

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 58

By: David

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5
6 AS INTRODUCED

7 An Act relating to impaired driving of motor
8 vehicles; creating the Impaired Driving Elimination
9 Act (IDEA); providing short title; authorizing
10 municipalities to create a Limited Municipal Criminal
11 Court of Record; stating purpose; requiring municipal
12 resolution; requiring filing of resolution with
13 county clerk; stating jurisdiction of court; stating
14 penalties; providing for fines and fees; restricting
15 prosecution in certain courts; providing for
16 appointment and compensation of judges; stating
17 qualifications; providing for powers and duties;
18 providing for court reporter; providing for selection
19 of jurors and conduct of jury trials; requiring
20 courts to comply with certain criminal code of
21 procedure; stating powers of judges and court clerks;
22 providing sentencing procedures; authorizing deferred
23 sentencing for certain period; providing for appeals
24 to the Court of Criminal Appeals; requiring courts to
be governed by certain laws governing municipal
courts not of record; amending 11 O.S. 2011, Section
28-123, which relates to penalties; modifying certain
probation period; stating exception; amending 11 O.S.
2011, Section 14-111, which relates to penalties for
violations of municipal ordinances; updating
statutory language; modifying costs, fines and
penalties for certain violations; amending 47 O.S.
2011, Section 11-902, as last amended by Section 3,
Chapter 393, O.S.L. 2013 (47 O.S. Supp. 2014, Section
11-902) which relates to punishments for impaired
driving; modifying certain fine; requiring certain
first and subsequent offenses to be filed in certain
courts; providing for codification; providing for
noncodification; and providing an effective date.

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

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

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

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 27-140 of Title 11, unless there
8 is created a duplication in numbering, reads as follows:

9 A municipality having a municipal court not of record may create
10 a Limited Municipal Criminal Court of Record to establish municipal
11 jurisdiction over violations of ordinances prohibiting driving,
12 operating or being in the actual physical control of a motor vehicle
13 while under the influence of alcohol or other intoxicating
14 substances, the same as provided in Section 11-902 of Title 47 of
15 the Oklahoma Statutes. To create a Limited Municipal Criminal Court
16 of Record, effective on or after January 1, 2016, the governing body
17 of a municipality shall determine by resolution that the efficient
18 disposition of cases involving violations of its ordinances
19 prohibiting driving, operating or being in the actual physical
20 control of a motor vehicle while under the influence of alcohol or
21 other intoxicating substances necessitate the creation of a Limited
22 Municipal Criminal Court of Record. The governing body shall cause
23 a certified copy of the resolution to be filed in the office of the
24 county clerk of each county in which the municipality is located.

1 The filing of the resolution shall thereafter be judicially noticed
2 in all courts of this state.

3 SECTION 3. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 27-141 of Title 11, unless there
5 is created a duplication in numbering, read as follows:

6 A. Limited municipal criminal courts of record shall have
7 original jurisdiction, as provided by Section 1 of Article VII of
8 the Oklahoma Constitution, to hear and determine all prosecutions
9 for a violation of any ordinance prohibiting driving, operating or
10 being in the actual physical control of a motor vehicle while under
11 the influence of alcohol or other intoxicating substances.

12 B. When an offense of driving, operating or being in the actual
13 physical control of a motor vehicle while under the influence of
14 alcohol or other intoxicating substances is charged, the penalty
15 provided for the violation of the ordinance shall be a fine or
16 deferral fees in lieu of a fine not exceeding One Thousand Two
17 Hundred Fifty Dollars (\$1,250.00), imprisonment not to exceed six
18 (6) months, or both fine and imprisonment, plus costs, fees and
19 assessments. The court shall remit a portion of any fine or
20 deferral fee in accordance with the requirements of paragraph 1 of
21 subsection B of Section 14-111 of Title 11 of the Oklahoma Statutes.
22 All persons so charged before a limited municipal criminal court of
23 record shall be entitled to a trial by jury, unless waived by the
24

1 defendant. Judgments and sentences imposed by the judge shall be as
2 effective as if the same had been rendered and imposed by a jury.

3 C. If a deferred sentence is imposed, an administrative fee not
4 to exceed the amount prescribed in subsection D of Section 28-123 of
5 Title 11 of the Oklahoma Statutes may be imposed as costs in the
6 case.

7 D. A defendant who has been in jeopardy for the same or any
8 lesser included offense in the limited municipal criminal court of
9 record or district court shall not be prosecuted in any other court
10 for the same or a lesser included offense.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 27-142 of Title 11, unless there
13 is created a duplication in numbering, read as follows:

14 A. The municipal governing body may appoint and fix the
15 compensation of one or more judges of the limited municipal criminal
16 court of record, as may be required. Judges may be the same as
17 those appointed as a judge of the municipality's municipal court not
18 of record. Each judge shall possess the qualifications required by
19 law to be possessed by associate judges of the district court. A
20 judge shall serve for a term of two (2) years, expiring on a date
21 fixed by ordinance, and until a successor is appointed and
22 qualified, unless sooner removed by the vote of a majority of all
23 members of the governing body for such cause as is provided by law

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1 for the removal of public officers. Any appointment to fill a
2 vacancy shall be for the unexpired term.

3 B. A judge of a limited municipal criminal court of record
4 shall have power to administer oaths, keep and preserve the records
5 of the court, certify transcripts and other records and shall have
6 and possess such other general powers as are possessed by the
7 district judge. The judge shall also approve all recognizances and
8 bonds to which persons charged, or convicted, may be admitted and
9 shall determine and fix the amount thereof.

10 C. In the event of the disqualification, disability or absence
11 of a regular judge of a limited municipal criminal court of record,
12 the municipal governing body shall have power to appoint a special
13 judge to sit for the duration of such disqualification, disability
14 or absence.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 27-143 of Title 11, unless there
17 is created a duplication in numbering, read as follows:

18 A. The presiding judge of a limited municipal criminal court of
19 record may recommend to the governing body of the municipality the
20 appointment of a suitable and proper person as court reporter, whose
21 duty it shall be to correctly take and record all of the testimony
22 and proceedings pertaining to offenses of driving, operating or
23 being in the actual physical control of a motor vehicle while under
24 the influence of alcohol or other intoxicating substances when

1 required by either party. The municipal governing body shall fix
2 the compensation to be allowed the court reporter. Such reporter
3 may also perform such other clerical duties as the municipal
4 governing body and judge and clerk of the court may require and
5 shall have power to certify all transcripts and records of evidence
6 and proceedings taken.

7 B. Any such court reporter, before entering upon the duties of
8 office, shall be duly sworn in open court to faithfully perform the
9 duties of that office.

10 C. The reporter shall not receive any fees from the
11 municipality other than the compensation provided for the reporter's
12 regular employment, but shall receive the same fees for transcribing
13 the testimony and proceedings from other parties that are received
14 by reporters of the district court for like services.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 27-144 of Title 11, unless there
17 is created a duplication in numbering, read as follows:

18 A. A jury for the trial of cases in a limited municipal
19 criminal court of record shall consist of six (6) persons who shall
20 be selected, empanelled and qualified in the same manner that jurors
21 are selected, empanelled and qualified in the district court.

22 B. Jurors in a limited municipal criminal court of record shall
23 be selected pursuant to this section under the same terms and
24 conditions as are provided for by law for the district courts, or in

1 the alternative, pursuant to Section 18.1 of Title 38 of the
2 Oklahoma Statutes. Upon written request of the judge of a limited
3 municipal criminal court record for a stated number of jurors to the
4 chief judge of the appropriate district court, it shall be the duty
5 of the clerk of the district court to draw from the jury wheel a
6 requested number of jurors in the same manner as is provided by law
7 for the district court until the number requested, who from their
8 addresses appear to reside within the corporate limits of the
9 municipality, is drawn, and to prepare a list of names drawn and
10 certify such list to the judge of the municipal court. On
11 completion of the draw, the clerk shall immediately return to the
12 jury wheel all names drawn which are not placed on the certified
13 list. The judge of the limited municipal criminal court of record
14 shall make written request to the chief judge of the district court
15 for a stated number of additional jurors if, after allowance of
16 claimed statutory exemptions, the listed number is found to be
17 insufficient. Summons of the prospective jurors shall be issued as
18 set out by ordinance, and may be served in person by the chief of
19 police or any member of the police force of the municipality, or may
20 be served by the clerk of the municipal court by mail.

21 C. The judge of the court shall ascertain if any of the
22 prospective jurors reside outside the corporate limits of the
23 municipality and shall not summon for jury duty any nonresident of
24 the municipality.

1 D. Upon order of the presiding judge, the clerk, or a judge,
2 and the chief of police of the municipality shall draw the names of
3 jurors from the jury box, in such number as may be ordered by the
4 presiding judge, in the same manner as is provided by law for the
5 drawing of names to fill a jury panel in the district court by the
6 district judge and sheriff of the county.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 27-145 of Title 11, unless there
9 is created a duplication in numbering, read as follows:

10 A. Except as otherwise specifically provided, a limited
11 municipal criminal court of record shall comply with the criminal
12 code of procedure, as in the district court for misdemeanor cases.

13 B. A limited municipal criminal court of record, by and through
14 its clerk or judge, shall have power to issue subpoenas, writs of
15 attachment, and summonses, to administer oaths, to verify complaints
16 and other processes and writs issuable by the district judge in
17 criminal proceedings, and to direct the same to the chief of police
18 or other law enforcement officers. The municipal criminal court of
19 record shall have power to compel obedience to its writs and orders
20 in the same manner and to the same extent as the district court. A
21 limited municipal criminal court of record shall also have power to
22 issue arrest warrants and search and seizure warrants. A law
23 enforcement officer of the municipality or a county sheriff may
24 serve an arrest warrant issued by the municipal court any place

1 within this state. If the warrant is served by a county sheriff,
2 the municipality shall pay the Sheriff's Service Fee Account a fee
3 of Twenty Dollars (\$20.00).

4 C. All sentences of imprisonment shall be executed by the chief
5 of police of the municipality and any person convicted of a
6 violation of any ordinance of the municipality prohibiting driving,
7 operating or being in the actual physical control of a motor vehicle
8 while under the influence of alcohol or other intoxicating
9 substances and sentenced to imprisonment shall be confined in the
10 jail of the municipality, at the discretion of the court, for the
11 time specified in the sentence.

12 D. A judge of a limited municipal criminal court of record
13 imposing a judgment and sentence, at the court's discretion, is
14 empowered to modify, reduce, or suspend or defer the imposition of
15 such sentence or any part thereof and to authorize probation for a
16 period not to exceed one (1) year from the date of acceptance of a
17 plea, under such terms or conditions as the judge may specify. Upon
18 completion of the probation term following a deferred sentence, the
19 defendant shall be discharged without a court judgment of guilt, and
20 the verdict, judgment of guilty or plea of guilty shall be expunged
21 from the record and the charge be dismissed with prejudice to any
22 further action, except as provided for the commission of a second or
23 subsequent offense pursuant to Section 11-902 of Title 47 of the
24 Oklahoma Statutes. Records of any such deferral and expungement

1 shall be maintained by the court as prescribed in subsection C of
2 Section 991c of Title 22 of the Oklahoma Statutes. Upon a finding
3 of the court that the conditions of probation have been violated,
4 the municipal judge may enter a judgment of guilty.

5 E. A judge of a limited municipal criminal court of record may
6 defer sentencing for a period of time not to exceed one (1) year
7 from the date of sentence.

8 F. The entry of pleas of guilty or nolo contendere to a judge of
9 a limited municipal criminal court of record shall not require that
10 a record be made before a court reporter, provided that they are
11 recorded in a form which is in substantial compliance with any
12 mandatory form for pleas and summary of facts required to be entered
13 in the district courts, as prescribed by the Oklahoma Court of
14 Criminal Appeals.

15 G. Appeals may be taken from a judgment or order of a limited
16 municipal criminal court of record to the Court of Criminal Appeals
17 in the same manner and to the same extent that appeals are now taken
18 from the district courts to the Court of Criminal Appeals in
19 criminal matters, and no appeals other than those herein provided
20 shall be allowed.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 27-146 of Title 11, unless there
23 is created a duplication in numbering, read as follows:

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1 Except as otherwise provided by law, limited municipal criminal
2 courts of record shall be governed by those laws governing municipal
3 criminal courts not of record.

4 SECTION 9. AMENDATORY 11 O.S. 2011, Section 28-123, is
5 amended to read as follows:

6 Section 28-123. A. All sentences of imprisonment shall be
7 executed by the chief of police of the city, and any person
8 convicted of a violation of any ordinance of the city and sentenced
9 to imprisonment shall be confined in the jail, farm or workhouse, of
10 the city, in the discretion of the court, for the time specified in
11 the sentence. All persons who shall be convicted in the court of
12 violation of any ordinance of the city and sentenced to pay a fine
13 and costs, who shall refuse to pay such fine or costs, shall be
14 imprisoned in the jail of the city for one (1) day for each Two
15 Dollars (\$2.00) of the fine and costs assessed.

16 B. The judge of the municipal criminal court of record imposing
17 a judgment and sentence, at ~~his~~ the judge's discretion, is empowered
18 to modify, reduce, or suspend or defer the imposition of such
19 sentence or any part thereof and to authorize probation for a period
20 not to exceed ~~six (6) months~~ one (1) year from the date of ~~sentence~~
21 acceptance of the plea, under such terms or conditions as the judge
22 may specify. Upon completion of the probation term following a
23 deferred sentence, the defendant shall be discharged without a court
24 judgment of guilt, and the verdict, judgment of guilty or plea of

1 guilty shall be expunged from the record and ~~said~~ the charge be
2 dismissed with prejudice to any further action. Upon a finding of
3 the court that the conditions of probation have been violated, the
4 municipal judge may enter a judgment of guilty.

5 C. The judge of the municipal court of record may continue or
6 delay imposing a judgment and sentence for a period of time not to
7 exceed one (1) year from the date of sentence. ~~At~~ Except when the
8 offense constitutes a violation of an ordinance prohibiting driving,
9 operating or being in the actual physical control of a motor vehicle
10 while under the influence of alcohol or other intoxicating
11 substances, at the expiration of such period of time the judge may
12 allow the city attorney to amend the charge to a lesser offense.

13 D. If a deferred sentence is imposed, an administrative fee of
14 One Hundred Dollars (\$100.00) may be imposed as costs in the case,
15 in addition to any deferral fee otherwise authorized by law.

16 SECTION 10. AMENDATORY 11 O.S. 2011, Section 14-111, is
17 amended to read as follows:

18 Section 14-111. A. The governing body of a municipality may
19 provide for enforcement of its ordinances and establish fines,
20 penalties, or imprisonment, as authorized by subsections B through D
21 of this section, for any offense in violation of its ordinances,
22 which shall be recoverable together with costs of suit. The
23 governing body may provide that any person fined for violation of a
24 municipal ordinance who is financially able but refuses or neglects

1 to pay the fine or costs may be compelled to satisfy the amount owed
2 by working on the streets, alleys, avenues, areas, and public
3 grounds of the municipality, subject to the direction of the ~~street~~
4 ~~commissioner or other proper officer~~ officers or employees of the
5 municipality, at a rate per day as the governing body may prescribe
6 by ordinance, but not less than Fifty Dollars (\$50.00) per day for
7 useful labor, until the fine or costs are satisfied.

8 B. 1. Except for municipal ordinances related to prostitution
9 and as otherwise provided in this section, ~~cities~~ municipalities
10 having a municipal criminal court of record may enact ordinances
11 prescribing maximum fines or deferral fees in lieu of fines of One
12 Thousand Two Hundred Dollars (\$1,200.00) ~~and costs~~ or imprisonment
13 not exceeding six (6) months or both ~~the fine and imprisonment~~, plus
14 costs, fees and assessments, but shall not have authority to enact
15 any ordinance making unlawful an act or omission declared by state
16 statute to be punishable as a felony. ~~Cities~~ Municipalities having
17 a municipal criminal court of record may enact ordinances
18 prescribing maximum fines or deferral fees in lieu of fines of One
19 Thousand Dollars (\$1,000.00) ~~and costs~~ or imprisonment not exceeding
20 six (6) months or both ~~such~~ fine and imprisonment, plus costs, fees
21 and assessments for violations of municipal ordinances regulating
22 the pretreatment of wastewater and regulating stormwater discharges.
23 ~~Cities~~ Municipalities having a municipal criminal court of record or
24 a limited municipal criminal court of record may enact ordinances

1 prescribing maximum fines or deferral fees in lieu of fines of One
2 Thousand Two Hundred Fifty Dollars (\$1,250.00) ~~and costs~~ or
3 imprisonment not exceeding six (6) months or both ~~such~~ fine and
4 imprisonment, plus costs, fees and assessments for ~~alcohol-related~~
5 ~~or drug-related traffic~~ offenses prohibiting driving, operating or
6 being in the actual physical control of a motor vehicle while under
7 the influence of alcohol or other intoxicating substances, the same
8 as provided in Section 11-902 of Title 47 of the Oklahoma Statutes.

9 The court shall remit Fifty Dollars (\$50.00) of each alcohol fine or
10 deferral fee to a fund of the municipality that shall be used to
11 defray costs for enforcement of laws relating to juvenile access to
12 alcohol, other laws relating to alcohol and other intoxicating
13 substances, and traffic-related offenses involving alcohol or other
14 intoxicating substances.

15 2. For violations of municipal ordinances relating to
16 prostitution, including but not limited to engaging in prostitution
17 or soliciting or procuring prostitution, a municipal criminal court
18 of record may enact ordinances prescribing an imprisonment not to
19 exceed six (6) months, and fines or deferral fees in lieu of fines
20 as follows: a fine not to exceed Two Thousand Five Hundred Dollars
21 (\$2,500.00), plus costs, fees and assessments upon the first
22 conviction for violation of any such ordinances, a fine or deferral
23 fee in lieu of a fine of not more than Five Thousand Dollars
24 (\$5,000.00), plus costs, fees and assessments upon the second

1 conviction for violation of any of such ordinances, and a fine or
2 deferral fee in lieu of a fine of not more than Seven Thousand Five
3 Hundred Dollars (\$7,500.00), plus costs, fees and assessments upon
4 the third or subsequent convictions for violation of any of such
5 ordinances, or both ~~such~~ fine and imprisonment as well as a term of
6 community service of not less than forty (40) nor more than eighty
7 (80) hours.

8 C. Municipalities having a municipal court not of record may
9 enact ordinances prescribing maximum fines pursuant to the
10 provisions of this subsection. A municipal ordinance may not impose
11 a penalty, including fine or deferral fee in lieu of a fine ~~and~~
12 ~~costs,~~ plus costs, fees and assessments, which is greater than that
13 established by statute for the same offense. The maximum fine or
14 deferral fee in lieu of a fine for traffic-related offenses relating
15 to speeding or parking shall not exceed Two Hundred Dollars
16 (\$200.00), plus costs fees and assessments. The maximum fine or
17 deferral fee in lieu of a fine for alcohol-related or drug-related
18 offenses shall not exceed Eight Hundred Dollars (\$800.00), plus
19 costs, fees and assessments. For all other offenses, the maximum
20 fine or deferral fee in lieu of a fine shall not exceed Seven
21 Hundred Fifty Dollars (\$750.00), plus costs, fees and assessments.
22 The court shall remit Fifty Dollars (\$50.00) of each alcohol fine or
23 deferral fee to a fund of the municipality that shall be used to
24 defray costs for enforcement of laws relating to juvenile access to

1 alcohol, other laws relating to alcohol and other intoxicating
2 substances, and traffic-related offenses involving alcohol or other
3 intoxicating substances. The ordinances may prescribe costs
4 pursuant to the provisions of Section 27-126 of this title or
5 imprisonment not exceeding sixty (60) days or both ~~the~~ fine and
6 imprisonment; provided, that municipalities having only a municipal
7 court not of record shall not have authority to enact or enforce any
8 ordinance making unlawful any act or omission declared by state
9 statute to be punishable as a felony, or prohibiting driving,
10 operating or being in the actual physical control of a motor vehicle
11 while under the influence of alcohol or other intoxicating
12 substances, when such offense was committed on or after January 1,
13 2016; provided further, that municipalities having a municipal court
14 not of record may enact ordinances prescribing maximum fines of One
15 Thousand Dollars (\$1,000.00) ~~and costs~~ or imprisonment not exceeding
16 ninety (90) days or both ~~such~~ fine and imprisonment, plus costs,
17 fees and assessments for violations of municipal ordinances
18 regulating the pretreatment of wastewater and regulating stormwater
19 discharges. If imprisonment is available for the offense, then that
20 person charged shall have a right to a jury trial.

21 D. Municipalities having ~~both a~~ a municipal criminal ~~courts~~ court
22 of record, a limited municipal criminal court of record, ~~and or a~~
23 municipal ~~courts~~ court not of record may enact ordinances, within
24 the authority of this section, for each court.

1 E. No municipality may levy a fine or deferral fee in lieu of a
2 fine of over Fifty Dollars (\$50.00) until it has compiled and
3 published its penal ordinances as required in Sections 14-109 and
4 14-110 of this title.

5 F. No municipality may levy a fine of more than Ten Dollars
6 (\$10.00) nor court costs of more than Fifteen Dollars (\$15.00) for
7 exceeding the posted speed limit by no more than ten (10) miles per
8 hour upon any portion of the National System of Interstate and
9 Defense Highways, federal-aid primary highways, and the state
10 highway system which are located on the outskirts of any
11 municipality as determined in Section 2-117 of Title 47 of the
12 Oklahoma Statutes.

13 SECTION 11. AMENDATORY 47 O.S. 2011, Section 11-902, as
14 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
15 2014, Section 11-902), is amended to read as follows:

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

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

1 time of a test of such person's blood or breath administered within
2 two (2) hours after the arrest of such person;

3 2. Is under the influence of alcohol;

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

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

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

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

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

24

- 1 a. participate in an assessment and evaluation pursuant
2 to subsection G of this section and shall follow all
3 recommendations made in the assessment and evaluation,
4 b. be punished by imprisonment in jail for not less than
5 ten (10) days nor more than one (1) year, and
6 c. be fined not more than ~~One Thousand Dollars~~
7 ~~(\$1,000.00)~~ One Thousand Two Hundred Fifty Dollars
8 (\$1,250.00).

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

1 assessment and evaluation pursuant to subsection G of this section
2 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 or

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

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

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

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

- 1 a. follow all recommendations made in the assessment and
2 evaluation for treatment at the defendant's expense,
3 two hundred forty (240) hours of community service and
4 use of an ignition interlock device, as provided by
5 subparagraph n of paragraph 1 of subsection A of
6 Section 991a of Title 22 of the Oklahoma Statutes, 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 ten (10) years and a fine of not more than Five
10 Thousand Dollars (\$5,000.00), 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 ten (10) days, the person shall serve a term of
17 imprisonment of at least ten (10) days.

18 4. Any person who is convicted of a third or subsequent felony
19 offense pursuant to the provisions of this section or a violation
20 pursuant 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 followed by not less than one (1) year of supervision
6 and periodic testing at the defendant's expense, four
7 hundred eighty (480) hours of community service, and
8 use of an ignition interlock device, as provided by
9 subparagraph n of paragraph 1 of subsection A of
10 Section 991a of Title 22 of the Oklahoma Statutes, for
11 a minimum of thirty (30) days, or
- 12 b. placement in the custody of the Department of
13 Corrections for not less than one (1) year and not to
14 exceed twenty (20) years and a fine of not more than
15 Five Thousand Dollars (\$5,000.00), or
- 16 c. treatment, imprisonment and a fine within the
17 limitations prescribed in subparagraphs a and b of
18 this paragraph.

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

22 5. Any person who, after a previous conviction of a violation
23 of murder in the second degree or manslaughter in the first degree
24 in which the death was caused as a result of driving under the

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

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

11 7. In any case in which a defendant is charged with a second or
12 subsequent driving under the influence of alcohol or other
13 intoxicating substance offense committed prior to January 1, 2016,
14 within any municipality with a municipal court other than a court of
15 record, the charge shall be presented to the county's district
16 attorney and filed with the district court of the county within
17 which the municipality is located. On and after January 1, 2016,
18 charges for any first offense of driving under the influence of
19 alcohol or other intoxicating substance committed on or after
20 January 1, 2016, shall only be filed in a municipal criminal court
21 of record, a limited municipal criminal court of record or the
22 district court and charges for a second or subsequent offense shall
23 only be filed in the district court.
24

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

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

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

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

1 in paragraph 2 of subsection C of this section. Any person who
2 commits a second felony offense pursuant to this subsection shall,
3 upon conviction, be guilty of a felony and shall be punished as
4 provided in paragraph 3 of subsection C of this section. Any person
5 who commits a third or subsequent felony offense pursuant to the
6 provisions of this subsection shall, upon conviction, be guilty of a
7 felony and shall be punished as provided in paragraph 4 of
8 subsection C of this section.

9 E. When a person is sentenced to imprisonment in the custody of
10 the Department of Corrections, the person shall be processed through
11 the Lexington Assessment and Reception Center or at a place
12 determined by the Director of the Department of Corrections. The
13 Department of Corrections shall classify and assign the person to
14 one or more of the following:

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

18 2. A correctional facility operated by the Department of
19 Corrections with assignment to substance abuse treatment.
20 Successful completion of a Department-of-Corrections-approved
21 substance abuse treatment program shall satisfy the recommendation
22 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
23 course or treatment program or both. Successful completion of an
24

1 approved Department of Corrections substance abuse treatment program
2 may precede or follow the required assessment.

3 F. The Department of Public Safety is hereby authorized to
4 reinstate any suspended or revoked driving privilege when the person
5 meets the statutory requirements which affect the existing driving
6 privilege.

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

1 of assisting the court in its sentencing determination. The court
2 shall, as a condition of any sentence imposed, including deferred
3 and suspended sentences, require the person to participate in and
4 successfully complete all recommendations from the evaluation, such
5 as an alcohol and substance abuse treatment program pursuant to
6 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
7 indicates that the evaluation and assessment shows that the
8 defendant would benefit from a ten-hour or twenty-four-hour alcohol
9 and drug substance abuse course or a treatment program or both, the
10 court shall, as a condition of any sentence imposed, including
11 deferred and suspended sentences, require the person to follow all
12 recommendations identified by the evaluation and assessment and
13 ordered by the court. No person, agency or facility operating an
14 evaluation and assessment program certified by the Department of
15 Mental Health and Substance Abuse Services shall solicit or refer
16 any person evaluated and assessed pursuant to this section for any
17 treatment program or substance abuse service in which such person,
18 agency or facility has a vested interest; however, this provision
19 shall not be construed to prohibit the court from ordering
20 participation in or any person from voluntarily utilizing a
21 treatment program or substance abuse service offered by such person,
22 agency or facility. If a person is sentenced to imprisonment in the
23 custody of the Department of Corrections and the court has received
24 a written evaluation report pursuant to the provisions of this

1 subsection, the report shall be furnished to the Department of
2 Corrections with the judgment and sentence. Any evaluation and
3 assessment report submitted to the court pursuant to the provisions
4 of this subsection shall be handled in a manner which will keep such
5 report confidential from the general public's review. Nothing
6 contained in this subsection shall be construed to prohibit the
7 court from ordering judgment and sentence in the event the defendant
8 fails or refuses to comply with an order of the court to obtain the
9 evaluation and assessment required by this subsection. If the
10 defendant fails or refuses to comply with an order of the court to
11 obtain the evaluation and assessment, the Department of Public
12 Safety shall not reinstate driving privileges until the defendant
13 has complied in full with such order. Nothing contained in this
14 subsection shall be construed to prohibit the court from ordering
15 judgment and sentence and any other sanction authorized by law for
16 failure or refusal to comply with an order of the court.

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

1 participation by the defendant, if in the opinion of the court the
2 defendant has the ability to pay such fee.

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

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

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

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

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

5 M. Any plea of guilty, nolo contendere or finding of guilt for
6 a violation of this section or a violation pursuant to the
7 provisions of any law of this state or another state prohibiting the
8 offenses provided for in subsection A of this section, Section 11-
9 904 of this title, or paragraph 4 of subsection A of Section 852.1
10 of Title 21 of the Oklahoma Statutes, shall constitute a conviction
11 of the offense for the purpose of this section for a period of ten
12 (10) years following the completion of any court-imposed
13 probationary term.

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

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

23 2. Whether a person was under the influence of one or more
24 impairing substances and the category of such impairing substance or

1 substances. A witness who has received training and holds a current
2 certification as a drug recognition expert shall be qualified to
3 give the testimony in any case in which such testimony may be
4 relevant.

5 SECTION 12. This act shall become effective November 1, 2015.

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