

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 HOUSE BILL 2151

 By: West (Kevin)

7 AS INTRODUCED

8 An Act relating to driving under the influence;
9 requiring the development of certain cellular phone
10 tracking application; providing for the installation
11 of the application on certain individual's cellular
12 phone; stating requirements for the tracking
13 application; disallowing the use of certain
14 information for probable cause; authorizing the
15 Department of Public Safety to promulgate rules;
16 amending 47 O.S. 2021, Section 902, which relates to
17 persons under the influence of alcohol or other
18 intoxicating substance or combination thereof;
19 providing for installation of cellular phone tracking
20 application on convicted person's phones; providing
21 for codification; and providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 11-902e of Title 47, unless
25 there is created a duplication in numbering, reads as follows:

26 A. The Department of Public Safety shall develop or contract to
27 develop a cellular phone application that allows for the tracking of
28 individuals convicted of the offense of driving while under the
29 influence of alcohol or other intoxicating substance as provided for

1 in subsection A of Section 11-902 of Title 47 of the Oklahoma
2 Statutes. The cellular phone application shall be installed on the
3 cellular telephone of individuals convicted of the offense of
4 driving under the influence, in accordance with Section 11-902 of
5 this title. The cellular phone application shall:

6 1. Allow for information relating to the individual's real-time
7 and past location to be available to any state or municipal law
8 enforcement agency personnel;

9 2. Allow for law enforcement personnel to locate previous
10 offenders in his or her immediate area; and

11 3. Not allow for an individual's name or identifying information
12 to be seen on the tracking device used by law enforcement officers.
13 The location of an individual shall only be visible to law
14 enforcement personnel as a dot on the screen with no identifying
15 information.

16 B. The location information provided to law enforcement
17 personnel via the cellular telephone application described in
18 subsection A of this section shall not be considered probable cause
19 for the stop of an individual.

20 C. The Department of Public Safety is authorized to develop any
21 rules and procedures to effectuate the provisions of this section.

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

24

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

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

11 2. Is under the influence of alcohol;

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

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

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

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

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

- 9 a. participate in an assessment and evaluation pursuant
10 to subsection G of this section and shall follow all
11 recommendations made in the assessment and evaluation,
12 b. be punished by imprisonment in jail for not less than
13 ten (10) days nor more than one (1) year, ~~and~~
14 c. be fined not more than One Thousand Dollars
15 (\$1,000.00), and
16 d. have the option of having a tracking application
17 installed on his or her cellular telephone, pursuant
18 to Section 1 of this act, for a period of one (1) year
19 if agreed to by the District Attorney.

20 2. Any person who, having been convicted of or having received
21 deferred judgment for a violation 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 in this section, Section 11-904 of
24 this title or paragraph 4 of subsection A of Section 852.1 of Title

1 21 of the Oklahoma Statutes, or having a prior conviction in a
2 municipal criminal court of record for the violation of a municipal
3 ordinance prohibiting the offense provided for in this section
4 commits a subsequent violation of this section within ten (10) years
5 of the date following the completion of the execution of said
6 sentence or deferred judgment shall, upon conviction, be guilty of a
7 felony and shall participate in an assessment and evaluation
8 pursuant to subsection G of this section and shall be sentenced to:

9 a. follow all recommendations made in the assessment and
10 evaluation for treatment at the defendant's expense,

11 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 five (5) years and a fine of not more than Two
15 Thousand Five Hundred Dollars (\$2,500.00), or

16 c. treatment, imprisonment and a fine within the
17 limitations prescribed in subparagraphs a and b of
18 this paragraph, or

19 d. have a tracking application installed on his or her
20 cellular telephone, pursuant to Section 1 of this act,
21 for a period of five (5) years.

22 However, if the treatment in subsection G of this section does
23 not include residential or inpatient treatment for a period of not

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1 less than five (5) days, the person shall serve a term of
2 imprisonment of at least five (5) days.

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

- 12 a. follow all recommendations made in the assessment and
13 evaluation for treatment at the defendant's expense,
14 two hundred forty (240) hours of community service and
15 use of an ignition interlock device, as provided by
16 subparagraph n of paragraph 1 of subsection A of
17 Section 991a of Title 22 of the Oklahoma Statutes, or
- 18 b. placement in the custody of the Department of
19 Corrections for not less than one (1) year and not to
20 exceed ten (10) years and a fine of not more than Five
21 Thousand Dollars (\$5,000.00), or
- 22 c. treatment, imprisonment and a fine within the
23 limitations prescribed in subparagraphs a and b of
24 this paragraph.

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

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

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

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

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

22 7. In any case in which a defendant is charged with driving
23 under the influence of alcohol or other intoxicating substance
24 offense within any municipality with a municipal court other than a

1 court of record, the charge shall be presented to the county's
2 district attorney and filed with the district court of the county
3 within which the municipality is located.

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

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

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

19 E. When a person is sentenced to imprisonment in the custody of
20 the Department of Corrections, the person shall be processed through
21 the Lexington Assessment and Reception Center or at a place
22 determined by the Director of the Department of Corrections. The
23 Department of Corrections shall classify and assign the person to
24 one or more of the following:

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

4 2. A correctional facility operated by the Department of
5 Corrections with assignment to substance abuse treatment.
6 Successful completion of a Department-of-Corrections-approved
7 substance abuse treatment program shall satisfy the recommendation
8 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
9 course or treatment program or both. Successful completion of an
10 approved Department of Corrections substance abuse treatment program
11 may precede or follow the required assessment.

12 F. The Department of Public Safety is hereby authorized to
13 reinstate any suspended or revoked driving privilege when the person
14 meets the statutory requirements which affect the existing driving
15 privilege.

16 G. Any person who is found guilty of a violation of the
17 provisions of this section shall be ordered to participate in an
18 alcohol and drug substance abuse evaluation and assessment program
19 offered by a certified assessment agency or certified assessor for
20 the purpose of evaluating and assessing the receptivity to treatment
21 and prognosis of the person and shall follow all recommendations
22 made in the assessment and evaluation for treatment. The court
23 shall order the person to reimburse the agency or assessor for the
24 evaluation and assessment. Payment shall be remitted by the

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

1 any person evaluated and assessed pursuant to this section for any
2 treatment program or substance abuse service in which such person,
3 agency or facility has a vested interest; however, this provision
4 shall not be construed to prohibit the court from ordering
5 participation in or any person from voluntarily utilizing a
6 treatment program or substance abuse service offered by such person,
7 agency or facility. If a person is sentenced to imprisonment in the
8 custody of the Department of Corrections and the court has received
9 a written evaluation report pursuant to the provisions of this
10 subsection, the report shall be furnished to the Department of
11 Corrections with the judgment and sentence. Any evaluation and
12 assessment report submitted to the court pursuant to the provisions
13 of this subsection shall be handled in a manner which will keep such
14 report confidential from the general public's review. Nothing
15 contained in this subsection shall be construed to prohibit the
16 court from ordering judgment and sentence in the event the defendant
17 fails or refuses to comply with an order of the court to obtain the
18 evaluation and assessment required by this subsection. If the
19 defendant fails or refuses to comply with an order of the court to
20 obtain the evaluation and assessment, the Department of Public
21 Safety shall not reinstate driving privileges until the defendant
22 has complied in full with such order. Nothing contained in this
23 subsection shall be construed to prohibit the court from ordering

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

3 H. Any person who is found guilty of a violation of the
4 provisions of this section shall be required by the court to attend
5 a victims impact panel program, as defined in subsection H of
6 Section 991a of Title 22 of the Oklahoma Statutes, if such a program
7 is offered in the county where the judgment is rendered, and to pay
8 a fee of Seventy-five Dollars (\$75.00), as set by the governing
9 authority of the program and approved by the court, to the program
10 to offset the cost of participation by the defendant, if in the
11 opinion of the court the defendant has the ability to pay such fee.

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

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

20 K. When a person is found guilty of a violation of the
21 provisions of this section, the court shall order, in addition to
22 any other penalty, the defendant to pay a one-hundred-dollar
23 assessment to be deposited in the Drug Abuse Education and Treatment
24

1 Revolving Fund created in Section 2-503.2 of Title 63 of the
2 Oklahoma Statutes, upon collection.

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

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

15 M. Any plea of guilty, nolo contendere or finding of guilt for
16 a violation of this section or a violation pursuant to the
17 provisions of any law of this state or another state prohibiting the
18 offenses provided for in this section, Section 11-904 of this title,
19 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
20 Oklahoma Statutes, shall constitute a conviction of the offense for
21 the purpose of this section; provided, any deferred judgment shall
22 only be considered to constitute a conviction for a period of ten
23 (10) years following the completion of any court-imposed
24 probationary term.

1 N. If qualified by knowledge, skill, experience, training or
2 education, a witness shall be allowed to testify in the form of an
3 opinion or otherwise solely on the issue of impairment, but not on
4 the issue of specific alcohol concentration level, relating to the
5 following:

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

10 2. Whether a person was under the influence of one or more
11 impairing substances and the category of such impairing substance or
12 substances. A witness who has received training and holds a current
13 certification as a drug recognition expert shall be qualified to
14 give the testimony in any case in which such testimony may be
15 relevant.

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

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18 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION AND
19 TECHNOLOGY, dated 02/21/2023 - DO PASS.

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