

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 660

By: Rogers

AS INTRODUCED

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

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

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

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

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

2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating

1 substance, including but not limited to marijuana, or the combined
2 influence of alcohol and any other intoxicating substance, any
3 violation of paragraph 1, 2, 3, 4 or 5 of subsection A of Section
4 11-902 of this title or any violation of Section 11-906.4 of this
5 title. However, the Department shall not additionally revoke the
6 driving privileges of the person pursuant to this subsection if the
7 driving privilege of the person has been revoked because of a test
8 result or test refusal pursuant to Section 753 or 754 of this title
9 arising from the same circumstances which resulted in the conviction
10 unless the revocation because of a test result or test refusal is
11 set aside;

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

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

16 5. Perjury or the making of a false affidavit or statement
17 under oath to the Department under the Uniform Vehicle Code or under
18 any other law relating to the ownership or operation of motor
19 vehicles;

20 6. A felony conviction for unlawfully possessing, distributing,
21 dispensing, manufacturing, trafficking, attempting or conspiring to
22 distribute, dispense, manufacture, or traffic a controlled dangerous
23 substance as defined in the Uniform Controlled Dangerous Substances
24 Act while driving a motor vehicle;

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

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

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

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

13 C. A license revocation under any provision of this section,
14 except for paragraph 2, 3, 6, or 7 of subsection A of this section,
15 shall be for a period of three (3) years if a prior revocation under
16 this section commenced within the preceding five-year period as
17 shown by the records of the Department. Such period shall not be
18 modified.

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

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

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

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

11 H. Any person whose driving privileges are or have been
12 canceled or denied pursuant to this section, except for paragraph 1,
13 2 or 8 of subsection A of this section, may file a petition for
14 relief based upon error or hardship.

15 1. The petition shall be filed in the district court which
16 notified the Department. If the Notification originated in a
17 municipal court, the petition shall be filed in the district court
18 of the county in which the municipal court is located. A copy of
19 the Notification and a copy of the Department's action canceling or
20 denying driving privileges pursuant to this section shall be
21 attached to the petition.

22 2. The district court shall conduct a hearing on the petition
23 and may determine the matter de novo, without notice to the
24 Department and, if applicable, without notice to the municipal

1 court; provided, the district court shall not consider a collateral
2 attack upon the merits of any conviction or determination which has
3 become final.

4 3. The district court may deny the petition or, in its
5 discretion, issue a written Order to the Department to decrease the
6 period of cancellation or denial to any period or issue a written
7 Order to vacate the Department's action taken pursuant to this
8 section, in its entirety. The content of the Order shall not grant
9 or purport to grant any driving privileges to the person; however,
10 such Order may direct the Department of Public Safety to do so if
11 the person is otherwise eligible therefor. The petitioner is
12 responsible for his or her own attorney fees. However, if the
13 petitioner is granted relief for error, then the party that
14 committed the error may be ordered to pay attorney fees and costs.
15 Unless all persons or agencies the court had reason to believe may
16 have had relevant information related to the court record and
17 departmental action have been given notice of the petition, attorney
18 fees and costs shall not be awarded against any party. In no event
19 shall the Department of Public Safety be liable for attorney fees
20 and costs for suspending, revoking, canceling, or denying a driver
21 license based upon reasonable reliance on a notice from a court
22 requiring the revocation, suspension, cancellation, or denial of the
23 driver license according to law.

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

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

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

13 2. Is under the influence of alcohol or marijauna;

14 3. Has any amount of a Schedule I chemical or controlled
15 substance, which includes marijuana, as defined in Section 2-204 of
16 Title 63 of the Oklahoma Statutes, or one of its metabolites or
17 analogs in the person's blood, saliva, urine or any other bodily
18 fluid at the time of a test of such person's blood, saliva, urine or
19 any other bodily fluid administered within two (2) hours after the
20 arrest of such person;

21 4. Is under the influence of any intoxicating substance other
22 than alcohol which may render such person incapable of safely
23 driving or operating a motor vehicle; or
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1 5. Is under the combined influence of alcohol, marijuana, and
2 any other intoxicating substance which may render such person
3 incapable of safely driving or operating a motor vehicle.

4 B. The fact that any person charged with a violation of this
5 section is or has been lawfully entitled to use alcohol, marijuana,
6 or a controlled dangerous substance or any other intoxicating
7 substance shall not constitute a defense against any charge of
8 violating this section.

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

- 12 a. participate in an assessment and evaluation pursuant
13 to subsection G of this section and shall follow all
14 recommendations made in the assessment and evaluation,
- 15 b. be punished by imprisonment in jail for not less than
16 ten (10) days nor more than one (1) year, and
- 17 c. be fined not more than One Thousand Dollars
18 (\$1,000.00).

19 2. Any person who, having been convicted of or having received
20 deferred judgment for a violation of this section or a violation
21 pursuant to the provisions of any law of this state or another state
22 prohibiting the offenses provided in this section, Section 11-904 of
23 this title or paragraph 4 of subsection A of Section 852.1 of Title
24 21 of the Oklahoma Statutes, or having a prior conviction in a

1 municipal criminal court of record for the violation of a municipal
2 ordinance prohibiting the offense provided for in this section
3 commits a subsequent violation of this section within ten (10) years
4 of the date following the completion of the execution of said
5 sentence or deferred judgment shall, upon conviction, be guilty of a
6 felony and shall participate in an assessment and evaluation
7 pursuant to subsection G of this section and shall be sentenced to:

- 8 a. follow all recommendations made in the assessment and
9 evaluation for treatment at the defendant's expense,
10 or
11 b. placement in the custody of the Department of
12 Corrections for not less than one (1) year and not to
13 exceed five (5) years and a fine of not more than Two
14 Thousand Five Hundred Dollars (\$2,500.00), or
15 c. treatment, imprisonment and a fine within the
16 limitations prescribed in subparagraphs a and b of
17 this paragraph.

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

22 3. Any person who commits a violation of this section after
23 having been convicted of a felony offense pursuant to the provisions
24 of this section or a violation pursuant to the provisions of any law

1 of this state or another state prohibiting the offenses provided for
2 in this section, Section 11-904 of this title or paragraph 4 of
3 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes
4 shall be guilty of a felony and participate in an assessment and
5 evaluation pursuant to subsection G of this section and shall be
6 sentenced to:

- 7 a. follow all recommendations made in the assessment and
8 evaluation for treatment at the defendant's expense,
9 two hundred forty (240) 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, or
- 13 b. placement in the custody of the Department of
14 Corrections for not less than one (1) year and not to
15 exceed ten (10) years and a fine of not more than Five
16 Thousand Dollars (\$5,000.00), or
- 17 c. treatment, imprisonment and a fine within the
18 limitations prescribed in subparagraphs a and b of
19 this paragraph.

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

1 4. Any person who commits a violation of this section after
2 having been twice convicted of a felony offense pursuant to the
3 provisions of this section or a violation pursuant to the provisions
4 of any law of this state or another state prohibiting the offenses
5 provided for in this section, Section 11-904 of this title or
6 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
7 Oklahoma Statutes shall be guilty of a felony and participate in an
8 assessment and evaluation pursuant to subsection G of this section
9 and shall be sentenced to:

- 10 a. follow all recommendations made in the assessment and
11 evaluation for treatment at the defendant's expense,
12 followed by not less than one (1) year of supervision
13 and periodic testing at the defendant's expense, four
14 hundred eighty (480) hours of community service, and
15 use of an ignition interlock device, as provided by
16 subparagraph n of paragraph 1 of subsection A of
17 Section 991a of Title 22 of the Oklahoma Statutes, for
18 a minimum of thirty (30) days, or
- 19 b. placement in the custody of the Department of
20 Corrections for not less than one (1) year and not to
21 exceed twenty (20) years and a fine of not more than
22 Five Thousand Dollars (\$5,000.00), or
- 23
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1 c. treatment, imprisonment and a fine within the
2 limitations prescribed in subparagraphs a and b of
3 this paragraph.

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

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

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

20 7. In any case in which a defendant is charged with driving
21 under the influence of alcohol, marijuana, or other intoxicating
22 substance offense within any municipality with a municipal court
23 other than a court of record, the charge shall be presented to the
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1 county's district attorney and filed with the district court of the
2 county within which the municipality is 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 is hereby authorized to
13 reinstate any suspended or revoked driving privilege when the person
14 meets the statutory requirements which affect the existing driving
15 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 shall not reinstate driving privileges until the defendant
22 has complied in full with such order. Nothing contained in this
23 subsection shall be construed to prohibit the court from ordering

1 judgment and sentence and any other sanction authorized by law for
2 failure or refusal to comply with an order of 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.

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