

1 ENGROSSED HOUSE  
2 BILL NO. 2151

By: West (Kevin) of the House

3 and

4 Rosino of the Senate

5  
6  
7 [ driving under the influence - cellular phone  
8 tracking application - probable cause - Department  
9 of Public Safety - codification - effective date ]  
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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. NEW LAW A new section of law not to be  
14 codified in the Oklahoma Statutes reads as follows:

15 This act shall be known and may be cited as the "Drunk Impaired  
16 Accountability Law (D.A.I.L.)".

17 SECTION 2. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 11-902e of Title 47, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. The Department of Public Safety shall maintain and develop  
21 or contract to develop a cellular phone application that allows for  
22 the tracking of individuals convicted of the offense of driving  
23 while under the influence of alcohol or other intoxicating substance  
24 as provided for in subsection A of Section 11-902 of Title 47 of the

1 Oklahoma Statutes. If the Department choses to contract for the  
2 development of the cellular phone application, the Department shall  
3 offer the contract to an existing state vendor with similar  
4 experience in developing such applications. The cellular phone  
5 application shall be installed on the cellular telephone of  
6 individuals convicted of the offense of driving under the influence,  
7 in accordance with Section 11-902 of Title 47 of the Oklahoma  
8 Statutes. The cellular phone application shall:

9 1. Allow for information relating to the individual's real-time  
10 and past location to be available to any state or municipal law  
11 enforcement agency personnel;

12 2. Allow for law enforcement personnel to locate previous  
13 offenders in his or her immediate area; and

14 3. Not allow for an individual's name or identifying  
15 information to be seen on the tracking device used by law  
16 enforcement officers. The location of an individual shall only be  
17 visible to law enforcement personnel as a dot on the screen with no  
18 identifying information.

19 B. The location information provided to law enforcement  
20 personnel via the cellular telephone application described in  
21 subsection A of this section shall not be considered probable cause  
22 for the stop of an individual.

23 C. The Department of Public Safety is authorized to develop any  
24 rules and procedures to effectuate the provisions of this section.

1 SECTION 3. AMENDATORY 47 O.S. 2021, Section 11-902, is  
2 amended to read as follows:

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

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

13 2. Is under the influence of alcohol;

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

20 4. Is under the influence of any intoxicating substance other  
21 than alcohol which may render such person incapable of safely  
22 driving or operating a motor vehicle; or  
23  
24

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

4           B. The fact that any person charged with a violation of this  
5 section is or has been lawfully entitled to use alcohol or a  
6 controlled dangerous substance or any other intoxicating substance  
7 shall not constitute a defense against any charge of violating this  
8 section.

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

- 12           a. participate in an assessment and evaluation pursuant  
13           to subsection G of this section and shall follow all  
14           recommendations made in the assessment and evaluation,
- 15           b. be punished by imprisonment in jail for not less than  
16           ten (10) days nor more than one (1) year, ~~and~~
- 17           c. be fined not more than One Thousand Dollars  
18           (\$1,000.00), and
- 19           d. have the option of having a tracking application  
20           installed on his or her cellular telephone, pursuant  
21           to Section 1 of this act, for a period of one (1) year  
22           if agreed to by the District Attorney.

23           2. Any person who, having been convicted of or having received  
24 deferred judgment for a violation of this section or a violation

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

- 12 a. follow all recommendations made in the assessment and  
13 evaluation for treatment at the defendant's expense,  
14 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 five (5) years and a fine of not more than Two  
18 Thousand Five Hundred Dollars (\$2,500.00), or
- 19 c. treatment, imprisonment and a fine within the  
20 limitations prescribed in subparagraphs a and b of  
21 this paragraph, or
- 22 d. have a tracking application installed on his or her  
23 cellular telephone, pursuant to Section 1 of this act,  
24 for a period of five (5) years.

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

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

- 14           a. follow all recommendations made in the assessment and  
15           evaluation for treatment at the defendant's expense,  
16           two hundred forty (240) hours of community service and  
17           use of an ignition interlock device, as provided by  
18           subparagraph n of paragraph 1 of subsection A of  
19           Section 991a of Title 22 of the Oklahoma Statutes, or
- 20           b. placement in the custody of the Department of  
21           Corrections for not less than one (1) year and not to  
22           exceed ten (10) years and a fine of not more than Five  
23           Thousand Dollars (\$5,000.00), or

24

1           c.    treatment, imprisonment and a fine within the  
2                    limitations prescribed in subparagraphs a and b of  
3                    this paragraph.

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

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

17           a.    follow all recommendations made in the assessment and  
18                    evaluation for treatment at the defendant's expense,  
19                    followed by not less than one (1) year of supervision  
20                    and periodic testing at the defendant's expense, four  
21                    hundred eighty (480) hours of community service, and  
22                    use of an ignition interlock device, as provided by  
23                    subparagraph n of paragraph 1 of subsection A of  
24

1 Section 991a of Title 22 of the Oklahoma Statutes, for  
2 a minimum of thirty (30) days, 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 twenty (20) years and a fine of not more than  
6 Five 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 person does not undergo residential or inpatient  
11 treatment pursuant to subsection G of this section the person shall  
12 serve a term of imprisonment of at least ten (10) days.

13 5. Any person who, after a previous conviction of a violation  
14 of murder in the second degree or manslaughter in the first degree  
15 in which the death was caused as a result of driving under the  
16 influence of alcohol or other intoxicating substance, is convicted  
17 of a violation of this section shall be guilty of a felony and shall  
18 be punished by imprisonment in the custody of the Department of  
19 Corrections for not less than five (5) years and not to exceed  
20 twenty (20) years, and a fine of not more than Ten Thousand Dollars  
21 (\$10,000.00).

22 6. Provided, however, a conviction from another state shall not  
23 be used to enhance punishment pursuant to the provisions of this  
24

1 subsection if that conviction is based on a blood or breath alcohol  
2 concentration of less than eight-hundredths (0.08).

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

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

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

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

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

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

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

18 F. The Department of Public Safety is hereby authorized to  
19 reinstate any suspended or revoked driving privilege when the person  
20 meets the statutory requirements which affect the existing driving  
21 privilege.

22 G. Any person who is found guilty of a violation of the  
23 provisions of this section shall be ordered to participate in an  
24 alcohol and drug substance abuse evaluation and assessment program

1 offered by a certified assessment agency or certified assessor for  
2 the purpose of evaluating and assessing the receptivity to treatment  
3 and prognosis of the person and shall follow all recommendations  
4 made in the assessment and evaluation for treatment. The court  
5 shall order the person to reimburse the agency or assessor for the  
6 evaluation and assessment. Payment shall be remitted by the  
7 defendant or on behalf of the defendant by any third party;  
8 provided, no state-appropriated funds are utilized. The fee for an  
9 evaluation and assessment shall be the amount provided in subsection  
10 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The  
11 evaluation and assessment shall be conducted at a certified  
12 assessment agency, the office of a certified assessor or at another  
13 location as ordered by the court. The agency or assessor shall,  
14 within seventy-two (72) hours from the time the person is evaluated  
15 and assessed, submit a written report to the court for the purpose  
16 of assisting the court in its sentencing determination. The court  
17 shall, as a condition of any sentence imposed, including deferred  
18 and suspended sentences, require the person to participate in and  
19 successfully complete all recommendations from the evaluation, such  
20 as an alcohol and substance abuse treatment program pursuant to  
21 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report  
22 indicates that the evaluation and assessment shows that the  
23 defendant would benefit from a ten-hour or twenty-four-hour alcohol  
24 and drug substance abuse course or a treatment program or both, the

1 court shall, as a condition of any sentence imposed, including  
2 deferred and suspended sentences, require the person to follow all  
3 recommendations identified by the evaluation and assessment and  
4 ordered by the court. No person, agency or facility operating an  
5 evaluation and assessment program certified by the Department of  
6 Mental Health and Substance Abuse Services shall solicit or refer  
7 any person evaluated and assessed pursuant to this section for any  
8 treatment program or substance abuse service in which such person,  
9 agency or facility has a vested interest; however, this provision  
10 shall not be construed to prohibit the court from ordering  
11 participation in or any person from voluntarily utilizing a  
12 treatment program or substance abuse service offered by such person,  
13 agency or facility. If a person is sentenced to imprisonment in the  
14 custody of the Department of Corrections and the court has received  
15 a written evaluation report pursuant to the provisions of this  
16 subsection, the report shall be furnished to the Department of  
17 Corrections with the judgment and sentence. Any evaluation and  
18 assessment report submitted to the court pursuant to the provisions  
19 of this subsection shall be handled in a manner which will keep such  
20 report confidential from the general public's review. Nothing  
21 contained in this subsection shall be construed to prohibit the  
22 court from ordering judgment and sentence in the event the defendant  
23 fails or refuses to comply with an order of the court to obtain the  
24 evaluation and assessment required by this subsection. If the

1 defendant fails or refuses to comply with an order of the court to  
2 obtain the evaluation and assessment, the Department of Public  
3 Safety shall not reinstate driving privileges until the defendant  
4 has complied in full with such order. Nothing contained in this  
5 subsection shall be construed to prohibit the court from ordering  
6 judgment and sentence and any other sanction authorized by law for  
7 failure or refusal to comply with an order of the court.

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

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

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

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

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

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

19 M. Any plea of guilty, nolo contendere or finding of guilt for  
20 a violation of this section or a violation pursuant to the  
21 provisions of any law of this state or another state prohibiting the  
22 offenses provided for in this section, Section 11-904 of this title,  
23 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the  
24 Oklahoma Statutes, shall constitute a conviction of the offense for

1 the purpose of this section; provided, any deferred judgment shall  
2 only be considered to constitute a conviction for a period of ten  
3 (10) years following the completion of any court-imposed  
4 probationary term.

5 N. If qualified by knowledge, skill, experience, training or  
6 education, a witness shall be allowed to testify in the form of an  
7 opinion or otherwise solely on the issue of impairment, but not on  
8 the issue of specific alcohol concentration level, relating to the  
9 following:

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

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

20 SECTION 4. This act shall become effective November 1, 2023.

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1 Passed the House of Representatives the 23rd day of March, 2023.

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3 \_\_\_\_\_  
4 Presiding Officer of the House  
of Representatives

5 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2023.

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8 \_\_\_\_\_  
9 Presiding Officer of the Senate