

# DUI Statutory Overview



Presenter:

Joshua Smith (BOT Director)

## Title 47 O.S. § 11-902

### Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- An Interim Study was requested in response to Legislative Session Bill SB660.
- An Act relating to driving under the influence of marijuana; amending 47 O.S. 2021, Sections 6-205 and 11-902, which relate to mandatory revocation of driving privilege and persons under the influence of alcohol or other intoxicating substance; clarifying inclusions; modifying felony offenses; updating statutory language; and providing an effective date.



# Title 47 O.S. § 11-902

## Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- The current DUI statute encompasses five separate violations:
  - 1. Has a blood or breath alcohol concentration of (0.08) or more at the time of a test 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 or one of its metabolites or analogs, as defined in Section 2-204 of Title 63 of the Oklahoma Statutes, in the person's blood, saliva, urine or any other bodily fluid at the time of a test 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.

## Title 47 O.S. § 11-902

### Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- “Under the Influence” is defined in the Oklahoma Uniform Jury Instructions OUJI-CR 6-35:

Condition in which alcohol/ (an intoxicating substance)/ (a combination of alcohol and another/other intoxicating substance(s)) has/have so far affected the nervous system, brain, or muscles of the driver as to hinder, to an appreciable degree, his/her ability to operate a motor vehicle in a manner that an ordinary prudent and cautious person, if in full possession of his/her faculties, using reasonable care, would operate or drive under like conditions.



## Title 47 O.S. § 11-902

### Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- “Other intoxicating substance” is defined in:
- 47 O.S. § 1-140.1

For purposes of this title, "other intoxicating substance" means any controlled dangerous substance, as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor function.

## Title 47 O.S. § 11-902

### Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- It is important to note that an arrest for articulable impairment observed by the law enforcement officer must occur to invoke one of these five statutory violations. The officer's observations are the triggering mechanism for a DWI, DUI, DUI-D, or APC.



# Title 47 O.S. § 11-902

## Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- A DUI investigation and subsequent arrest normally starts with an officer observing driving behavior consistent with impaired driving.
  1. The officer makes a stop
  2. The officer makes contact
  3. Field sobriety testing and totality of circumstances
  4. The officer sends them on their way or makes an arrest
  5. If the officer arrests, Implied Consent advisory is read, and a refusal or chemical test is conducted

# Title 47 O.S. § 11-902

Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- Question: Is the state encountering challenges prosecuting marijuana impaired drivers?
- If so, why?



# Title 47 O.S. § 11-902

Persons Under the Influence of Alcohol or Other Intoxicating Substance or Combination Thereof

- Recommendation:  
Make no changes

# Title 47 O.S. § 6-205

## Mandatory Revocation of License by Department - Petition

- A. The Department of Public Safety shall immediately revoke the driving privilege of any person, whether adult or juvenile, upon receiving a record of conviction, in any municipal, state or federal court within the United States of any of the following offenses, when such conviction has become final:
  - ...
  - “2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, any violation of paragraph 1, 2, 3, 4 or 5 of subsection A of Section 11-902 of this title or any violation of Section 11-906.4 of this title. However, the Department shall not additionally revoke the driving privileges of the person pursuant to this subsection if the driving privilege of the person has been revoked because of a test result or test refusal pursuant to Section 753 or 754 of this title arising from the same circumstances which resulted in the conviction unless the revocation because of a test result or test refusal is set aside;”



# Title 47 O.S. § 6-205

## Mandatory Revocation of License by Department - Petition

- No changes are necessary in Title 47 O.S. § 6-205, proper language already exists.
- Civil action taken by the state is based on a criminal conviction.

# Questions?

## Contact Information:

Oklahoma Board of Tests for Alcohol and Drug Influence

Josh Smith (Director)

405-425-2460 or email [JOSHUA.SMITH@BOT.OK.GOV](mailto:JOSHUA.SMITH@BOT.OK.GOV)