

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SUBCOMMITTEE
4 RECOMMENDATION

5 FOR

6 HOUSE BILL NO. 1621

7 By: Derby

8 SUBCOMMITTEE RECOMMENDATION

9 An Act relating to motor vehicles; amending 47 O.S.
10 2011, Section 11-902, as last amended by Section 3,
11 Chapter 393, O.S.L. 2013 (47 O.S. Supp. 2014, Section
12 11-902), which relates to driving under the influence
13 of alcohol; requiring percentage of fines be
14 disbursed to certain entities or funds; prohibiting
15 courts from waiving fines; providing an exception;
16 amending 47 O.S. 2011, Section 761, which relates to
17 driving while impaired; requiring percentage of fines
18 be disbursed to certain entities or funds;
19 prohibiting courts from waiving fines; providing an
20 exception; preempting certain laws of municipalities
21 and political subdivisions; providing for
22 codification; and providing an effective date.

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

24 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
2014, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided
in this section for any person to drive, operate, or be in actual
physical control of a motor vehicle within this state, whether upon

1 public roads, highways, streets, turnpikes, other public places or
2 upon any private road, street, alley or lane which provides access
3 to one or more single or multifamily dwellings, who:

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

8 2. Is under the influence of alcohol;

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

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

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

21 B. The fact that any person charged with a violation of this
22 section is or has been lawfully entitled to use alcohol or a
23 controlled dangerous substance or any other intoxicating substance
24

1 shall not constitute a defense against any charge of violating this
2 section.

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

6 a. participate in an assessment and evaluation pursuant
7 to subsection G of this section and shall follow all
8 recommendations made in the assessment and evaluation,

9 b. be punished by imprisonment in jail for not less than
10 ten (10) days nor more than one (1) year, and

11 c. be fined not more than One Thousand Dollars
12 (\$1,000.00).

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

1 completion of the execution of such sentence or deferred judgment
2 commits a second offense pursuant to the provisions of this section
3 shall, upon conviction, be guilty of a felony and shall participate
4 in 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 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 five (5) years and a fine of not more than Two
12 Thousand Five Hundred Dollars (\$2,500.00), 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 five (5) days, the person shall serve a term of
19 imprisonment of at least five (5) days.

20 3. Any person who is 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 shall
2 participate in an assessment and evaluation pursuant to subsection G
3 of this section and shall be sentenced to:

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

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

21 4. Any person who is convicted of a third or subsequent felony
22 offense pursuant to the provisions of this section or a violation
23 pursuant to the provisions of any law of this state or another state
24 prohibiting the offenses provided for in subsection A of this

1 section, Section 11-904 of this title or paragraph 4 of subsection A
2 of Section 852.1 of Title 21 of the Oklahoma Statutes 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 followed by not less than one (1) year of supervision
8 and periodic testing at the defendant's expense, four
9 hundred eighty (480) 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, for
13 a minimum of thirty (30) days, or

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

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

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

24

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 pursuant to this section shall be
24 deemed guilty of aggravated driving under the influence. A person

1 convicted of aggravated driving under the influence shall
2 participate in an assessment and evaluation pursuant to subsection G
3 of this section and shall comply with all recommendations for
4 treatment. Such person shall be sentenced to:

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

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

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

1 who commits a third or subsequent felony offense pursuant to the
2 provisions of this subsection shall, upon conviction, be guilty of a
3 felony and shall be punished as provided in paragraph 4 of
4 subsection C of this section.

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

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

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

22 F. The Department of Public Safety is hereby authorized to
23 reinstate any suspended or revoked driving privilege when the person
24

1 meets the statutory requirements which affect the existing driving
2 privilege.

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

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

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

13 H. Any person who is found guilty of a violation of the
14 provisions of this section may be required by the court to attend a
15 victims impact panel program, as defined in subsection H of Section
16 991a of Title 22 of the Oklahoma Statutes, if such a program is
17 offered in the county where the judgment is rendered, and to pay a
18 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
19 Dollars (\$60.00) as set by the governing authority of the program
20 and approved by the court to the program to offset the cost of
21 participation by the defendant, if in the opinion of the court the
22 defendant has the ability to pay such fee.

23 I. Any person who is found guilty of a felony violation of the
24 provisions of this section shall be required to submit to electronic

1 monitoring as authorized and defined by Section 991a of Title 22 of
2 the Oklahoma Statutes.

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

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

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

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

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

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

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

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

1 0. All monies received from fines for violations of the
2 provisions of this section, when collected by the court clerk, shall
3 be deposited by such court clerk as follows:

4 1. Fifty percent (50%) thereof to the District Attorneys
5 Council Revolving Fund to defray the costs of prosecution;

6 2. Twenty-five percent (25%) thereof to the arresting agency to
7 defray the costs of enforcing laws relating to driving under the
8 influence of alcohol or other intoxicating substance;

9 3. Fifteen percent (15%) thereof to the court fund; and

10 4. Ten percent (10%) thereof to the court clerk.

11 P. The court shall not have the discretion to waive any fine in
12 its entirety that is prescribed as punishment for violating the
13 provisions of this section. However, if the court determines that a
14 reduction of the fine is warranted, the court shall equally apply
15 the same percentage reduction to the fine, costs and any other fees
16 assessed in the criminal case.

17 SECTION 2. AMENDATORY 47 O.S. 2011, Section 761, is
18 amended to read as follows:

19 Section 761. A. Any person who operates a motor vehicle while
20 his ability to operate such motor vehicle is impaired by the
21 consumption of alcohol, or any other substance, other than alcohol,
22 which is capable of being ingested, inhaled, injected or absorbed
23 into the human body and is capable of adversely affecting the
24 central nervous system, vision, hearing or other sensory or motor

1 functions shall be subject to a fine of not less than One Hundred
2 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or
3 imprisonment in the county jail for not more than six (6) months, or
4 by both such fine and imprisonment.

5 B. Upon the receipt of any person's record of conviction of
6 driving while impaired, when such conviction has become final, the
7 Department of Public Safety shall suspend the driving privilege of
8 such person, as follows:

9 1. The first suspension shall be for thirty (30) days;

10 2. The second suspension shall be for a period of six (6)
11 months, which may be modified; provided, any modification under this
12 paragraph shall apply to Class D motor vehicles only; and

13 3. The third or subsequent suspension shall be for twelve (12)
14 months, which may be modified; provided, any modification under this
15 paragraph shall apply to Class D motor vehicles only.

16 Provided, however, the Department shall not suspend such
17 privilege pursuant to this subsection if said person's driving
18 privilege has been revoked based upon a test result or test refusal
19 pursuant to Section 753 or Section 754 of this title arising from
20 the same circumstances which resulted in the conviction.

21 C. The violations as set out in this section shall not be
22 bondable under Section 1115.3 of Title 22 of the Oklahoma Statutes.

23 D. Any person who is found guilty of a violation of the
24 provisions of this section or pleading guilty or nolo contendere for

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

1 solicit or refer any person evaluated pursuant to this section for
2 any treatment program or alcohol and drug substance abuse service in
3 which such person, agency or facility has a vested interest;
4 however, this provision shall not be construed to prohibit the court
5 from ordering participation in or any person from voluntarily
6 utilizing a treatment program or alcohol and drug substance abuse
7 service offered by such person, agency or facility. Any evaluation
8 report submitted to the court pursuant to this subsection shall be
9 handled in a manner which will keep such report confidential from
10 the general public's review. Nothing contained in this subsection
11 shall be construed to prohibit the court from ordering judgment and
12 sentence and any other sanction authorized by law for failure or
13 refusal to comply with an order of the court.

14 E. All monies received from fines for violations of the
15 provisions of this section, when collected by the court clerk, shall
16 be deposited by such court clerk as follows:

17 1. Fifty percent (50%) thereof to the District Attorneys
18 Council Revolving Fund to defray the costs of prosecution;

19 2. Twenty-five percent (25%) thereof to the arresting agency to
20 defray the costs of enforcing laws relating to driving under the
21 influence of alcohol or other intoxicating substance;

22 3. Fifteen percent (15%) thereof to the court fund; and

23 4. Ten percent (10%) thereof to the court clerk.

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1 F. The court shall not have the discretion to waive any fine in
2 its entirety that is prescribed as punishment for violating the
3 provisions of this section. However, if the court determines that a
4 reduction of the fine is warranted, the court shall equally apply
5 the same percentage reduction to the fine, costs and any other fees
6 assessed in the criminal case.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 11-902c of Title 47, unless
9 there is created a duplication in numbering, reads as follows:

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

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

23 C. The preemption provisions of this section shall not apply to
24 prosecutions in municipal criminal courts of record for offenses

1 relating to driving under the influence of alcohol or any other
2 intoxicating substance or operating a motor vehicle while impaired.

3 SECTION 4. This act shall become effective November 1, 2015.

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