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February 27, 2018

SENATE BILL NO. 1091

By: Treat of the Senate

and

Roberts (Dustin) of the
House

An Act relating to driving under the influence; amending 47 O.S. 2011, Section 11-902, as last amended by Section 18, Chapter 42, O.S.L. 2017 (47 O.S. Supp. 2017, Section 11-902), which relates to persons under the influence and penalty enhancement; modifying certain discretion; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as last amended by Section 18, Chapter 42, O.S.L. 2017 (47 O.S. Supp. 2017, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state, whether upon public roads, highways, streets, turnpikes, other public places or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings, who:

1 1. Has a blood or breath alcohol concentration, as defined in
2 Section 756 of this title, of eight-hundredths (0.08) or more at the
3 time of a test of such person's blood or breath administered within
4 two (2) hours after the arrest of such person;

5 2. Is under the influence of alcohol;

6 3. Has any amount of a Schedule I chemical or controlled
7 substance, as defined in Section 2-204 of Title 63 of the Oklahoma
8 Statutes, or one of its metabolites or analogs in the person's
9 blood, saliva, urine or any other bodily fluid at the time of a test
10 of such person's blood, saliva, urine or any other bodily fluid
11 administered within two (2) hours after the arrest of such person;

12 4. Is under the influence of any intoxicating substance other
13 than alcohol which may render such person incapable of safely
14 driving or operating a motor vehicle; or

15 5. Is under the combined influence of alcohol and any other
16 intoxicating substance which may render such person incapable of
17 safely driving or operating a motor vehicle.

18 B. The fact that any person charged with a violation of this
19 section is or has been lawfully entitled to use alcohol or a
20 controlled dangerous substance or any other intoxicating substance
21 shall not constitute a defense against any charge of violating this
22 section.

1 C. 1. Any person who is convicted of a violation of the
2 provisions of this section shall be guilty of a misdemeanor for the
3 first offense and shall:

- 4 a. participate in an assessment and evaluation pursuant
5 to subsection G of this section and shall follow all
6 recommendations made in the assessment and evaluation,
- 7 b. be punished by imprisonment in jail for not less than
8 ten (10) days nor more than one (1) year, and
- 9 c. be fined not more than One Thousand Dollars
10 (\$1,000.00).

11 2. Any person who, having been convicted of or having received
12 deferred judgment for a violation of this section or a violation
13 pursuant to the provisions of any law of this state or another state
14 prohibiting the offenses provided in this section, Section 11-904 of
15 this title or paragraph 4 of subsection A of Section 852.1 of Title
16 21 of the Oklahoma Statutes, or having a prior conviction in a
17 municipal criminal court of record for the violation of a municipal
18 ordinance prohibiting the offense provided for in this section
19 commits a subsequent violation of this section within ten (10) years
20 of the date following the completion of the execution of said
21 sentence or deferred judgment, ~~and against whom the district~~
22 ~~attorney seeks to enhance punishment pursuant to the provision of~~
23 ~~this section,~~ shall, upon conviction, be guilty of a felony and
24

1 shall participate in an assessment and evaluation pursuant to
2 subsection G of this section and shall be sentenced to:

- 3 a. follow all recommendations made in the assessment and
4 evaluation for treatment at the defendant's expense,
5 or
- 6 b. placement in the custody of the Department of
7 Corrections for not less than one (1) year and not to
8 exceed five (5) years and a fine of not more than Two
9 Thousand Five Hundred Dollars (\$2,500.00), or
- 10 c. treatment, imprisonment and a fine within the
11 limitations prescribed in subparagraphs a and b of
12 this paragraph.

13 However, if the treatment in subsection G of this section does
14 not include residential or inpatient treatment for a period of not
15 less than five (5) days, the person shall serve a term of
16 imprisonment of at least five (5) days.

17 3. Any person who commits a violation of this section after
18 having been convicted of a felony offense pursuant to the provisions
19 of this section or a violation pursuant to the provisions of any law
20 of this state or another state prohibiting the offenses provided for
21 in this section, Section 11-904 of this title or paragraph 4 of
22 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes,
23 ~~and against whom the district attorney seeks to enhance punishment,~~
24 shall be guilty of a felony and participate in an assessment and

1 evaluation pursuant to subsection G of this section and shall be
2 sentenced to:

- 3 a. follow all recommendations made in the assessment and
4 evaluation for treatment at the defendant's expense,
5 two hundred forty (240) hours of community service and
6 use of an ignition interlock device, as provided by
7 subparagraph n of paragraph 1 of subsection A of
8 Section 991a of Title 22 of the Oklahoma Statutes, or
- 9 b. placement in the custody of the Department of
10 Corrections for not less than one (1) year and not to
11 exceed ten (10) years and a fine of not more than Five
12 Thousand Dollars (\$5,000.00), or
- 13 c. treatment, imprisonment and a fine within the
14 limitations prescribed in subparagraphs a and b of
15 this paragraph.

16 However, if the treatment in subsection G of this section does
17 not include residential or inpatient treatment for a period of not
18 less than ten (10) days, the person shall serve a term of
19 imprisonment of at least ten (10) days.

20 4. Any person who commits a violation of this section after
21 having been twice convicted of a felony offense pursuant to the
22 provisions of this section or a violation pursuant to the provisions
23 of any law of this state or another state prohibiting the offenses
24 provided for in this section, Section 11-904 of this title or

1 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
2 Oklahoma Statutes, ~~and against whom the district attorney seeks to~~
3 ~~enhance punishment,~~ shall be guilty of a felony and participate in
4 an assessment and evaluation pursuant to subsection G of this
5 section and shall be sentenced to:

- 6 a. follow all recommendations made in the assessment and
7 evaluation for treatment at the defendant's expense,
8 followed by not less than one (1) year of supervision
9 and periodic testing at the defendant's expense, four
10 hundred eighty (480) hours of community service, and
11 use of an ignition interlock device, as provided by
12 subparagraph n of paragraph 1 of subsection A of
13 Section 991a of Title 22 of the Oklahoma Statutes, for
14 a minimum of thirty (30) days, or
- 15 b. placement in the custody of the Department of
16 Corrections for not less than one (1) year and not to
17 exceed twenty (20) years and a fine of not more than
18 Five Thousand Dollars (\$5,000.00), or
- 19 c. treatment, imprisonment and a fine within the
20 limitations prescribed in subparagraphs a and b of
21 this paragraph.

22 However, if the person does not undergo residential or inpatient
23 treatment pursuant to subsection G of this section the person shall
24 serve a term of imprisonment of at least ten (10) days.

1 5. Any person who, after a previous conviction of a violation
2 of murder in the second degree or manslaughter in the first degree
3 in which the death was caused as a result of driving under the
4 influence of alcohol or other intoxicating substance, is convicted
5 of a violation of this section shall be guilty of a felony and shall
6 be punished by imprisonment in the custody of the Department of
7 Corrections for not less than five (5) years and not to exceed
8 twenty (20) years, and a fine of not more than Ten Thousand Dollars
9 (\$10,000.00).

10 6. Provided, however, a conviction from another state shall not
11 be used to enhance punishment pursuant to the provisions of this
12 subsection if that conviction is based on a blood or breath alcohol
13 concentration of less than eight-hundredths (0.08).

14 7. In any case in which a defendant is charged with driving
15 under the influence of alcohol or other intoxicating substance
16 offense within any municipality with a municipal court other than a
17 court of record, the charge shall be presented to the county's
18 district attorney and filed with the district court of the county
19 within which the municipality is located.

20 D. Any person who is convicted of a violation of driving under
21 the influence with a blood or breath alcohol concentration of
22 fifteen-hundredths (0.15) or more pursuant to this section shall be
23 deemed guilty of aggravated driving under the influence. A person
24 convicted of aggravated driving under the influence shall

1 participate in an assessment and evaluation pursuant to subsection G
2 of this section and shall comply with all recommendations for
3 treatment. Such person shall be sentenced as provided in paragraph
4 1, 2, 3, 4 or 5 of subsection C of this section and to:

5 1. Not less than one (1) year of supervision and periodic
6 testing at the defendant's expense; and

7 2. An ignition interlock device or devices, as provided by
8 subparagraph n of paragraph 1 of subsection A of Section 991a of
9 Title 22 of the Oklahoma Statutes, for a minimum of ninety (90)
10 days.

11 E. When a person is sentenced to imprisonment in the custody of
12 the Department of Corrections, the person shall be processed through
13 the Lexington Assessment and Reception Center or at a place
14 determined by the Director of the Department of Corrections. The
15 Department of Corrections shall classify and assign the person to
16 one or more of the following:

17 1. The Department of Mental Health and Substance Abuse Services
18 pursuant to paragraph 1 of subsection A of Section 612 of Title 57
19 of the Oklahoma Statutes; or

20 2. A correctional facility operated by the Department of
21 Corrections with assignment to substance abuse treatment.
22 Successful completion of a Department-of-Corrections-approved
23 substance abuse treatment program shall satisfy the recommendation
24 for a ten-hour or twenty-four-hour alcohol and drug substance abuse

1 course or treatment program or both. Successful completion of an
2 approved Department of Corrections substance abuse treatment program
3 may precede or follow the required assessment.

4 F. The Department of Public Safety is hereby authorized to
5 reinstate any suspended or revoked driving privilege when the person
6 meets the statutory requirements which affect the existing driving
7 privilege.

8 G. Any person who is found guilty of a violation of the
9 provisions of this section shall be ordered to participate in an
10 alcohol and drug substance abuse evaluation and assessment program
11 offered by a certified assessment agency or certified assessor for
12 the purpose of evaluating and assessing the receptivity to treatment
13 and prognosis of the person and shall follow all recommendations
14 made in the assessment and evaluation for treatment. The court
15 shall order the person to reimburse the agency or assessor for the
16 evaluation and assessment. Payment shall be remitted by the
17 defendant or on behalf of the defendant by any third party;
18 provided, no state-appropriated funds are utilized. The fee for an
19 evaluation and assessment shall be the amount provided in subsection
20 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
21 evaluation and assessment shall be conducted at a certified
22 assessment agency, the office of a certified assessor or at another
23 location as ordered by the court. The agency or assessor shall,
24 within seventy-two (72) hours from the time the person is evaluated

1 and assessed, submit a written report to the court for the purpose
2 of assisting the court in its sentencing determination. The court
3 shall, as a condition of any sentence imposed, including deferred
4 and suspended sentences, require the person to participate in and
5 successfully complete all recommendations from the evaluation, such
6 as an alcohol and substance abuse treatment program pursuant to
7 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
8 indicates that the evaluation and assessment shows that the
9 defendant would benefit from a ten-hour or twenty-four-hour alcohol
10 and drug substance abuse course or a treatment program or both, the
11 court shall, as a condition of any sentence imposed, including
12 deferred and suspended sentences, require the person to follow all
13 recommendations identified by the evaluation and assessment and
14 ordered by the court. No person, agency or facility operating an
15 evaluation and assessment program certified by the Department of
16 Mental Health and Substance Abuse Services shall solicit or refer
17 any person evaluated and assessed pursuant to this section for any
18 treatment program or substance abuse service in which such person,
19 agency or facility has a vested interest; however, this provision
20 shall not be construed to prohibit the court from ordering
21 participation in or any person from voluntarily utilizing a
22 treatment program or substance abuse service offered by such person,
23 agency or facility. If a person is sentenced to imprisonment in the
24 custody of the Department of Corrections and the court has received

1 a written evaluation report pursuant to the provisions of this
2 subsection, the report shall be furnished to the Department of
3 Corrections with the judgment and sentence. Any evaluation and
4 assessment report submitted to the court pursuant to the provisions
5 of this subsection shall be handled in a manner which will keep such
6 report confidential from the general public's review. Nothing
7 contained in this subsection shall be construed to prohibit the
8 court from ordering judgment and sentence in the event the defendant
9 fails or refuses to comply with an order of the court to obtain the
10 evaluation and assessment required by this subsection. If the
11 defendant fails or refuses to comply with an order of the court to
12 obtain the evaluation and assessment, the Department of Public
13 Safety shall not reinstate driving privileges until the defendant
14 has complied in full with such order. Nothing contained in this
15 subsection shall be construed to prohibit the court from ordering
16 judgment and sentence and any other sanction authorized by law for
17 failure or refusal to comply with an order of the court.

18 H. Any person who is found guilty of a violation of the
19 provisions of this section may be required by the court to attend a
20 victims impact panel program, as defined in subsection H of Section
21 991a of Title 22 of the Oklahoma Statutes, if such a program is
22 offered in the county where the judgment is rendered, and to pay a
23 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
24 Dollars (\$60.00) as set by the governing authority of the program

1 and approved by the court to the program to offset the cost of
2 participation by the defendant, if in the opinion of the court the
3 defendant has the ability to pay such fee.

4 I. Any person who is found guilty of a felony violation of the
5 provisions of this section shall be required to submit to electronic
6 monitoring as authorized and defined by Section 991a of Title 22 of
7 the Oklahoma Statutes.

8 J. Any person who is found guilty of a violation of the
9 provisions of this section who has been sentenced by the court to
10 perform any type of community service shall not be permitted to pay
11 a fine in lieu of performing the community service.

12 K. When a person is found guilty of a violation of the
13 provisions of this section, the court shall order, in addition to
14 any other penalty, the defendant to pay a one-hundred-dollar
15 assessment to be deposited in the Drug Abuse Education and Treatment
16 Revolving Fund created in Section 2-503.2 of Title 63 of the
17 Oklahoma Statutes, upon collection.

18 L. 1. When a person is eighteen (18) years of age or older,
19 and is the driver, operator, or person in physical control of a
20 vehicle, and is convicted of violating any provision of this section
21 while transporting or having in the motor vehicle any child less
22 than eighteen (18) years of age, the fine shall be enhanced to
23 double the amount of the fine imposed for the underlying driving
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1 under the influence (DUI) violation which shall be in addition to
2 any other penalties allowed by this section.

3 2. Nothing in this subsection shall prohibit the prosecution of
4 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
5 Statutes who is in violation of any provision of this section or
6 Section 11-904 of this title.

7 M. Any plea of guilty, nolo contendere or finding of guilt for
8 a violation of this section or a violation pursuant to the
9 provisions of any law of this state or another state prohibiting the
10 offenses provided for in this section, Section 11-904 of this title,
11 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
12 Oklahoma Statutes, shall constitute a conviction of the offense for
13 the purpose of this section; provided, any deferred judgment shall
14 only be considered to constitute a conviction for a period of ten
15 (10) years following the completion of any court-imposed
16 probationary term.

17 N. If qualified by knowledge, skill, experience, training or
18 education, a witness shall be allowed to testify in the form of an
19 opinion or otherwise solely on the issue of impairment, but not on
20 the issue of specific alcohol concentration level, relating to the
21 following:

22 1. The results of any standardized field sobriety test
23 including, but not limited to, the horizontal gaze nystagmus (HGN)
24

1 test administered by a person who has completed training in
2 standardized field sobriety testing; or

3 2. Whether a person was under the influence of one or more
4 impairing substances and the category of such impairing substance or
5 substances. A witness who has received training and holds a current
6 certification as a drug recognition expert shall be qualified to
7 give the testimony in any case in which such testimony may be
8 relevant.

9 SECTION 2. This act shall become effective November 1, 2018.

10 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
11 February 27, 2018 - DO PASS
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