

1 **SENATE FLOOR VERSION**

2 March 30, 2016

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2555

6 By: Wright and Biggs of the
7 House

8 and

9 Sykes of the Senate

10 **[motor vehicles - penalties for driving or
11 operating a vehicle while under the influence -
12 effective date]**

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

14 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
15 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
16 2015, Section 11-902), is amended to read as follows:

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

23 1. Has a blood or breath alcohol concentration, as defined in
24 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:

24

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

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

1 attorney seeks to enhance punishment pursuant to the provision of
2 this section shall, upon conviction, be guilty of a felony and shall
3 participate in an assessment and evaluation pursuant to subsection G
4 of this section and shall be sentenced to:

5 a. follow all recommendations made in the assessment and
6 evaluation for treatment at the defendant's expense,
7 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 five (5) years and a fine of not more than Two
11 Thousand Five Hundred Dollars (\$2,500.00), 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 treatment in subsection G of this section does
16 not include residential or inpatient treatment for a period of not
17 less than five (5) days, the person shall serve a term of
18 imprisonment of at least five (5) days.

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

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

- 5 a. follow all recommendations made in the assessment and
6 evaluation for treatment at the defendant's expense,
7 two hundred forty (240) hours of community service and
8 use of an ignition interlock device, as provided by
9 subparagraph n of paragraph 1 of subsection A of
10 Section 991a of Title 22 of the Oklahoma Statutes, 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 ten (10) years and a fine of not more than Five
14 Thousand Dollars (\$5,000.00), 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 ten (10) days, the person shall serve a term of
21 imprisonment of at least ten (10) days.

22 4. Any person who ~~is~~ commits a violation of this section after
23 having been twice convicted of a ~~third or subsequent~~ felony offense
24 pursuant to the provisions of this section or a violation pursuant

1 to the provisions of any law of this state or another state
2 prohibiting the offenses provided for in ~~subsection A~~ of this
3 section, Section 11-904 of this title or paragraph 4 of subsection A
4 of Section 852.1 of Title 21 of the Oklahoma Statutes, and against
5 whom the district attorney seeks to enhance punishment, shall be
6 guilty of a felony and 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 followed by not less than one (1) year of supervision
11 and periodic testing at the defendant's expense, four
12 hundred eighty (480) hours of community service, and
13 use of an ignition interlock device, as provided by
14 subparagraph n of paragraph 1 of subsection A of
15 Section 991a of Title 22 of the Oklahoma Statutes, for
16 a minimum of thirty (30) days, or

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

21 c. treatment, imprisonment and a fine within the
22 limitations prescribed in subparagraphs a and b of
23 this paragraph.
24

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

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

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

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

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

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

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

16 ~~Nothing in this subsection shall preclude the defendant from~~
17 ~~being charged or punished as provided in paragraph 1, 2, 3, 4 or 5~~
18 ~~of subsection C of this section. Any person who is convicted~~
19 ~~pursuant to the provisions of this subsection shall be guilty of a~~
20 ~~misdemeanor for a first offense and shall be punished as provided in~~
21 ~~paragraph 1 of subsection C of this section. Any person who, during~~
22 ~~the period of any court-imposed probationary term or within ten (10)~~
23 ~~years of the completion of the execution of any sentence or deferred~~
24 ~~judgment, commits a second violation of this subsection shall, upon~~

1 ~~conviction, be guilty of a felony and shall be punished as provided~~
2 ~~in paragraph 2 of subsection C of this section. Any person who~~
3 ~~commits a second felony offense pursuant to this subsection shall,~~
4 ~~upon conviction, be guilty of a felony and shall be punished as~~
5 ~~provided in paragraph 3 of subsection C of this section. Any person~~
6 ~~who commits a third or subsequent felony offense pursuant to the~~
7 ~~provisions of this subsection shall, upon conviction, be guilty of a~~
8 ~~felony and shall be punished as provided in paragraph 4 of~~
9 ~~subsection C of this section.~~

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

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

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

1 approved Department of Corrections substance abuse treatment program
2 may precede or follow the required assessment.

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

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

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

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

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

1 participation by the defendant, if in the opinion of the court the
2 defendant has the ability to pay such fee.

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

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

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

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

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

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

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

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

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

7 SECTION 2. AMENDATORY 47 O.S. 2011, Section 11-904, as
8 amended by Section 1, Chapter 157, O.S.L. 2012 (47 O.S. Supp. 2015,
9 Section 11-904), is amended to read as follows:

10 Section 11-904. A. Any person who is involved in a personal
11 injury accident while driving or operating a motor vehicle within
12 this state and who is in violation of the provisions of subsection A
13 of Section 11-902 of this title may be charged with a violation of
14 the provisions of this subsection as follows:

15 1. Any person who is convicted of a violation of the provisions
16 of this subsection shall be deemed guilty of a misdemeanor for the
17 first offense and shall be punished by imprisonment in the county
18 jail for not less than ninety (90) days nor more than one (1) year,
19 and a fine of not more than Two Thousand Five Hundred Dollars
20 (\$2,500.00); and

21 2. Any person who is convicted of a violation of the provisions
22 of this subsection after having been previously convicted of a
23 violation of this subsection or of Section 11-902 of this title
24 shall be deemed guilty of a felony and shall be punished by

1 imprisonment in the custody of the Department of Corrections for not
2 less than one (1) year and not more than five (5) years, and a fine
3 of not more than Five Thousand Dollars (\$5,000.00).

4 B. 1. Any person who causes an accident resulting in great
5 bodily injury to any person other than himself while driving or
6 operating a motor vehicle within this state and who is in violation
7 of the provisions of subsection A of Section 11-902 of this title
8 may be charged with a violation of the provisions of this
9 subsection. Any person who is convicted of a violation of the
10 provisions of this subsection shall be deemed guilty of a felony
11 punishable by imprisonment in the custody of the Department of
12 Corrections for not less than ~~one (1) year~~ four (4) years and not
13 more than ~~ten (10)~~ twenty (20) years, and a fine of not more than
14 Five Thousand Dollars (\$5,000.00).

15 2. As used in this subsection, "great bodily injury" means
16 bodily injury which creates a substantial risk of death or which
17 causes serious, permanent disfigurement or protracted loss or
18 impairment of the function of any bodily member or organ.

19 SECTION 3. This act shall become effective November 1, 2016.

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
21 March 30, 2016 - DO PASS AS AMENDED
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