

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3044

By: Talley

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2021, Section 11-902, which relates to persons under the influence of alcohol or other intoxicating substances; requiring certain persons complete Impaired Driver Accountability Program; allowing for satisfaction of requirements under certain condition; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2021, 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. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of eight-hundredths (0.08) or more at the

1 time of a test of such person's blood or breath administered within  
2 two (2) hours after the arrest of such person;

3 2. Is under the influence of alcohol;

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

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

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

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

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

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

2. Any person who, having been convicted of or having received deferred judgment for a violation of this section or a violation pursuant to the provisions of any law of this state or another state prohibiting the offenses provided in this section, Section 11-904 of this title or paragraph 4 of subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes, or having a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in this section commits a subsequent violation of this section within ten (10) years of the date following the completion of the execution of said sentence or deferred judgment shall, upon conviction, be guilty of a felony and shall participate in an assessment and evaluation pursuant to subsection G of this section and shall be sentenced to:

- a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense,  
or

- 1           b.    placement in the custody of the Department of  
2                Corrections for not less than one (1) year and not to  
3                exceed five (5) years and a fine of not more than Two  
4                Thousand Five Hundred Dollars (\$2,500.00), or  
5           c.    treatment, imprisonment and a fine within the  
6                limitations prescribed in subparagraphs a and b of  
7                this paragraph.

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

12          3.   Any person who commits a violation of this section after  
13 having been convicted of a felony offense pursuant to the provisions  
14 of this section or a violation pursuant to the provisions of any law  
15 of this state or another state prohibiting the offenses provided for  
16 in this section, Section 11-904 of this title or paragraph 4 of  
17 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes  
18 shall be guilty of a felony and participate in an assessment and  
19 evaluation pursuant to subsection G of this section and shall be  
20 sentenced to:

- 21          a.   follow all recommendations made in the assessment and  
22                evaluation for treatment at the defendant's expense,  
23                two hundred forty (240) hours of community service and  
24                use of an ignition interlock device, as provided by

- 1            subparagraph n of paragraph 1 of subsection A of  
2            Section 991a of Title 22 of the Oklahoma Statutes, or  
3            b.    placement in the custody of the Department of  
4            Corrections for not less than one (1) year and not to  
5            exceed ten (10) years and a fine of not more than Five  
6            Thousand Dollars (\$5,000.00), or  
7            c.    treatment, imprisonment and a fine within the  
8            limitations prescribed in subparagraphs a and b of  
9            this paragraph.

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

14           4.    Any person who commits a violation of this section after  
15           having been twice convicted of a felony offense pursuant to the  
16           provisions of this section or a violation pursuant to the provisions  
17           of any law of this state or another state prohibiting the offenses  
18           provided for in this section, Section 11-904 of this title or  
19           paragraph 4 of subsection A of Section 852.1 of Title 21 of the  
20           Oklahoma Statutes shall be guilty of a felony and participate in an  
21           assessment and evaluation pursuant to subsection G of this section  
22           and shall be sentenced to:

- 23           a.    follow all recommendations made in the assessment and  
24           evaluation for treatment at the defendant's expense,

1 followed by not less than one (1) year of supervision  
2 and periodic testing at the defendant's expense, four  
3 hundred eighty (480) hours of community service, and  
4 use of an ignition interlock device, as provided by  
5 subparagraph n of paragraph 1 of subsection A of  
6 Section 991a of Title 22 of the Oklahoma Statutes, for  
7 a minimum of thirty (30) days, or

8 b. placement in the custody of the Department of  
9 Corrections for not less than one (1) year and not to  
10 exceed twenty (20) years and a fine of not more than  
11 Five Thousand Dollars (\$5,000.00), or

12 c. treatment, imprisonment and a fine within the  
13 limitations prescribed in subparagraphs a and b of  
14 this paragraph.

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

18 5. Any person who, after a previous conviction of a violation  
19 of murder in the second degree or manslaughter in the first degree  
20 in which the death was caused as a result of driving under the  
21 influence of alcohol or other intoxicating substance, is convicted  
22 of a violation of this section shall be guilty of a felony and shall  
23 be punished by imprisonment in the custody of the Department of  
24 Corrections for not less than five (5) years and not to exceed

1 twenty (20) years, and a fine of not more than Ten Thousand Dollars  
2 (\$10,000.00).

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

7 7. In any case in which a defendant is charged with driving  
8 under the influence of alcohol or other intoxicating substance  
9 offense within any municipality with a municipal court other than a  
10 court of record, the charge shall be presented to the county's  
11 district attorney and filed with the district court of the county  
12 within which the municipality is located.

13 D. Any person who is convicted of a violation of driving under  
14 the influence with a blood or breath alcohol concentration of  
15 fifteen-hundredths (0.15) or more pursuant to this section shall be  
16 deemed guilty of aggravated driving under the influence. A person  
17 convicted of aggravated driving under the influence shall  
18 participate in an assessment and evaluation pursuant to subsection G  
19 of this section and shall comply with all recommendations for  
20 treatment. Such person shall be sentenced as provided in paragraph  
21 1, 2, 3, 4 or 5 of subsection C of this section and to:

22 1. Not less than one (1) year of supervision and periodic  
23 testing at the defendant's expense; and  
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1        2. An ignition interlock device or devices, as provided by  
2 subparagraph n of paragraph 1 of subsection A of Section 991a of  
3 Title 22 of the Oklahoma Statutes, for a minimum of ninety (90)  
4 days.

5        E. When a person is sentenced to imprisonment in the custody of  
6 the Department of Corrections, the person shall be processed through  
7 the Lexington Assessment and Reception Center or at a place  
8 determined by the Director of the Department of Corrections. The  
9 Department of Corrections shall classify and assign the person to  
10 one or more of the following:

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

14        2. A correctional facility operated by the Department of  
15 Corrections with assignment to substance abuse treatment.  
16 Successful completion of a Department-of-Corrections-approved  
17 substance abuse treatment program shall satisfy the recommendation  
18 for a ten-hour or twenty-four-hour alcohol and drug substance abuse  
19 course or treatment program or both. Successful completion of an  
20 approved Department of Corrections substance abuse treatment program  
21 may precede or follow the required assessment.

22        F. The Department of Public Safety is hereby authorized to  
23 reinstate any suspended or revoked driving privilege when the person  
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1 meets the statutory requirements which affect the existing driving  
2 privilege.

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

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

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

13 H. Any person who is found guilty of a violation of the  
14 provisions of this section shall be required by the court to attend  
15 a victims impact panel program, as defined in subsection H of  
16 Section 991a of Title 22 of the Oklahoma Statutes, if such a program  
17 is offered in the county where the judgment is rendered, and to pay  
18 a fee of Seventy-five Dollars (\$75.00), as set by the governing  
19 authority of the program and approved by the court, to the program  
20 to offset the cost of participation by the defendant, if in the  
21 opinion of the court the defendant has the ability to pay such fee.

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

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

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

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

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

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

11 N. If qualified by knowledge, skill, experience, training or  
12 education, a witness shall be allowed to testify in the form of an  
13 opinion or otherwise solely on the issue of impairment, but not on  
14 the issue of specific alcohol concentration level, relating to the  
15 following:

16 1. The results of any standardized field sobriety test  
17 including, but not limited to, the horizontal gaze nystagmus (HGN)  
18 test administered by a person who has completed training in  
19 standardized field sobriety testing; or

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

3 0. Any person who having been convicted of or having received  
4 deferred judgment for a violation of this section, in addition to  
5 any sentence imposed by the court, shall be required to complete the  
6 Impaired Driver Accountability Program (IDAP) in accordance with the  
7 rules of the Board of Tests for Alcohol and Drug Influence;  
8 provided, if in relation to the same incident, the person completes  
9 IDAP as required by Section 6-205.1 of this title, such program  
10 completion shall satisfy the requirements of this subsection.

11 SECTION 2. This act shall become effective November 1, 2022.

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13 58-2-9113 JBH 12/30/21  
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