

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 660

6 By: Rogers

7 COMMITTEE SUBSTITUTE

8 An Act relating to driving under the influence of
9 marijuana; amending 47 O.S. 2021, Sections 6-205 and
10 11-902, which relate to mandatory revocation of
11 driving privilege and persons under the influence of
12 alcohol or other intoxicating substance; clarifying
13 inclusions; modifying felony offenses; updating
14 statutory language; and providing an effective date.

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

16 SECTION 1. AMENDATORY 47 O.S. 2021, Section 6-205, is
17 amended to read as follows:

18 Section 6-205. A. ~~The Department of Public Safety Service~~
19 Oklahoma shall immediately revoke the driving privilege of any
20 person, whether adult or juvenile, upon receiving a record of
21 conviction, in any municipal, state or federal court within the
22 United States of any of the following offenses, when such conviction
23 has become final:

24 1. Manslaughter or negligent homicide resulting from the
operation of a motor vehicle;

1 2. Driving or being in actual physical control of a motor
2 vehicle while under the influence of alcohol, any other intoxicating
3 substance, including but not limited to marijuana, cannabis,
4 tetrahydrocannabinol, or its psychoactive components such as delta-
5 9-tetrahydrocannabinol, 11-hydroxy-delta-9-tetrahydrocannabinol, and
6 specifically excluding cannabinal, or the combined influence of
7 alcohol and any other intoxicating substance, any violation of
8 paragraph 1, 2, 3, 4 or 5 of subsection A of Section 11-902 of this
9 title or any violation of Section 11-906.4 of this title. However,
10 ~~the Department~~ Service Oklahoma shall not additionally revoke the
11 driving privileges of the person pursuant to this subsection if the
12 driving privilege of the person has been revoked because of a test
13 result or test refusal pursuant to Section 753 or 754 of this title
14 arising from the same circumstances which resulted in the conviction
15 unless the revocation because of a test result or test refusal is
16 set aside;

17 3. Driving a motor vehicle during the commission of a felony;

18 4. Failure to stop and render aid as required under the laws of
19 this state in the event of a motor vehicle accident resulting in the
20 death or personal injury of another;

21 5. Perjury or the making of a false affidavit or statement
22 under oath to ~~the Department~~ Service Oklahoma under the Uniform
23 Vehicle Code or under any other law relating to the ownership or
24 operation of motor vehicles;

1 6. A felony conviction for unlawfully possessing, distributing,
2 dispensing, manufacturing, trafficking, attempting or conspiring to
3 distribute, dispense, manufacture, or traffic a controlled dangerous
4 substance as defined in the Uniform Controlled Dangerous Substances
5 Act while driving a motor vehicle;

6 7. A misdemeanor conviction for a violation of Section 1-229.34
7 of Title 63 of the Oklahoma Statutes;

8 8. Failure to obey a traffic control device as provided in
9 Section 11-202 of this title or a stop sign when such failure
10 results in great bodily injury to any other person; or

11 9. Failure to stop or to remain stopped for school bus loading
12 or unloading of children pursuant to Section 11-705 or 11-705.1 of
13 this title.

14 B. The first license revocation under any provision of this
15 section, except for paragraph 2, 3, 6, 7, or 9 of subsection A of
16 this section, shall be for a period of one (1) year. Such period
17 shall not be modified.

18 C. A license revocation under any provision of this section,
19 except for paragraph 2, 3, 6, or 7 of subsection A of this section,
20 shall be for a period of three (3) years if a prior revocation under
21 this section commenced within the preceding five-year period as
22 shown by the records of ~~the Department~~ Service Oklahoma. Such
23 period shall not be modified.

24

1 D. The period of license revocation under paragraph 2, 3 or 6
2 of subsection A of this section shall be governed by the provisions
3 of Section 6-205.1 of this title.

4 E. The first license revocation under paragraph 7 of subsection
5 A of this section shall be for a period of six (6) months. Such
6 periods shall not be modified.

7 F. The first license revocation under paragraph 9 of subsection
8 A of this section shall be for a period of one (1) year. Such
9 period may be modified. Any appeal of the revocation of driving
10 privilege under paragraph 9 of subsection A of this section shall be
11 governed by Section 6-211 of this title; provided, any modification
12 under this subsection shall apply to Class D motor vehicles only.

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

17 H. Any person whose driving privileges are or have been
18 canceled or denied pursuant to this section, except for paragraph 1,
19 2 or 8 of subsection A of this section, may file a petition for
20 relief based upon error or hardship.

21 1. The petition shall be filed in the district court which
22 notified ~~the Department~~ Service Oklahoma. If the Notification
23 originated in a municipal court, the petition shall be filed in the
24 district court of the county in which the municipal court is

1 located. A copy of the Notification and a copy of ~~the Department's~~
2 Service Oklahoma's action canceling or denying driving privileges
3 pursuant to this section shall be attached to the petition.

4 2. The district court shall conduct a hearing on the petition
5 and may determine the matter de novo, without notice to ~~the~~
6 ~~Department~~ Service Oklahoma and, if applicable, without notice to
7 the municipal court; provided, the district court shall not consider
8 a collateral attack upon the merits of any conviction or
9 determination which has become final.

10 3. The district court may deny the petition or, in its
11 discretion, issue a written Order to ~~the Department~~ Service Oklahoma
12 to decrease the period of cancellation or denial to any period or
13 issue a written Order to vacate ~~the Department's~~ Service Oklahoma's
14 action taken pursuant to this section, in its entirety. The content
15 of the Order shall not grant or purport to grant any driving
16 privileges to the person; however, such Order may direct ~~the~~
17 ~~Department of Public Safety~~ Service Oklahoma to do so if the person
18 is otherwise eligible therefor. The petitioner is responsible for
19 his or her own attorney fees. However, if the petitioner is granted
20 relief for error, then the party that committed the error may be
21 ordered to pay attorney fees and costs. Unless all persons or
22 agencies the court had reason to believe may have had relevant
23 information related to the court record and departmental action have
24 been given notice of the petition, attorney fees and costs shall not

1 be awarded against any party. In no event shall ~~the Department of~~
2 ~~Public Safety Service Oklahoma~~ be liable for attorney fees and costs
3 for suspending, revoking, canceling, or denying a driver license
4 based upon reasonable reliance on a notice from a court requiring
5 the revocation, suspension, cancellation, or denial of the driver
6 license according to law.

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

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

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

19 2. Is under the influence of alcohol or marijuana, including
20 but not limited to cannabis, tetrahydrocannabinol, or its
21 psychoactive components such as delta-9-tetrahydrocannabinol, 11-
22 hydroxy-delta-9-tetrahydrocannabinol, and specifically excluding
23 cannabinol;
24

1 3. Has any amount of a Schedule I chemical or controlled
2 substance, which includes marijuana, including but not limited to
3 cannabis, tetrahydrocannabinol, or its psychoactive components such
4 as delta-9-tetrahydrocannabinol, 11-hydroxy-delta-9-
5 tetrahydrocannabinol, and specifically excluding cannabiniol, as
6 defined in Section 2-204 of Title 63 of the Oklahoma Statutes, or
7 one of its metabolites or analogs in the person's blood, saliva,
8 urine or any other bodily fluid at the time of a test of such
9 person's blood, saliva, urine or any other bodily fluid administered
10 within two (2) hours after the arrest of such person;

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

14 5. Is under the combined influence of alcohol or marijuana,
15 including but not limited to cannabis, tetrahydrocannabinol, or its
16 psychoactive components such as delta-9-tetrahydrocannabinol, 11-
17 hydroxy-delta-9-tetrahydrocannabinol, and specifically excluding
18 cannabiniol, and any other intoxicating substance which may render
19 such person incapable of safely driving or operating a motor
20 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, marijuana,
23 including but not limited to cannabis, tetrahydrocannabinol, or its
24 psychoactive components such as delta-9-tetrahydrocannabinol, 11-

1 hydroxy-delta-9-tetrahydrocannabinol, and specifically excluding
2 cannabinol, or a controlled dangerous substance or any other
3 intoxicating substance shall not constitute a defense against any
4 charge of violating this section.

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

- 8 a. participate in an assessment and evaluation pursuant
9 to subsection G of this section and shall follow all
10 recommendations made in the assessment and evaluation,
- 11 b. be punished by imprisonment in jail for not less than
12 ten (10) days nor more than one (1) year, and
- 13 c. be fined not more than One Thousand Dollars
14 (\$1,000.00).

15 2. Any person who, having been convicted of or having received
16 deferred judgment for a violation of this section or a violation
17 pursuant to the provisions of any law of this state or another state
18 prohibiting the offenses provided in 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, or having a prior conviction in a
21 municipal criminal court of record for the violation of a municipal
22 ordinance prohibiting the offense provided for in this section
23 commits a subsequent violation of this section within ten (10) years
24 of the date following the completion of the execution of said

1 sentence or deferred judgment shall, upon conviction, be guilty of a
2 felony and shall participate in an assessment and evaluation
3 pursuant to subsection G 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 ~~or~~

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

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

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

18 3. Any person who commits a violation of this section after
19 having been convicted of a felony offense pursuant to the provisions
20 of this section or a violation pursuant to the provisions of any law
21 of this state or another state prohibiting the offenses provided for
22 in this section, Section 11-904 of this title or paragraph 4 of
23 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes
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 shall be guilty of a felony and participate in an
3 assessment and evaluation pursuant to subsection G of this section
4 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, marijuana, including but not limited to
5 cannabis, tetrahydrocannabinol, or its psychoactive components such
6 as delta-9-tetrahydrocannabinol, 11-hydroxy-delta-9-
7 tetrahydrocannabinol, and specifically excluding cannabitol, or
8 other intoxicating substance, is convicted of a violation of this
9 section shall be guilty of a felony and shall be punished by
10 imprisonment in the custody of the Department of Corrections for not
11 less than five (5) years and not to exceed twenty (20) years, and a
12 fine ~~of~~ not more than Ten Thousand Dollars (\$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 driving
18 under the influence of alcohol, marijuana, including but not limited
19 to cannabis, tetrahydrocannabinol, or its psychoactive components
20 such as delta-9-tetrahydrocannabinol, 11-hydroxy-delta-9-
21 tetrahydrocannabinol, and specifically excluding cannabitol, or
22 other intoxicating substance offense within any municipality with a
23 municipal court other than a court of record, the charge shall be
24 presented to the county's district attorney and filed with the

1 district court of the county within which the municipality is
2 located.

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

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

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

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

24

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

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

6 Successful completion of a Department-of-Corrections-approved
7 substance abuse treatment program shall satisfy the recommendation
8 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
9 course or treatment program or both. Successful completion of an
10 approved Department of Corrections substance abuse treatment program
11 may precede or follow the required assessment.

12 F. ~~The Department of Public Safety~~ Service Oklahoma is hereby
13 authorized to reinstate any suspended or revoked driving privilege
14 when the person meets the statutory requirements which affect the
15 existing driving privilege.

16 G. Any person who is found guilty of a violation of the
17 provisions of this section shall be ordered to participate in an
18 alcohol and drug substance abuse evaluation and assessment program
19 offered by a certified assessment agency or certified assessor for
20 the purpose of evaluating and assessing the receptivity to treatment
21 and prognosis of the person and shall follow all recommendations
22 made in the assessment and evaluation for treatment. The court
23 shall order the person to reimburse the agency or assessor for the
24 evaluation and assessment. Payment shall be remitted by the

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

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

1 authorized by law for failure or refusal to comply with an order of
2 the court.

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

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

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

20 K. When a person is found guilty of a violation of the
21 provisions of this section, the court shall order, in addition to
22 any other penalty, the defendant to pay a one-hundred-dollar
23 assessment to be deposited in the Drug Abuse Education and Treatment
24

1 Revolving Fund created in Section 2-503.2 of Title 63 of the
2 Oklahoma Statutes, upon collection.

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

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

15 M. Any plea of guilty, nolo contendere or finding of guilt 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 for in this section, Section 11-904 of this title,
19 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
20 Oklahoma Statutes, shall constitute a conviction of the offense for
21 the purpose of this section; provided, any deferred judgment shall
22 only be considered to constitute a conviction for a period of ten
23 (10) years following the completion of any court-imposed
24 probationary term.

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

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

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

16 SECTION 3. This act shall become effective November 1, 2023.

17

18 59-1-1978 JES 2/28/2023 2:49:34 PM

19

20

21

22

23

24