

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2563

By: McBride

4
5
6 AS INTRODUCED

7 An Act relating to driving under the influence;
8 amending 47 O.S. 2021, Section 11-902, which relates
9 to penalties for driving under the influence;
10 providing an exception to certain prohibited act; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 47 O.S. 2021, Section 11-902, is
14 amended to read as follows:

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

22 1. Has a blood or breath alcohol concentration, as defined in
23 Section 756 of this title, of eight-hundredths (0.08) or more at the
24

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

- 21 a. follow all recommendations made in the assessment and
22 evaluation for treatment at the defendant's expense,
23 or
24

- 1 b. placement in the custody of the Department of
2 Corrections for not less than one (1) year and not to
3 exceed five (5) years and a fine of not more than Two
4 Thousand Five Hundred Dollars (\$2,500.00), or
5 c. treatment, imprisonment and a fine within the
6 limitations prescribed in subparagraphs a and b of
7 this paragraph.

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

12 3. Any person who commits a violation of this section after
13 having been convicted of a felony offense pursuant to the provisions
14 of this section or a violation pursuant to the provisions of any law
15 of this state or another state prohibiting the offenses provided for
16 in this section, Section 11-904 of this title or paragraph 4 of
17 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes
18 shall be guilty of a felony and participate in an assessment and
19 evaluation pursuant to subsection G of this section and shall be
20 sentenced to:

- 21 a. follow all recommendations made in the assessment and
22 evaluation for treatment at the defendant's expense,
23 two hundred forty (240) hours of community service and
24 use of an ignition interlock device, as provided by

- 1 subparagraph n of paragraph 1 of subsection A of
2 Section 991a of Title 22 of the Oklahoma Statutes, or
3 b. placement in the custody of the Department of
4 Corrections for not less than one (1) year and not to
5 exceed ten (10) years and a fine of not more than Five
6 Thousand Dollars (\$5,000.00), or
7 c. treatment, imprisonment and a fine within the
8 limitations prescribed in subparagraphs a and b of
9 this paragraph.

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

14 4. Any person who commits a violation of this section after
15 having been twice convicted of a felony offense pursuant to the
16 provisions of this section or a violation pursuant to the provisions
17 of any law of this state or another state prohibiting the offenses
18 provided for in this section, Section 11-904 of this title or
19 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
20 Oklahoma Statutes shall be guilty of a felony and participate in an
21 assessment and evaluation pursuant to subsection G of this section
22 and shall be sentenced to:

- 23 a. follow all recommendations made in the assessment and
24 evaluation for treatment at the defendant's expense,

1 followed by not less than one (1) year of supervision
2 and periodic testing at the defendant's expense, four
3 hundred eighty (480) hours of community service, and
4 use of an ignition interlock device, as provided by
5 subparagraph n of paragraph 1 of subsection A of
6 Section 991a of Title 22 of the Oklahoma Statutes, for
7 a minimum of thirty (30) days, 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 twenty (20) years and a fine of not more than
11 Five Thousand Dollars (\$5,000.00), 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 person does not undergo residential or inpatient
16 treatment pursuant to subsection G of this section the person shall
17 serve a term of imprisonment of at least ten (10) days.

18 5. Any person who, after a previous conviction of a violation
19 of murder in the second degree or manslaughter in the first degree
20 in which the death was caused as a result of driving under the
21 influence of alcohol or other intoxicating substance, is convicted
22 of a violation of this section shall be guilty of a felony and shall
23 be punished by imprisonment in the custody of the Department of
24 Corrections for not less than five (5) years and not to exceed

1 twenty (20) years, and a fine of not more than Ten Thousand Dollars
2 (\$10,000.00).

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

7 7. In any case in which a defendant is charged with driving
8 under the influence of alcohol or other intoxicating substance
9 offense within any municipality with a municipal court other than a
10 court of record, the charge shall be presented to the county's
11 district attorney and filed with the district court of the county
12 within which the municipality is located.

13 D. Any person who is convicted of a violation of driving under
14 the influence with a blood or breath alcohol concentration of
15 fifteen-hundredths (0.15) or more pursuant to this section shall be
16 deemed guilty of aggravated driving under the influence. A person
17 convicted of aggravated driving under the influence shall
18 participate in an assessment and evaluation pursuant to subsection G
19 of this section and shall comply with all recommendations for
20 treatment. Such person shall be sentenced as provided in paragraph
21 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

24

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

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 shall be required by the court to attend
15 a victims impact panel program, as defined in subsection H of
16 Section 991a of Title 22 of the Oklahoma Statutes, if such a program
17 is offered in the county where the judgment is rendered, and to pay
18 a fee of Seventy-five Dollars (\$75.00), as set by the governing
19 authority of the program and approved by the court, to the program
20 to offset the cost of participation by the defendant, if in the
21 opinion of the court the defendant has the ability to pay such fee.

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

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 this section, Section 11-904 of this title,
5 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
6 Oklahoma Statutes, shall constitute a conviction of the offense for
7 the purpose of this section; provided, any deferred judgment shall
8 only be considered to constitute a conviction for a period of ten
9 (10) years following the completion of any court-imposed
10 probationary term.

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

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

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

1 give the testimony in any case in which such testimony may be
2 relevant.

3 SECTION 2. This act shall become effective November 1, 2023.

4

5 59-1-5084 GRS 01/18/23

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24