STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

HOUSE BILL 2151

By: West (Kevin)

AS INTRODUCED

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

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

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

A. The Department of Public Safety shall develop or contract to develop a cellular phone application that allows for the tracking of individuals convicted of the offense of driving while under the influence of alcohol or other intoxicating substance as provided for in subsection A of Section 11-902 of Title 47 of the Oklahoma Statutes.
Statutes. The cellular phone application shall be installed on the cellular telephone of individuals convicted of the offense of driving under the influence, in accordance with Section 11-902 of this title. The cellular phone application shall:

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

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

3. Not allow for an individual's name or identifying information to be seen on the tracking device used by law enforcement officers.

The location of an individual shall only be visible to law enforcement personnel as a dot on the screen with no identifying information.

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

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

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

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

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

2. Is under the influence of alcohol;

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

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

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

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

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

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

   b. be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and

   c. be fined not more than One Thousand Dollars ($1,000.00), and

   d. have the option of having a tracking application installed on his or her cellular telephone, pursuant to Section 1 of this act, for a period of one (1) year if agreed to by the District Attorney.

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

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

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

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

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

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

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

a. follow all recommendations made in the assessment and
evaluation for treatment at the defendant's expense,
two hundred forty (240) hours of community service and
use of an ignition interlock device, as provided by
subparagraph n of paragraph 1 of subsection A of
Section 991a of Title 22 of the Oklahoma Statutes, or

b. placement in the custody of the Department of
Corrections for not less than one (1) year and not to
exceed ten (10) years and a fine of not more than Five
Thousand Dollars ($5,000.00), or

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

However, if the treatment in subsection G of this section does
not include residential or inpatient treatment for a period of not
less than ten (10) days, the person shall serve a term of
imprisonment of at least ten (10) days.
4. Any person who commits a violation of this section after having been twice convicted of a felony offense pursuant to the provisions of this section or a violation pursuant to the provisions of any law of this state or another state prohibiting the offenses provided for in this section, Section 11-904 of this title or paragraph 4 of subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes shall be guilty of a felony and participate in an assessment and evaluation pursuant to subsection G of this section and shall be sentenced to:

   a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, followed by not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and use of an ignition interlock device, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, for a minimum of thirty (30) days, or

   b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed twenty (20) years and a fine of not more than Five Thousand Dollars ($5,000.00), or
c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

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

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

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

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

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

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

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

E. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. The Department of Corrections shall classify and assign the person to one or more of the following:
1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

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

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

G. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in an alcohol and drug substance abuse evaluation and assessment program offered by a certified assessment agency or certified assessor for the purpose of evaluating and assessing the receptivity to treatment and prognosis of the person and shall follow all recommendations made in the assessment and evaluation for treatment. The court shall order the person to reimburse the agency or assessor for the evaluation and assessment. Payment shall be remitted by the
defendant or on behalf of the defendant by any third party;
provided, no state-appropriated funds are utilized. The fee for an
evaluation and assessment shall be the amount provided in subsection
C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
evaluation and assessment shall be conducted at a certified
assessment agency, the office of a certified assessor or at another
location as ordered by the court. The agency or assessor shall,
within seventy-two (72) hours from the time the person is evaluated
and assessed, submit a written report to the court for the purpose
of assisting the court in its sentencing determination. The court
shall, as a condition of any sentence imposed, including deferred
and suspended sentences, require the person to participate in and
successfully complete all recommendations from the evaluation, such
as an alcohol and substance abuse treatment program pursuant to
Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
indicates that the evaluation and assessment shows that the
defendant would benefit from a ten-hour or twenty-four-hour alcohol
and drug substance abuse course or a treatment program or both, the
court shall, as a condition of any sentence imposed, including
defered and suspended sentences, require the person to follow all
recommendations identified by the evaluation and assessment and
ordered by the court. No person, agency or facility operating an
evaluation and assessment program certified by the Department of
Mental Health and Substance Abuse Services shall solicit or refer
any person evaluated and assessed pursuant to this section for any
treatment program or substance abuse service in which such person,
agency or facility has a vested interest; however, this provision
shall not be construed to prohibit the court from ordering
participation in or any person from voluntarily utilizing a
treatment program or substance abuse service offered by such person,
agency or facility. If a person is sentenced to imprisonment in the
custody of the Department of Corrections and the court has received
a written evaluation report pursuant to the provisions of this
subsection, the report shall be furnished to the Department of
Corrections with the judgment and sentence. Any evaluation and
assessment report submitted to the court pursuant to the provisions
of this subsection shall be handled in a manner which will keep such
report confidential from the general public's review. Nothing
contained in this subsection shall be construed to prohibit the
court from ordering judgment and sentence in the event the defendant
fails or refuses to comply with an order of the court to obtain the
evaluation and assessment required by this subsection. If the
defendant fails or refuses to comply with an order of the court to
obtain the evaluation and assessment, the Department of Public
Safety shall not reinstate driving privileges until the defendant
has complied in full with such order. Nothing contained in this
subsection shall be construed to prohibit the court from ordering
judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

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

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

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

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

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

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

M. Any plea of guilty, nolo contendere or finding of guilt for a violation of this section or a violation pursuant to the provisions of any law of this state or another state prohibiting the offenses provided for in this section, Section 11-904 of this title, or paragraph 4 of subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes, shall constitute a conviction of the offense for the purpose of this section; provided, any deferred judgment shall only be considered to constitute a conviction for a period of ten (10) years following the completion of any court-imposed probationary term.
N. If qualified by knowledge, skill, experience, training or education, a witness shall be allowed to testify in the form of an opinion or otherwise solely on the issue of impairment, but not on the issue of specific alcohol concentration level, relating to the following:

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

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

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