

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 69

By: Allen

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5  
6 AS INTRODUCED

7 An Act relating to driving under the influence;  
8 amending 47 O.S. 2011, Section 11-902, as last  
9 amended by Section 1, Chapter 196, O.S.L. 2016 (47  
10 O.S. Supp. 2016, Section 11-902), which relates to  
11 penalty for persons under the influence of alcohol or  
12 other intoxicating substance; specifying certain  
13 inclusions; and providing an effective date.

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

15 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as  
16 last amended by Section 1, Chapter 196, O.S.L. 2016 (47 O.S. Supp.  
17 2016, Section 11-902), is amended to read as follows:

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

24 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. Has, as shown by analysis of such person's blood, blood  
4 containing five (5) nanograms or more of delta 9-  
5 tetrahydrocannabinol per milliliter in whole blood;

6 3. Is under the influence of alcohol;

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

13 ~~4.~~ 5. Is under the influence of any intoxicating substance  
14 other than alcohol which may render such person incapable of safely  
15 driving or operating a motor vehicle; or

16 ~~5.~~ 6. Is under the combined influence of alcohol and any other  
17 intoxicating substance which may render such person incapable of  
18 safely driving or operating a motor vehicle.

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

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

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

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

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

6 b. placement in the custody of the Department of  
7 Corrections for not less than one (1) year and not to  
8 exceed five (5) years and a fine of not more than Two  
9 Thousand Five Hundred Dollars (\$2,500.00), or

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

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

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

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

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

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

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

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

6 a. follow all recommendations made in the assessment and  
7 evaluation for treatment at the defendant's expense,  
8 followed by not less than one (1) year of supervision  
9 and periodic testing at the defendant's expense, four  
10 hundred eighty (480) hours of community service, and  
11 use of an ignition interlock device, as provided by  
12 subparagraph n of paragraph 1 of subsection A of  
13 Section 991a of Title 22 of the Oklahoma Statutes, for  
14 a minimum of thirty (30) days, or

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

19 c. treatment, imprisonment and a fine within the  
20 limitations prescribed in subparagraphs a and b of  
21 this paragraph.

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

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

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

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

21           D. Any person who is convicted of a violation of driving under  
22 the influence with a blood or breath alcohol concentration of  
23 fifteen-hundredths (0.15) or more or has, as shown by analysis of  
24 such person's blood, blood containing nine (9) nanograms or more of

1 delta 9-tetrahydrocannabinol per milliliter in whole blood pursuant  
2 to this section shall be deemed guilty of aggravated driving under  
3 the influence. A person convicted of aggravated driving under the  
4 influence shall participate in an assessment and evaluation pursuant  
5 to subsection G of this section and shall comply with all  
6 recommendations for treatment. Such person shall be sentenced as  
7 provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this  
8 section and to:

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

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

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

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

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1           2. A correctional facility operated by the Department of  
2 Corrections with assignment to substance abuse treatment.  
3 Successful completion of a Department-of-Corrections-approved  
4 substance abuse treatment program shall satisfy the recommendation  
5 for a ten-hour or twenty-four-hour alcohol and drug substance abuse  
6 course or treatment program or both. Successful completion of an  
7 approved Department of Corrections substance abuse treatment program  
8 may precede or follow the required assessment.

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

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

1 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The  
2 evaluation and assessment shall be conducted at a certified  
3 assessment agency, the office of a certified assessor or at another  
4 location as ordered by the court. The agency or assessor shall,  
5 within seventy-two (72) hours from the time the person is evaluated  
6 and assessed, submit a written report to the court for the purpose  
7 of assisting the court in its sentencing determination. The court  
8 shall, as a condition of any sentence imposed, including deferred  
9 and suspended sentences, require the person to participate in and  
10 successfully complete all recommendations from the evaluation, such  
11 as an alcohol and substance abuse treatment program pursuant to  
12 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report  
13 indicates that the evaluation and assessment shows that the  
14 defendant would benefit from a ten-hour or twenty-four-hour alcohol  
15 and drug substance abuse course or a treatment program or both, the  
16 court shall, as a condition of any sentence imposed, including  
17 deferred and suspended sentences, require the person to follow all  
18 recommendations identified by the evaluation and assessment and  
19 ordered by the court. No person, agency or facility operating an  
20 evaluation and assessment program certified by the Department of  
21 Mental Health and Substance Abuse Services shall solicit or refer  
22 any person evaluated and assessed pursuant to this section for any  
23 treatment program or substance abuse service in which such person,  
24 agency or facility has a vested interest; however, this provision

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

23 H. Any person who is found guilty of a violation of the  
24 provisions of this section may be required by the court to attend a

1 victims impact panel program, as defined in subsection H of Section  
2 991a of Title 22 of the Oklahoma Statutes, if such a program is  
3 offered in the county where the judgment is rendered, and to pay a  
4 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty  
5 Dollars (\$60.00) as set by the governing authority of the program  
6 and approved by the court to the program to offset the cost of  
7 participation by the defendant, if in the opinion of the court the  
8 defendant has the ability to pay such fee.

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

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

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

23 L. 1. When a person is eighteen (18) years of age or older,  
24 and is the driver, operator, or person in physical control of a

1 vehicle, and is convicted of violating any provision of this section  
2 while transporting or having in the motor vehicle any child less  
3 than eighteen (18) years of age, the fine shall be enhanced to  
4 double the amount of the fine imposed for the underlying driving  
5 under the influence (DUI) violation which shall be in addition to  
6 any other penalties allowed by this section.

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

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

21 N. If qualified by knowledge, skill, experience, training or  
22 education, a witness shall be allowed to testify in the form of an  
23 opinion or otherwise solely on the issue of impairment, but not on  
24

1 the issue of specific alcohol concentration level, relating to the  
2 following:

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

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

13 SECTION 2. This act shall become effective November 1, 2017.

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