

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3239

By: Lawson

AS INTRODUCED

An Act relating to driving under the influence; amending 11 O.S. 2021, Section 27-101, which relates to the creation of municipal court not of record; creating a Qualified DUI Municipal Court Not of Record for certain municipalities; requiring municipality make certain determination by resolution; requiring the filing resolution with the county clerk; requiring certain judicial notice; requiring certain prerequisites; amending 47 O.S. 2021, Section 11-902, which relates to persons under the influence of alcohol or other intoxicating substance or combination thereof; making exception for certain courts to retain jurisdiction; stating requirements for certain court jurisdiction; requiring certain cases be transferred to district court; stating powers of certain court; prohibiting the reinstatement of driving privileges until certain conditions met; requiring certain cases involving bodily injury and other offenses be transferred to district court; amending 47 O.S. 2021, Section 11-902c, which relates to preemption of legislation pertaining to prosecution of offenses related to driving under the influence of alcohol or other intoxicating substances; making exception for certain court; and providing an effective date.

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

SECTION 1. AMENDATORY 11 O.S. 2021, Section 27-101, is amended to read as follows:

1 Section 27-101. A. A municipality may create a Municipal
2 Court, as provided in this article, which shall be a court not of
3 record. This court may be created in addition to a Municipal
4 Criminal Court of Record. References in Sections 27-101 through 27-
5 131 of this title to the municipal court shall mean the municipal
6 court not of record established under the authority of the
7 provisions of this article.

8 B. In cities having a population of more than fifteen thousand
9 (15,000) inhabitants, according to the latest Federal Decennial
10 Census, there is hereby created a "qualified DUI municipal court not
11 of record", subject to the provisions of subsection C of this
12 section. References in Sections 27-101 through 27-131 of this title
13 to the qualified DUI municipal court not of record shall mean the
14 courts established by the provisions of this article in cities over
15 fifteen thousand (15,000) population.

16 C. For the creation of a qualified DUI municipal court not of
17 record, the municipal governing body shall determine by resolution
18 that the qualified DUI municipal court not of record should be and
19 is created. The governing body shall cause a certified copy of the
20 resolution to be filed in the office of the county clerk of each
21 county in which the municipality is located. The resolution and
22 filing thereof shall be judicially noticed in all courts of this
23 state. As a prerequisite to the creation of a qualified DUI
24 municipal court not of record, the municipality must have a stand-
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1 alone city attorney or city prosecutor specifically tasked with
2 handling such matters before the court.

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

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

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

15 2. Is under the influence of alcohol;

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

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

19 2. Any person who, having been convicted of or having received
20 deferred judgment for a violation of this section or a violation
21 pursuant to the provisions of any law of this state or another state
22 prohibiting the offenses provided in this section, Section 11-904 of
23 this title or paragraph 4 of subsection A of Section 852.1 of Title
24 21 of the Oklahoma Statutes, or having a prior conviction in a
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1 municipal criminal court of record for the violation of a municipal
2 ordinance prohibiting the offense provided for in this section
3 commits a subsequent violation of this section within ten (10) years
4 of the date following the completion of the execution of said
5 sentence or deferred judgment shall, upon conviction, be guilty of a
6 felony and shall participate in an assessment and evaluation
7 pursuant to subsection G of this section and shall be sentenced to:

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

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

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

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

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

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

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

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 person does not undergo residential or inpatient
5 treatment pursuant to subsection G of this section the person shall
6 serve a term of imprisonment of at least ten (10) days.

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

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

20 7. In any case in which a defendant is charged with driving
21 under the influence of alcohol or other intoxicating substance
22 ~~offense~~ or operating a motor vehicle while impaired within any
23 municipality with a municipal court other than a court of record,
24 the charge shall be presented to the county's district attorney and
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1 filed with the district court of the county within which the
2 municipality is located, except for any municipality with a
3 qualified DUI municipal court not of record which may retain
4 jurisdiction of the case and file such charge against a defendant.

5 8. The qualified DUI municipal court not of record shall have
6 jurisdiction to prosecute a defendant for any offenses related to
7 driving under the influence of alcohol or other intoxicating
8 substance or operating a motor vehicle while impaired for two
9 dispositions during a ten-year period from the date of plea of the
10 first disposition. Any subsequent arrest of a defendant for any
11 offense related to driving under the influence of alcohol or other
12 intoxicating substance or operating a motor vehicle while impaired,
13 after two dispositions during the ten-year period in the qualified
14 DUI municipal court not of record, shall be presented to the
15 county's district attorney and filed with the district court of the
16 county within which the municipality is located.

17 a. The qualified DUI municipal court not of record shall
18 be required to order the defendant, in addition to all
19 other appropriate orders made by the court, to the
20 following:

21 (1) For the first disposition of any offense related
22 to driving under the influence of alcohol or
23 other intoxicating substance or operating a motor
24 vehicle while impaired, the defendant shall be
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1 required to obtain a drug and alcohol assessment
2 by a certified assessment agency or certified
3 assessor and successfully complete all
4 recommendations made therein. The defendant also
5 shall be required to attend a victims impact
6 panel, as defined in subsection H of Section 991a
7 of Title 22 of the Oklahoma Statutes.

8 (2) For a second disposition of any offense related
9 to driving under the influence of alcohol or
10 other intoxicating substance or operating a motor
11 vehicle while impaired, the defendant shall be
12 required to obtain a drug and alcohol assessment
13 by a certified assessment agency or certified
14 assessor and successfully complete all
15 recommendations made therein, which shall include
16 an intensive outpatient rehabilitation program.
17 Additionally, the defendant shall be required to
18 install, at defendant's expense and on every
19 motor vehicle operated by defendant, an ignition
20 interlock device approved by the Board of Tests
21 for Alcohol and Drug Influence for a period of
22 six (6) months.

23 b. Service Oklahoma shall not reinstate the driving
24 privileges of the defendant from a driver license
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1 suspension pursuant to Sections 753 or 754 of this
2 title until the defendant fully complies with all
3 requirements enumerated in subparagraph a of this
4 paragraph.

5 9. Any person arrested for driving under the influence of
6 alcohol or other intoxicating substance or operating a motor vehicle
7 while impaired that results in bodily injury to anyone other than
8 the defendant shall not be prosecuted in the qualified municipal
9 court not of record but shall be presented to the county's district
10 attorney and filed with the district court of the county within
11 which the municipality is located.

12 10. Any person having been convicted of a felony offense
13 pursuant to the provision of this section or a violation pursuant to
14 the provisions of any law of this state or another state prohibiting
15 the offenses provided for in this section or Section 11-904 of this
16 title, within the prior ten-year period, shall be prosecuted for any
17 new offense involving driving under the influence of alcohol or
18 other intoxicating substance or operating a motor vehicle while
19 impaired by presenting said charge to the county's district attorney
20 and filing the same with the district court of the county within
21 which the municipality is located.

22 D. Any person who is convicted of a violation of driving under
23 the influence with a blood or breath alcohol concentration of
24 fifteen-hundredths (0.15) or more pursuant to this section shall be
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1 deemed guilty of aggravated driving under the influence. A person
2 convicted of aggravated driving under the influence shall
3 participate in an assessment and evaluation pursuant to subsection G
4 of this section and shall comply with all recommendations for
5 treatment. Such person shall be sentenced as provided in paragraph
6 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

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

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

22 2. A correctional facility operated by the Department of
23 Corrections with assignment to substance abuse treatment.

24 Successful completion of a Department-of-Corrections-approved
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1 substance abuse treatment program shall satisfy the recommendation
2 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
3 course or treatment program or both. Successful completion of an
4 approved Department of Corrections substance abuse treatment program
5 may precede or follow the required assessment.

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

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

1 location as ordered by the court. The agency or assessor shall,
2 within seventy-two (72) hours from the time the person is evaluated
3 and assessed, submit a written report to the court for the purpose
4 of assisting the court in its sentencing determination. The court
5 shall, as a condition of any sentence imposed, including deferred
6 and suspended sentences, require the person to participate in and
7 successfully complete all recommendations from the evaluation, such
8 as an alcohol and substance abuse treatment program pursuant to
9 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
10 indicates that the evaluation and assessment shows that the
11 defendant would benefit from a ten-hour or twenty-four-hour alcohol
12 and drug substance abuse course or a treatment program or both, the
13 court shall, as a condition of any sentence imposed, including
14 deferred and suspended sentences, require the person to follow all
15 recommendations identified by the evaluation and assessment and
16 ordered by the court. No person, agency or facility operating an
17 evaluation and assessment program certified by the Department of
18 Mental Health and Substance Abuse Services shall solicit or refer
19 any person evaluated and assessed pursuant to this section for any
20 treatment program or substance abuse service in which such person,
21 agency or facility has a vested interest; however, this provision
22 shall not be construed to prohibit the court from ordering
23 participation in or any person from voluntarily utilizing a
24 treatment program or substance abuse service offered by such person,
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1 agency or facility. If a person is sentenced to imprisonment in the
2 custody of the Department of Corrections and the court has received
3 a written evaluation report pursuant to the provisions of this
4 subsection, the report shall be furnished to the Department of
5 Corrections with the judgment and sentence. Any evaluation and
6 assessment report submitted to the court pursuant to the provisions
7 of this subsection shall be handled in a manner which will keep such
8 report confidential from the general public's review. Nothing
9 contained in this subsection shall be construed to prohibit the
10 court from ordering judgment and sentence in the event the defendant
11 fails or refuses to comply with an order of the court to obtain the
12 evaluation and assessment required by this subsection. If the
13 defendant fails or refuses to comply with an order of the court to
14 obtain the evaluation and assessment, the Department of Public
15 Safety shall not reinstate driving privileges until the defendant
16 has complied in full with such order. Nothing contained in this
17 subsection shall be construed to prohibit the court from ordering
18 judgment and sentence and any other sanction authorized by law for
19 failure or refusal to comply with an order of the court.

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

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

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

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

19 L. 1. When a person is eighteen (18) years of age or older,
20 and is the driver, operator, or person in physical control of a
21 vehicle, and is convicted of violating any provision of this section
22 while transporting or having in the motor vehicle any child less
23 than eighteen (18) years of age, the fine shall be enhanced to
24 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)
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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 3. AMENDATORY 47 O.S. 2021, Section 11-902c, is
10 amended to read as follows:

11 Section 11-902c. A. The State Legislature hereby occupies and
12 preempts the entire field of legislation in this state touching in
13 any way the prosecution of offenses relating to driving under the
14 influence of alcohol or any other intoxicating substance or
15 operating a motor vehicle while impaired to the complete exclusion
16 of any order, ordinance, local legislation or regulation by any
17 municipality or other political subdivision of this state.

18 B. No municipality or other political subdivision shall
19 prosecute any laws or ordinances relating to the offense of driving
20 under the influence of alcohol or any other intoxicating substance
21 or operating a motor vehicle while impaired. Any existing or future
22 orders, ordinances, local legislation or regulations in violation of
23 this section is void and unenforceable.

1 C. The preemption provisions of this section shall not apply to
2 prosecutions in municipal criminal courts of record or qualified DUI
3 municipal courts not of record for offenses relating to driving
4 under the influence of alcohol or any other intoxicating substance
5 or operating a motor vehicle while impaired. Nothing in this
6 section shall prohibit a municipality from establishing a municipal
7 criminal court of record pursuant to the provisions of Section 28-
8 101 of Title 11 of the Oklahoma Statutes.

9 SECTION 4. This act shall become effective November 1, 2024.

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