

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3960

By: Fetgatter

4  
5  
6 AS INTRODUCED

7 An Act relating to driving under the influence;  
8 amending 47 O.S. 2011, Section 751, as last amended  
9 by Section 12, Chapter 400, O.S.L. 2019 (47 O.S.  
10 Supp. 2019, Section 751), which relates to implied  
11 consent to test for alcohol or other intoxicating  
12 substance; requiring law enforcement officers make a  
13 certain articulable observation before requiring  
14 field sobriety test; amending 47 O.S. 2011, Section  
15 756, as amended by Section 15, Chapter 392, O.S.L.  
16 2017 (47 O.S. Supp. 2019, Section 756), which relates  
17 to admission of evidence shown by tests; allowing the  
18 admissibility of certain evidence; requiring certain  
19 additional evidence for conviction; amending 47 O.S.  
20 2011, Section 761, which relates to operation of a  
21 motor vehicle while impaired; modifying description  
22 of impairment from consumption; amending 47 O.S.  
23 2011, Section 11-902, as last amended by Section 1,  
24 Chapter 61, O.S.L. 2018 (47 O.S. Supp. 2019, Section  
11-902), which relates to persons under the influence  
of alcohol or other intoxicating substance; allowing  
medical marijuana patients to have certain amounts of  
marijuana in their system; and providing an effective  
date.

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

1 SECTION 1. AMENDATORY 47 O.S. 2011, Section 751, as last  
2 amended by Section 12, Chapter 400, O.S.L. 2019 (47 O.S. Supp. 2019,  
3 Section 751), is amended to read as follows:

4 Section 751. A. 1. Any person who operates a motor vehicle  
5 upon the public roads, highways, streets, turnpikes or other public  
6 place or upon any private road, street, alley or lane which provides  
7 access to one or more single or ~~multi-family~~ multifamily dwellings  
8 within this state shall be deemed to have given consent to a test or  
9 tests of such person's blood or breath, for the purpose of  
10 determining the alcohol concentration as defined in Section 756 of  
11 this title, and such person's blood, saliva or urine for determining  
12 the presence or concentration of any other intoxicating substance  
13 therein as defined in this section, if arrested for any offense  
14 arising out of acts alleged to have been committed while the person  
15 was operating or in actual physical control of a motor vehicle upon  
16 the public roads, highways, streets, turnpikes or other public place  
17 or upon any private road, street, alley or lane which provides  
18 access to one or more single or ~~multi-family~~ multifamily dwellings  
19 while under the influence of alcohol or other intoxicating  
20 substance, or the combined influence of alcohol and any other  
21 intoxicating substance, or if the person is involved in a traffic  
22 accident that resulted in the immediate death or serious injury of  
23 any person and is removed from the scene of the accident to a  
24

1 hospital or other health care facility outside the State of Oklahoma  
2 before a law enforcement officer can effect an arrest.

3 2. A law enforcement officer, having reasonable grounds to  
4 believe that such person was operating or in actual physical control  
5 of a motor vehicle while under the influence, may direct the  
6 administration of or administer the test or tests. Provided,  
7 however, an officer shall have made an articulable observation,  
8 other than the odor of marijuana, including, but not limited to,  
9 glassy or red eyes or slurring speech, to request that the driver  
10 submit to a field sobriety test for marijuana.

11 As used in this title, the term "other intoxicating substance"  
12 shall mean any controlled dangerous substance as defined in the  
13 Uniform Controlled Dangerous Substances Act and any other substance,  
14 other than alcohol, which is capable of being ingested, inhaled,  
15 injected or absorbed into the human body and is capable of adversely  
16 affecting the central nervous system, vision, hearing or other  
17 sensory or motor functions.

18 B. The law enforcement agency by which the arresting officer is  
19 employed may designate, in accordance with the rules of the Board of  
20 Tests for Alcohol and Drug Influence, hereinafter referred to as the  
21 Board, whether blood or breath is to be tested for the alcohol  
22 concentration thereof, and whether blood, saliva or urine is to be  
23 tested for the presence or concentration of any other intoxicating  
24 substance therein.

1 In the event that law enforcement agency does not designate the  
2 test to be administered, breath shall be the substance tested for  
3 alcohol concentration. Blood may also be tested to determine the  
4 alcohol concentration thereof in the event that breath cannot be  
5 tested to determine the alcohol concentration thereof because of the  
6 lack of an approved device or qualified person to administer a  
7 breath test or because such breath test for any other reason cannot  
8 be administered in accordance with the rules of the Board.

9 In the event the law enforcement agency does not designate the  
10 test to be administered, blood, saliva or urine shall be the  
11 substance tested for the presence or concentration of any other  
12 intoxicating substance or the combination of alcohol and any other  
13 intoxicating substance.

14 C. In the event the person is incapable of submitting to and  
15 successfully completing, by reason of illness or injury or other  
16 physical disability, the test to be administered, an alternate test  
17 may be administered in accordance with the rules of the Board.

18 D. Any person who is unconscious or otherwise incapable of  
19 refusing to submit to a test of such person's blood or breath to  
20 determine the alcohol concentration thereof, or to a test of such  
21 person's blood, saliva or urine to determine the presence or  
22 concentration of any other intoxicating substance therein, shall be  
23 deemed not to have withdrawn the consent provided by subsection A of  
24 this section, and such test may be administered as provided herein.

1 An unconscious person who has been issued a citation by a law  
2 enforcement officer for one of the offenses listed in subsection A  
3 of this section is arrested for purposes of this section. The  
4 arresting officer must leave a copy of the citation with the  
5 arrested person which may be accomplished by handing it to the  
6 arrested person, or by leaving it with the personal effects of the  
7 arrested party, so as to inform the unconscious person of the  
8 arrest.

9 Any person who has been arrested for one of the offenses listed  
10 in subsection A of this section who is unconscious or injured and  
11 who requires immediate medical treatment as determined by a treating  
12 physician may be released on the person's own recognizance for  
13 medical reasons by the arresting officer. The arresting officer who  
14 releases an arrested person on the person's own recognizance must  
15 indicate the release on the face of the citation. Any person  
16 released on his or her own recognizance for medical reasons shall  
17 remain at liberty pending the filing of charges.

18 E. In addition to any test designated by the arresting officer,  
19 the arrested person may also designate any additional test to be  
20 administered to determine the concentration of alcohol, or the  
21 presence or concentration of any other intoxicating substance or the  
22 combination of alcohol and any other intoxicating substance. The  
23 cost of such additional test shall be at the expense of the arrested  
24 person.

1 A sufficient quantity of any specimen obtained at the  
2 designation of the arrested person shall be available to the law  
3 enforcement agency employing the arresting officer. Such specimens  
4 shall be treated in accordance with the rules applicable to the  
5 specimens obtained by an arresting officer.

6 F. When a law enforcement officer has determined that the blood  
7 alcohol content of an individual is to be tested for the presence or  
8 concentration of alcohol, other intoxicating substance, or the  
9 combination of alcohol and any other intoxicating substance, the law  
10 enforcement officer shall inform the individual to be tested that  
11 the withdrawal of blood shall only be performed by certain medical  
12 personnel as provided for in Section 752 of this title.

13 G. The results of the tests provided for in this title shall be  
14 admissible in all civil actions, including administrative hearings  
15 regarding driving privileges.

16 SECTION 2. AMENDATORY 47 O.S. 2011, Section 756, as  
17 amended by Section 15, Chapter 392, O.S.L. 2017 (47 O.S. Supp. 2019,  
18 Section 756), is amended to read as follows:

19 Section 756. A. Upon the trial of any criminal action or  
20 proceeding arising out of acts alleged to have been committed by any  
21 person while driving or in actual physical control of a motor  
22 vehicle while under the influence of alcohol or any other  
23 intoxicating substance, or the combined influence of alcohol and any  
24 other intoxicating substance, evidence of the alcohol concentration

1 in the blood or breath of the person as shown by analysis of the  
2 blood or breath of the person performed in accordance with the  
3 provisions of Sections 752 and 759 of this title or evidence of the  
4 presence or concentration of any other intoxicating substance as  
5 shown by analysis of such person's blood, breath, saliva, or urine  
6 specimens in accordance with the provisions of Sections 752 and 759  
7 of this title is admissible. Evidence that the person has refused  
8 to submit to a test or tests is also admissible. For the purpose of  
9 this title, when the person is under the age of twenty-one (21)  
10 years, evidence that there was, at the time of the test, any  
11 measurable quantity of alcohol is prima facie evidence that the  
12 person is under the influence of alcohol in violation of Section 11-  
13 906.4 of this title. For persons twenty-one years of age or older:

- 14 1. Evidence that there was, at the time of the test, an alcohol  
15 concentration of five-hundredths (0.05) or less is prima facie  
16 evidence that the person was not under the influence of alcohol;
- 17 2. Evidence that there was, at the time of the test, an alcohol  
18 concentration in excess of five-hundredths (0.05) but less than  
19 eight-hundredths (0.08) is relevant evidence that the person's  
20 ability to operate a motor vehicle was impaired by alcohol.

21 However, no person shall be convicted of the offense of operating or  
22 being in actual physical control of a motor vehicle while such  
23 person's ability to operate such vehicle was impaired by alcohol  
24 solely because there was, at the time of the test, an alcohol

1 concentration in excess of five-hundredths (0.05) but less than  
2 eight-hundredths (0.08) in the blood or breath of the person in the  
3 absence of additional evidence that such person's ability to operate  
4 such vehicle was affected by alcohol to the extent that the public  
5 health and safety was threatened or that the person had violated a  
6 state statute or local ordinance in the operation of a motor  
7 vehicle; and

8 3. Evidence that there was, at the time of the test, an alcohol  
9 concentration of eight-hundredths (0.08) or more shall be admitted  
10 as prima facie evidence that the person was under the influence of  
11 alcohol.

12 B. For purposes of this title, "alcohol concentration" means  
13 grams of alcohol per one hundred (100) milliliters of blood if the  
14 blood was tested, or grams of alcohol per two hundred ten (210)  
15 liters of breath if the breath was tested.

16 C. Evidence of the presence or concentration of marijuana,  
17 tetrahydrocannabinol (THC), or their metabolites, excluding 11-nor-  
18 9-carboxy-delta-9-tetrahydrocannabinol, or derivatives is  
19 admissible. However, no person shall be convicted of the offense of  
20 operating or being in actual physical control of a motor vehicle  
21 while such person's ability to operate such vehicle was impaired by  
22 marijuana, THC, or their metabolites, excluding 11-nor-9-carboxy-  
23 delta-9-tetrahydrocannabinol, or derivatives in the absence of  
24 additional evidence that such person's ability to operate such



1 vehicle was affected to a degree that the person was rendered  
2 substantially incapable, either mentally or physically by marijuana,  
3 THC, or their metabolites, excluding 11-nor-9-carboxy-delta-9-  
4 tetrahydrocannabinol, or derivatives to the extent that the public  
5 health and safety was threatened or that said person violated a  
6 state statute or local ordinance in the operation of a motor  
7 vehicle.

8 D. To be admissible in a proceeding, the evidence must first be  
9 qualified by establishing that the test was administered to the  
10 person within two (2) hours after the arrest of the person.

11 ~~D.~~ E. Upon the trial of any criminal action or proceeding  
12 arising out of acts alleged to have been committed by any person  
13 while driving or in actual physical control of a motor vehicle while  
14 under the influence of alcohol, the following may be considered as  
15 evidence that the test of the breath of the person was validly  
16 administered in accordance with the rules of the Board of Tests for  
17 Alcohol and Drug Influence:

18 1. A report, test result or other documentation indicating the  
19 test was performed by an operator holding a permit issued by the  
20 Board of Tests for Alcohol and Drug Influence;

21 2. A report, test result or other documentation indicating the  
22 test was performed after the installation of a dry gas cylinder by  
23 the Board of Tests for Alcohol and Drug Influence and before the  
24 expiration date of the cylinder;

1 3. A report, test result or other documentation reflecting the  
2 results of two breath samples within 0.03g/210L of each other; or

3 4. A report, test result or other documentation reflecting a  
4 control test within 0.01g/210L of the target value of the control.

5 ~~E.~~ F. Results of the test of a the breath or blood of the  
6 person, if admissible, shall be admitted without reference to  
7 measurement uncertainty.

8 ~~F.~~ G. 1. At any hearing, documents retained by the Board of  
9 Tests of Alcohol and Drug Influence to reflect maintenance on an  
10 instrument maintained by the Board for the measurement of alcohol  
11 concentration in a person's breath, which have been made available  
12 to the accused by the office of the district attorney at least ten  
13 (10) days prior to the hearing, when certified as correct by the  
14 persons making the report shall be received as evidence of the facts  
15 and findings stated, if relevant and otherwise admissible in  
16 evidence. If a report is deemed relevant by the state or the  
17 accused, the court shall admit the report without the testimony of  
18 the person making the report, unless the court, pursuant to  
19 paragraph 2 of this subsection, orders the person making the report  
20 to appear.

21 2. The court, upon motion of the state or the accused at least  
22 five (5) days prior to the hearing, shall order the attendance of  
23 the person making a report intended to be submitted as evidence,  
24 pursuant to paragraph 1 of this subsection, when it appears there is

1 a substantial likelihood that material evidence not contained in  
2 such report may be produced by the testimony of the person having  
3 prepared the report.

4 SECTION 3. AMENDATORY 47 O.S. 2011, Section 761, is  
5 amended to read as follows:

6 Section 761. A. Any person who operates a motor vehicle while  
7 his or her ability to operate such motor vehicle is impaired by the  
8 consumption of alcohol, or any other substance, other than alcohol,  
9 which is capable of being ingested, inhaled, injected or absorbed  
10 into the human body and ~~is capable of adversely affecting the~~  
11 ~~central nervous system, vision, hearing or other sensory or motor~~  
12 ~~functions~~ affects the person to the slightest degree so that the  
13 person is less able than the person ordinarily would have been,  
14 either mentally or physically, or both mentally and physically, to  
15 exercise clear judgment, sufficient physical control or due care in  
16 the safe operation of a vehicle shall be subject to a fine of not  
17 less than One Hundred Dollars (\$100.00) nor more than Five Hundred  
18 Dollars (\$500.00), or imprisonment in the county jail for not more  
19 than six (6) months, or by both such fine and imprisonment.

20 B. Upon the receipt of any person's record of conviction of  
21 driving while impaired, when such conviction has become final, the  
22 Department of Public Safety shall suspend the driving privilege of  
23 such person, as follows:

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

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

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

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

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

14           D. Any person who is found guilty of a violation of the  
15 provisions of this section or pleading guilty or nolo contendere for  
16 a violation of any provision of this section shall be ordered to  
17 participate in, prior to sentencing, an alcohol and drug assessment  
18 and evaluation by an assessment agency or assessment personnel  
19 certified by the Department of Mental Health and Substance Abuse  
20 Services for the purpose of evaluating the receptivity to treatment  
21 and prognosis of the person. The court shall order the person to  
22 reimburse the agency or assessor for the assessment and evaluation.  
23 The fee for an assessment and evaluation shall be the amount  
24 provided in subsection C of Section 3-460 of Title 43A of the

1 Oklahoma Statutes. The evaluation shall be conducted at a certified  
2 assessment agency, the office of a certified assessor or at another  
3 location as ordered by the court. The agency or assessor shall,  
4 within seventy-two (72) hours from the time the person is assessed,  
5 submit a written report to the court for the purpose of assisting  
6 the court in its final sentencing determination. If such report  
7 indicates that the evaluation shows that the defendant would benefit  
8 from a ten-hour or twenty-four-hour alcohol and drug substance abuse  
9 course or a treatment program or both, the court shall, as a  
10 condition of any sentence imposed, including a deferred sentence and  
11 a suspended sentence, require the person to follow all  
12 recommendations identified by the assessment and evaluation and  
13 ordered by the court. No person, agency or facility operating an  
14 alcohol and drug substance abuse evaluation program certified by the  
15 Department of Mental Health and Substance Abuse Services shall  
16 solicit or refer any person evaluated pursuant to this section for  
17 any treatment program or alcohol and drug substance abuse service in  
18 which such person, agency or facility has a vested interest;  
19 however, this provision shall not be construed to prohibit the court  
20 from ordering participation in or any person from voluntarily  
21 utilizing a treatment program or alcohol and drug substance abuse  
22 service offered by such person, agency or facility. Any evaluation  
23 report submitted to the court pursuant to this subsection shall be  
24 handled in a manner which will keep such report confidential from

1 the general public's review. Nothing contained in this subsection  
2 shall be construed to prohibit the court from ordering judgment and  
3 sentence and any other sanction authorized by law for failure or  
4 refusal to comply with an order of the court.

5 SECTION 4. AMENDATORY 47 O.S. 2011, Section 11-902, as  
6 last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp.  
7 2019, Section 11-902), is amended to read as follows:

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

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

18 2. Is under the influence of alcohol;

19 3. Has any amount of a Schedule I chemical or controlled  
20 substance, as defined in Section 2-204 of Title 63 of the Oklahoma  
21 Statutes, or one of its metabolites or analogs unless specifically  
22 excepted or listed in another schedule, in the person's blood,  
23 saliva, urine or any other bodily fluid at the time of a test of  
24

1 such person's blood, saliva, urine or any other bodily fluid  
2 administered within two (2) hours after the arrest of such person;

3 4. Is under the influence of any intoxicating substance other  
4 than alcohol ~~which may render such person incapable~~ that may affect  
5 the person to a degree that the person is incapable, either mentally  
6 or physically, of safely driving or operating a motor vehicle; or

7 5. Is under the combined influence of alcohol and any other  
8 intoxicating substance ~~which may render such person incapable~~ that  
9 may affect the person to a degree that the person is incapable,  
10 either mentally or physically, of safely driving or operating a  
11 motor vehicle.

12 B. The fact that any person charged with a violation of this  
13 section is or has been lawfully entitled to use alcohol or a  
14 controlled dangerous substance including, but not limited to, the  
15 medical use of marijuana pursuant to Sections 420 through 427.23 of  
16 Title 63 of the Oklahoma Statutes or any other intoxicating  
17 substance shall not constitute a defense against any charge of  
18 violating this section.

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

22 a. participate in an assessment and evaluation pursuant  
23 to subsection G of this section and shall follow all  
24 recommendations made in the assessment and evaluation,

- 1           b.    be punished by imprisonment in jail for not less than  
2                    ten (10) days nor more than one (1) year, and  
3           c.    be fined not more than One Thousand Dollars  
4                    (\$1,000.00).

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

- 18           a.    follow all recommendations made in the assessment and  
19                    evaluation for treatment at the defendant's expense,  
20                    or  
21           b.    placement in the custody of the Department of  
22                    Corrections for not less than one (1) year and not to  
23                    exceed five (5) years and a fine of not more than Two  
24                    Thousand Five Hundred Dollars (\$2,500.00), or



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

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

- 17 a. follow all recommendations made in the assessment and  
18 evaluation for treatment at the defendant's expense,  
19 two hundred forty (240) hours of community service and  
20 use of an ignition interlock device, as provided by  
21 subparagraph n of paragraph 1 of subsection A of  
22 Section 991a of Title 22 of the Oklahoma Statutes, or  
23 b. placement in the custody of the Department of  
24 Corrections for not less than one (1) year and not to

1 exceed ten (10) years and a fine of not more than Five  
2 Thousand Dollars (\$5,000.00), or

3 c. treatment, imprisonment and a fine within the  
4 limitations prescribed in subparagraphs a and b of  
5 this paragraph.

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

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

19 a. follow all recommendations made in the assessment and  
20 evaluation for treatment at the defendant's expense,  
21 followed by not less than one (1) year of supervision  
22 and periodic testing at the defendant's expense, four  
23 hundred eighty (480) 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, for  
3           a minimum of thirty (30) days, or

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

8           c.    treatment, imprisonment and a fine within the  
9           limitations prescribed in subparagraphs a and b of  
10          this paragraph.

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

14          5.    Any person who, after a previous conviction of a violation  
15          of murder in the second degree or manslaughter in the first degree  
16          in which the death was caused as a result of driving under the  
17          influence of alcohol or other intoxicating substance, is convicted  
18          of a violation of this section shall be guilty of a felony and shall  
19          be punished by imprisonment in the custody of the Department of  
20          Corrections for not less than five (5) years and not to exceed  
21          twenty (20) years, and a fine of not more than Ten Thousand Dollars  
22          (\$10,000.00).

23          6.    Provided, however, a conviction from another state shall not  
24          be used to enhance punishment pursuant to the provisions of this

1 subsection if that conviction is based on a blood or breath alcohol  
2 concentration of less than eight-hundredths (0.08).

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

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

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

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

24

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

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

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

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

22 G. Any person who is found guilty of a violation of the  
23 provisions of this section shall be ordered to participate in an  
24 alcohol and drug substance abuse evaluation and assessment program

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

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

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

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

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

22 J. Any person who is found guilty of a violation of the  
23 provisions of this section who has been sentenced by the court to  
24



1 perform any type of community service shall not be permitted to pay  
2 a fine in lieu of performing the community service.

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

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

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

21 M. Any plea of guilty, nolo contendere or finding of guilt for  
22 a violation of this section or a violation pursuant to the  
23 provisions of any law of this state or another state prohibiting the  
24 offenses provided for in this section, Section 11-904 of this title,

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

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

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

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

22 SECTION 5. This act shall become effective November 1, 2020.

23

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