

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE
4 FOR

5 HOUSE BILL NO. 3146

6 By: Sanders

7 COMMITTEE SUBSTITUTE

8 [motor vehicles - Impaired Driving Elimination Act -
9 effective date]

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

14 SECTION 1. NEW LAW A new section of law not to be
15 codified in the Oklahoma Statutes reads as follows:

16 This act shall be known and may be cited as the "Impaired
17 Driving Elimination Act" (IDEA).

18 SECTION 2. AMENDATORY 47 O.S. 2011, Section 11-902, as
19 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
20 2014, Section 11-902), is amended to read as follows:

21 Section 11-902. A. It is unlawful and punishable as provided
22 in this section for any person to drive, operate, or be in actual
23 physical control of a motor vehicle within this state, whether upon
24 public roads, highways, streets, turnpikes, other public places or

1 upon any private road, street, alley or lane which provides access
2 to one or more single or multifamily dwellings, who:

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

7 2. Is under the influence of alcohol;

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

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

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

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

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

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

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

1 shall, upon conviction, be guilty of a felony and shall participate
2 in an assessment and evaluation pursuant to subsection G of this
3 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 is convicted of a second felony offense
19 pursuant to the provisions of this section or a violation pursuant
20 to the provisions of any law of this state or another state
21 prohibiting the offenses provided for in subsection A of this
22 section, Section 11-904 of this title or paragraph 4 of subsection A
23 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
24

1 participate in an assessment and evaluation pursuant to subsection G
2 of this section and shall be sentenced to:

- 3 a. follow all recommendations made in the assessment and
4 evaluation for treatment at the defendant's expense,
5 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 is convicted of a third or subsequent felony
21 offense pursuant to the provisions of this section or a violation
22 pursuant 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 followed by not less than one (1) year of supervision
7 and periodic testing at the defendant's expense, four
8 hundred eighty (480) hours of community service, and
9 use of an ignition interlock device, as provided by
10 subparagraph n of paragraph 1 of subsection A of
11 Section 991a of Title 22 of the Oklahoma Statutes, for
12 a minimum of thirty (30) days, 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 twenty (20) years and a fine of not more than
16 Five 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 person does not undergo residential or inpatient
21 treatment pursuant to subsection G of this section the person shall
22 serve a term of imprisonment of at least ten (10) days.

23 5. Any person who, after a previous conviction of a violation
24 of murder in the second degree or manslaughter in the first degree

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

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

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

19 D. Any person who is convicted of a violation of driving under
20 the influence with a blood or breath alcohol concentration of
21 fifteen-hundredths (0.15) or more pursuant to this section shall be
22 deemed guilty of aggravated driving under the influence. A person
23 convicted of aggravated driving under the influence shall
24 participate in an assessment and evaluation pursuant to subsection G

1 of this section and shall comply with all recommendations for
2 treatment. Such person shall be sentenced to:

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

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

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

1 felony and shall be punished as provided in paragraph 4 of
2 subsection C of this section.

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

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

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

20 F. The Department of Public Safety is hereby authorized to
21 reinstate any suspended or revoked driving privilege when the person
22 meets the statutory requirements which affect the existing driving
23 privilege.

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1 G. Any person who is found guilty of a violation of the
2 provisions of this section shall be ordered to participate in an
3 alcohol and drug substance abuse evaluation and assessment program
4 offered by a certified assessment agency or certified assessor for
5 the purpose of evaluating and assessing the receptivity to treatment
6 and prognosis of the person and shall follow all recommendations
7 made in the assessment and evaluation for treatment. The court
8 shall order the person to reimburse the agency or assessor for the
9 evaluation and assessment. Payment shall be remitted by the
10 defendant or on behalf of the defendant by any third party;
11 provided, no state-appropriated funds are utilized. The fee for an
12 evaluation and assessment shall be the amount provided in subsection
13 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
14 evaluation and assessment shall be conducted at a certified
15 assessment agency, the office of a certified assessor or at another
16 location as ordered by the court. The agency or assessor shall,
17 within seventy-two (72) hours from the time the person is evaluated
18 and assessed, submit a written report to the court for the purpose
19 of assisting the court in its sentencing determination. The court
20 shall, as a condition of any sentence imposed, including deferred
21 and suspended sentences, require the person to participate in and
22 successfully complete all recommendations from the evaluation, such
23 as an alcohol and substance abuse treatment program pursuant to
24 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report

1 indicates that the evaluation and assessment shows that the
2 defendant would benefit from a ten-hour or twenty-four-hour alcohol
3 and drug substance abuse course or a treatment program or both, the
4 court shall, as a condition of any sentence imposed, including
5 deferred and suspended sentences, require the person to follow all
6 recommendations identified by the evaluation and assessment and
7 ordered by the court. No person, agency or facility operating an
8 evaluation and assessment program certified by the Department of
9 Mental Health and Substance Abuse Services shall solicit or refer
10 any person evaluated and assessed pursuant to this section for any
11 treatment program or substance abuse service in which such person,
12 agency or facility has a vested interest; however, this provision
13 shall not be construed to prohibit the court from ordering
14 participation in or any person from voluntarily utilizing a
15 treatment program or substance abuse service offered by such person,
16 agency or facility. If a person is sentenced to imprisonment in the
17 custody of the Department of Corrections and the court has received
18 a written evaluation report pursuant to the provisions of this
19 subsection, the report shall be furnished to the Department of
20 Corrections with the judgment and sentence. Any evaluation and
21 assessment report submitted to the court pursuant to the provisions
22 of this subsection shall be handled in a manner which will keep such
23 report confidential from the general public's review. Nothing
24 contained in this subsection shall be construed to prohibit the

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

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

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

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

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

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

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

23 M. Any plea of guilty, nolo contendere or finding of guilt for
24 a violation of this section or a violation pursuant to the

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

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

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

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

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

4 1. Forty-five percent (45%) 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;

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

11 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
12 Database Revolving Fund to defray the costs of the creation,
13 implementation and maintenance of the impaired driver database.

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

21 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-906.4, is
22 amended to read as follows:

23 Section 11-906.4 A. It is unlawful, and punishable as provided
24 in subsection B of this section, for any person under twenty-one

1 (21) years of age to drive, operate, or be in actual physical
2 control of a motor vehicle within this state who:

3 1. Has any measurable quantity of alcohol in the person's blood
4 or breath at the time of a test administered within two (2) hours
5 after an arrest of the person;

6 2. Exhibits evidence of being under the influence of any other
7 intoxicating substance as shown by analysis of a specimen of the
8 person's blood, breath, saliva, or urine in accordance with the
9 provisions of Sections 752 and 759 of this title; or

10 3. Exhibits evidence of the combined influence of alcohol and
11 any other intoxicating substance.

12 B. Any person under twenty-one (21) years of age who violates
13 any provision of this section shall be subject to the seizure of the
14 driver license of that person at the time of arrest or detention and
15 the person, upon conviction, shall be guilty of operating or being
16 in actual physical control of a motor vehicle while under the
17 influence while under age and shall be punished:

18 1. For a first conviction, by:

19 a. a fine of not less than One Hundred Dollars (\$100.00)
20 nor more than Five Hundred Dollars (\$500.00),

21 b. assignment to and completion of twenty (20) hours of
22 community service,

23 c. requiring the person to attend and complete a
24 treatment program, or

1 d. any combination of fine, community service, or
2 treatment;

3 2. Upon a second conviction, by:

4 a. assignment to and completion of not less than two
5 hundred forty (240) hours of community service, and

6 b. the requirement, after the conclusion of the mandatory
7 revocation period, to install an ignition interlock
8 device or devices, as provided by subparagraph n of
9 paragraph 1 of subsection A of Section 991a of Title
10 22 of the Oklahoma Statutes, for a period of not less
11 than thirty (30) days.

12 In addition, a second conviction may be punished by a fine of not
13 less than One Hundred Dollars (\$100.00) nor more than One Thousand
14 Dollars (\$1,000.00), or by requiring the person to attend and
15 complete a treatment program, as recommended by the assessment
16 required pursuant to subparagraph c of paragraph 2 of subsection D
17 of this section, or by both; or

18 3. Upon a third or subsequent conviction, by:

19 a. assignment to and completion of not less than four
20 hundred eighty (480) hours of community service, and

21 b. the requirement, after the conclusion of the mandatory
22 revocation period, to install an ignition interlock
23 device or devices, as provided by subparagraph n of
24 paragraph 1 of subsection A of Section 991a of Title

1 22 of the Oklahoma Statutes, for a period of not less
2 than thirty (30) days.

3 In addition, a third or subsequent conviction may be punished by a
4 fine of not less than One Hundred Dollars (\$100.00) nor more than
5 Two Thousand Dollars (\$2,000.00), or by requiring the person to
6 attend and complete a treatment program, as recommended by the
7 assessment required pursuant to subparagraph c of paragraph 2 of
8 subsection D of this section, or by both.

9 C. The court may assess additional community service hours in
10 lieu of any fine specified in this section.

11 D. In addition to any penalty or condition imposed pursuant to
12 the provisions of this section, the person shall be subject to:

13 1. Upon a first conviction:

14 a. the cancellation or denial of driving privileges as
15 ordered by the court pursuant to subsection B of
16 Section 6-107.1 of this title,

17 b. the mandatory revocation of driving privileges
18 pursuant to Section 6-205.1, 753 or 754 of this title,
19 which revocation period may be modified as provided by
20 law, and

21 c. the continued installation of an ignition interlock
22 device or devices, at the expense of the person, as
23 provided in subsection D of Section 6-212.3 of this
24 title, after the mandatory period of cancellation,

1 denial or revocation for a period as provided in
2 paragraph 1 of subsection A of Section 6-212.3 of this
3 title;

4 2. Upon a second conviction:

- 5 a. the cancellation or denial of driving privileges, as
6 ordered by the court pursuant to subsection B of
7 Section 6-107.2 of this title,
8 b. the mandatory revocation of driving privileges
9 pursuant to Section 6-205.1, 753 or 754 of this title,
10 which period may be modified as provided by law,
11 c. an assessment of the person's degree of alcohol abuse,
12 in the same manner as prescribed in subsection H of
13 Section 11-902 of this title, which may result in
14 treatment as deemed appropriate by the court, and
15 d. the continued installation of an ignition interlock
16 device or devices, at the expense of the person, as
17 provided in subsection D of Section 6-212.3 of this
18 title, after the mandatory period of cancellation,
19 denial or revocation for a period as provided in
20 paragraph 2 of subsection A of Section 6-212.3 of this
21 title; and

22 3. Upon a third or subsequent conviction:
23
24

- 1 a. the cancellation or denial of driving privileges as
2 ordered by the court pursuant to subsection B of
3 Section 6-107.2 of this title,
4 b. the mandatory revocation of driving privileges
5 pursuant to Section 6-205.1, 753 or 754 of this title,
6 which period may be modified as provided by law,
7 c. an assessment of the person's degree of alcohol abuse,
8 in the same manner as prescribed in subsection H of
9 Section 11-902 of this title, which may result in
10 treatment as deemed appropriate by the court, and
11 d. the continued installation of an ignition interlock
12 device or devices, at the expense of the person, as
13 provided in subsection D of Section 6-212.3 of this
14 title, after the mandatory period of cancellation,
15 denial, or revocation for a period as provided in
16 paragraph 3 of subsection A of Section 6-212.3 of this
17 title.

18 E. Nothing in this section shall be construed to prohibit the
19 filing of charges pursuant to Section 761 or 11-902 of this title
20 when the facts warrant.

21 F. As used in this section:

22 1. The term "conviction" includes a juvenile delinquency
23 adjudication by a court; and
24

1 2. The term "revocation" includes the cancellation or denial of
2 driving privileges by the Department.

3 G. All monies received from fines or assessments for violations
4 of the provisions of this section, when collected by the court
5 clerk, shall be deposited by such court clerk as follows:

6 1. Forty-five percent (45%) thereof to the District Attorneys
7 Council Revolving Fund to defray the costs of prosecution;

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

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

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

13 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
14 Database Revolving Fund to defray the costs of the creation,
15 implementation and maintenance of the impaired driver database.

16 H. The court shall not have the discretion to waive any fine or
17 assessment in its entirety that is prescribed as punishment for
18 violating the provisions of this section. However, if the court
19 determines that a reduction of the fine or assessment is warranted,
20 the court shall equally apply the same percentage reduction to the
21 fine or assessment, costs and any other fees assessed in the
22 criminal case.

23 SECTION 4. AMENDATORY 47 O.S. 2011, Section 761, is
24 amended to read as follows:

1 Section 761. A. Any person who operates a motor vehicle while
2 his ability to operate such motor vehicle is impaired by the
3 consumption of alcohol, or any other substance, other than alcohol,
4 which is capable of being ingested, inhaled, injected or absorbed
5 into the human body and is capable of adversely affecting the
6 central nervous system, vision, hearing or other sensory or motor
7 functions shall be subject to a fine of not less than One Hundred
8 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or
9 imprisonment in the county jail for not more than six (6) months, or
10 by both such fine and imprisonment.

11 B. Upon the receipt of any person's record of conviction of
12 driving while impaired, when such conviction has become final, the
13 Department of Public Safety shall suspend the driving privilege of
14 such person, as follows:

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

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

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

22 Provided, however, the Department shall not suspend such
23 privilege pursuant to this subsection if said person's driving
24 privilege has been revoked based upon a test result or test refusal

1 pursuant to Section 753 or Section 754 of this title arising from
2 the same circumstances which resulted in the conviction.

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

5 D. Any person who is found guilty of a violation of the
6 provisions of this section or pleading guilty or nolo contendere for
7 a violation of any provision of this section shall be ordered to
8 participate in, prior to sentencing, an alcohol and drug assessment
9 and evaluation by an assessment agency or assessment personnel
10 certified by the Department of Mental Health and Substance Abuse
11 Services for the purpose of evaluating the receptivity to treatment
12 and prognosis of the person. The court shall order the person to
13 reimburse the agency or assessor for the assessment and evaluation.
14 The fee for an assessment and evaluation shall be the amount
15 provided in subsection C of Section 3-460 of Title 43A of the
16 Oklahoma Statutes. The evaluation 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 assessed,
20 submit a written report to the court for the purpose of assisting
21 the court in its final sentencing determination. If such report
22 indicates that the evaluation shows that the defendant would benefit
23 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
24 course or a treatment program or both, the court shall, as a

1 condition of any sentence imposed, including a deferred sentence and
2 a suspended sentence, require the person to follow all
3 recommendations identified by the assessment and evaluation and
4 ordered by the court. No person, agency or facility operating an
5 alcohol and drug substance abuse evaluation program certified by the
6 Department of Mental Health and Substance Abuse Services shall
7 solicit or refer any person evaluated pursuant to this section for
8 any treatment program or alcohol and drug substance abuse service in
9 which such person, agency or facility has a vested interest;
10 however, this provision shall not be construed to prohibit the court
11 from ordering participation in or any person from voluntarily
12 utilizing a treatment program or alcohol and drug substance abuse
13 service offered by such person, agency or facility. Any evaluation
14 report submitted to the court pursuant to this subsection shall be
15 handled in a manner which will keep such report confidential from
16 the general public's review. Nothing contained in this subsection
17 shall be construed to prohibit the court from ordering judgment and
18 sentence and any other sanction authorized by law for failure or
19 refusal to comply with an order of the court.

20 E. All monies received from fines or assessments for violations
21 of the provisions of this section, when collected by the court
22 clerk, shall be deposited by such court clerk as follows:

23 1. Forty-five percent (45%) thereof to the District Attorneys
24 Council Revolving Fund to defray the costs of prosecution;

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

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

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

6 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
7 Database Revolving Fund to defray the costs of the creation,
8 implementation and maintenance of the impaired driver database.

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

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 11-902c of Title 47, unless
18 there is created a duplication in numbering, reads as follows:

19 A. The State Legislature hereby occupies and preempts the
20 entire field of legislation in this state touching in any way the
21 prosecution of offenses relating to driving under the influence of
22 alcohol or any other intoxicating substance or operating a motor
23 vehicle while impaired to the complete exclusion of any order,
24

1 ordinance, local legislation or regulation by any municipality or
2 other political subdivision of this state.

3 B. No municipality or other political subdivision shall
4 prosecute any laws or ordinances relating to the offense of driving
5 under the influence of alcohol or any other intoxicating substance
6 or operating a motor vehicle while impaired. Any existing or future
7 orders, ordinances, local legislation or regulations in violation of
8 this section is void and unenforceable.

9 C. The preemption provisions of this section shall not apply to
10 prosecutions in municipal criminal courts of record for offenses
11 relating to driving under the influence of alcohol or any other
12 intoxicating substance or operating a motor vehicle while impaired.
13 Nothing in this section shall prohibit a municipality from
14 establishing a municipal criminal court of record pursuant to the
15 provisions of Section 28-101 of Title 11 of the Oklahoma Statutes.

16 SECTION 6. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 11-902d of Title 47, unless
18 there is created a duplication in numbering, reads as follows:

19 A. The Commissioner of the Department of Public Safety is
20 hereby authorized to oversee the creation, development and
21 implementation of a statewide impaired driver database with
22 assistance from the Office of Management and Enterprise Services
23 subject to fiscal limitations and the availability of federal funds.

24

1 B. The Commissioner shall prescribe the form of the
2 investigative report required for offenses relating to driving under
3 the influence of alcohol or any other intoxicating substance or
4 operating a motor vehicle while impaired.

5 C. There is hereby created in the State Treasury a revolving
6 fund for the Department of Public Safety to be designated the
7 "Oklahoma Impaired Driver Database Revolving Fund". The fund shall
8 be a continuing fund, not subject to fiscal year limitations. All
9 monies accruing to the credit of the fund are hereby appropriated
10 and may be budgeted and expended by the Department for the exclusive
11 purpose of implementing, developing, administering and maintaining
12 an impaired driver database. Expenditures from the funds shall be
13 made upon warrants issued by the State Treasurer against claims
14 filed as prescribed by law with the Director of the Office of
15 Management and Enterprise Services for approval and payment.

16 SECTION 7. This act shall become effective November 1, 2016.

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