

This summary is intended to highlight the major changes and provide a guide to penalties and such that will be in place effective November 1, 2011.

DUI & APC 47 O.S. 11-901 Amended by Swezey Act & McGee Act

There will be two versions of the statute come November 1.

Cost of Blood Tests

Cost of Blood Test shall be added to court cost if convicted. (47 O.S. § 752, amended by HB 1676, effective 8/26/22).

Assessments/Evaluations

No longer be required *prior* to plea or sentencing. But the assessment and recommendations **shall be made a condition of the sentence or probation.**

Enhancement

Beginning 11-1-11, **any plea of guilty, no contest or finding of guilt for a DUI/APC shall constitute a conviction of the offense for the purpose of this section during the deferred or suspended sentence and for a period of ten years** following the completion of any court-imposed probationary term. (McGee Act)

DUI/APC or “**any law of this state or another state prohibiting offense**” in 47 O.S. § 11-902(A) (DUI, APC), 11-904 (Injury Accident while DUI), or 21 OS §852.1(A)(4) (Endangering a Child by DUI with child in car).

New Page 2 Offenses

Felony = 2nd offense that is **committed** either **during the period of probation or within 10 years of the date of completing any sentence or deferred sentence** of an enhanceable state charge OR from the date of conviction for a municipal court of record DUI/APC

- No longer conviction to conviction.
- But “felony offense” is defined as a “second offense” during the above period.

Felony DUI/APC

DUI/APC Penalties	
Misdemeanor DUI/APC	10 days - 1 year jail and up to \$1,000 fine Shall participate in an assessment and follow recommendations as part of sentence
1 st Felony	1 - 5 yrs and up to \$2,500 fine+ 5 days inpatient treatment or 5 days jail* Shall participate in an

	assessment and follow recommendations
2 nd Felony	1 - 10 years and up to \$5,000 fine or 240 hrs of community service with interlock up to 2 years or combination of both + 10 days inpatient treatment or 10 days jail* Shall participate in an assessment and follow recommendations
3 rd Felony	1 - 20 years and up to \$5,000 fine or 480 hrs of community service with interlock up to 2 years or combination of both + 10 days inpatient treatment or 10 days jail* Shall participate in an assessment and follow recommendations
DUI/APC After Former Conviction of Murder 2-DUI or Manslaughter 1-DUI	5 - 20 years and up to \$10,000 fine Shall participate in an assessment and follow recommendations There is no requirement for minimum days in jail if there is no inpatient treatment (because it now has its own specific penalty)

AGGRAVATED DUI 47 O.S. §11-902(D) Amended by Swezey Act & McGee Act

Two Versions (Both versions had final passage on 5/19/11 and both signed on 5/20/11)

Still requires BAC or BrAC of .15 or more

Enhancement

Now has its own defined penalty stages 1st (misdemeanor), 2nd (1st Felony), 3rd (2nd Felony), 4th (3rd Felony) etc. This means that Agg DUI can only be enhanced by an Agg DUI that is within the probation or 10 year period (“commits a second violation of *this subsection*” See, McGee version of §11-902(D))

Penalties

Reference is made to the corresponding level of DUI charge to provide for jail time in addition to the additional conditions. Both Acts amended the additional conditions which creates a potential conflict.

Conflicts

The Swezey Act - **Interlock: minimum 30 days**, does not remove 480 hours of community

service
The McGee Act - **Interlock: minimum 90 days**,

removes the 480 hours of community service

<p>Misdemeanor Aggravated DUI</p>	<p>10 days - 1 year jail and up to \$1,000 fine. + Shall participate in an assessment and follow recommendations + Minimum 1 year supervision and periodic testing, and + Interlock for a minimum of 30 days/90 days</p>
<p>1st Felony Aggravated DUI</p>	<p>1 - 5 years and up to \$2,500 fine + 5 days inpatient treatment or 5 days jail* + Shall participate in an assessment and follow recommendations + Minimum 1 year supervision and periodic testing, and + Interlock for a minimum of 30 days/90 days</p>
<p>2nd Felony Aggravated DUI</p>	<p>1 - 10 years and up to \$5,000 fine or 240 hours of community service with interlock up to 2 years or combination of both + 10 days inpatient treatment or 10 days jail* + Shall participate in an assessment and follow recommendations + Minimum 1 year supervision and periodic testing, and + Interlock for a minimum of 30 days/90 days</p>
<p>3rd Felony Aggravated DUI</p>	<p>1 - 20 years and up to \$5,000 fine or 480 hours of community service with interlock up to 2 years or combination of both + 10 days inpatient treatment or 10 days jail* + Shall participate in an assessment and follow recommendations + Minimum 1 year supervision and periodic testing, and + Interlock for a minimum of 30 days/90 days</p>
<p>* If the treatment assessed does not include a minimum of 5 days (10 days for 2nd + felony) of residential or inpatient treatment, the person shall serve at least 5 days of jail. (See additional notes under DUI)</p>	

<p>DUI/APC Mandatory Revocations (47 O.S. §6-205.1) Amended by Swezey Act</p>	
<p>1st Revocation</p>	<p>180 days, <i>may</i> be modified + Shall install an interlock for the entire period even if denied a modified license + Interlock for additional 1 ½ years if BAC = .15 or more or a Refusal* Total Interlock Period = 2 years if additional required</p>

2 nd in 10 years	1 year, <i>may</i> be modified + Shall install an interlock for the entire period + Interlock for additional 4 years (everyone) Total Interlock Period = 5 years
3 rd in 10 years	3 years, <i>may</i> be modified + Shall install an interlock for the entire period + Interlock for additional 5 years (everyone) Total Interlock Period = 8 years
<p>* Proof of additional interlock required for reinstatement. The additional interlock placed as a restriction on DL</p> <p><i>The following applies to all interlock requirements discussed unless otherwise stated:</i></p> <ul style="list-style-type: none"> · Interlock shall be required on <u>every vehicle</u> operated by that person (47 O.S. §754.1) · The exemption for employer's vehicles still applies (see 47 O.S. §754.1 for details) · Monthly maintenance fee for interlock capped at \$25 per month for each interlock <p>“Interlock Required” on DL or ID Anytime a person is “subject to an order” requiring the installation of an interlock, the person must surrender their Driver’s License or State ID to a tag agency in exchange for a replacement DL or ID with the words “Interlock Required” on them. Once the person is no longer required to have the interlock, he can then exchange his DL or ID again for one without those words.</p> <p>Reinstatement Fee is now \$50.00 (was \$25) until June 30, 2013. After that, it’s back to \$25. Remember, it can only be charged once (not for each suspension) but there are additional processing fees assessed for each suspension/revocation.</p> <p>If you win the DPS hearing and the client gets a deferred sentence, he avoids revocation and a lot of the interlock hassles. Remember, a modified license is a revoked license on his record.</p>	

DUI - UNDER 21 (47 O.S. §11-906.4) Amended by Swezey Act
Still requires “any measurable amount of alcohol” within 2 hours of arrest (0.02 or more) or exhibits evidence of being under the influence of intoxicants or combination.

All changes are from the Swezey Act. The primary changes are the interlock requirements.

1 st Conviction (was “offense”)	a) \$100-500 fine or b) 20 hrs community service or c) requiring treatment program d) combination of above	+ 6 month cancellation/denial of DL (47 O.S. §6-107.1(B)) + 6 month mandatory revocation, modifiable (47 O.S. §6-205.1) + 1 ½ year continued installation of an interlock after the mandatory period of a BAC/BrAC of .15+ or refusal (47 O.S. §6-212.3(A)(1))
2 nd Conviction	240 hours of community service + install interlock min. 30 days starting after the conclusion of	+ 1 year cancellation/denial (new statute says “as ordered by the court pursuant to” 47

	the mandatory revocation period In addition: + \$100-1,000 (optional) + Treatment program (optional)	O.S. §6-107.1(B) + 1 year mandatory revocation, modifiable (47 O.S. §6-205.1) + An assessment + 4 year continued installation of an interlock after the mandatory period (47 O.S. §6-212.3(A)2))
3 rd Conviction	480 hours of community service + Install interlock min. 30 days starting after the conclusion of the mandatory revocation period In addition: + \$100-2,000 (optional) + Treatment program (optional)	+ 2 year (or until 21) cancellation/denial (new statute says “as ordered by the court pursuant to” 47 O.S. §6-107.1(B)) + 3 year mandatory revocation, modifiable (47 O.S. §6-205.1) + An assessment + 5 year continued installation of an interlock after the mandatory period (47 O.S. §6-212.3(A)2)
<p>The interlock requirements for the 2nd or 3rd Under 21 convictions will be hard for a court to enforce because they begin after any mandatory period of revocation is over, and there is no option of probation if convicted. Fortunately, in my experience, these are rare.</p>		

Other Mandatory DL Revocations (47 O.S. §6-205.1) added by Aaron’s Law

Three items have been added to the list of things that will require mandatory revocation.

Requires a conviction, which has become final.

- 1st Conviction/Revocation 1 year, no modification
- 2nd Conviction/Revocation 3 years, no modification

*To be counted as a 2nd Conviction/Revocation, the prior revocation must have commenced (effective date) within 5 years. However, that prior revocation could have been based on any of the charges on the list below. (This list does not include DUI, APC and Drug charges because they are provided for separately.)

The new ones are designated by asterisks.

- Manslaughter or negligent homicide by motor vehicle
- Any felony where car is used in commission
- Hit and Run with personal injury or death of another
- Perjury or False statement under oath to DPS regarding ownership of vehicles
- Abandoning goods by interstate carrier
- Bus or Limo knowingly transporting underage drinkers

* **Reckless Driving without regard for the safety of others** pursuant to 47 O.S. §11-901.

Caution: the Reckless Driving statute (47 O.S. §11-901) says “reckless driving” is driving in a careless or wanton manner without regard for the safety of persons OR property OR driving in violation of the conditions outlined in 47 O.S. §11-801 (speeding)

If the person is facing conviction of “reckless driving” generically, and DPS revokes, it should be challenged and appealed if necessary. Insist that the ticket or information specifies “without regard for safety of others.”

BE CAREFUL of plea agreements on DUI’s, especially in municipalities, that will amend the charge to a Reckless Driving or are reduced to a Reckless Driving charge and require the defendant to take a conviction for it.

*** Failure to obey a traffic control device or stop sign when such failure results in great bodily injury to any other person** (“great bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.” 47 O.S. §2-605(F))

*** Failure to stop or remain stopped for school bus loading or unloading children** pursuant to 47 O.S. §11-705 - 11-705.1.

NEGLIGENT HOMICIDE 47 O.S. §11-903 Amended by Aaron’s Law

The changes clarify that this is a misdemeanor. Nothing enhances to a felony, not even itself. Range of punishment is amended to increase the fine and add condition.

Misdemeanor: 0-1 year jail and/or minimum of \$1,000 fine* AND attend defensive driving course or driver improvement course.

*** If at the time of conviction, DPS records reflect a conviction for any traffic offense within the previous 3 years, the fine shall be doubled.**

PERMITTING INVITEES UNDER 21 TO POSSESS OR CONSUME 37 O.S. §8.2 Amended by Cody’s Law

Prior to the amendment, this statute only had a penalty if the underage drinking resulted in great bodily injury or death of a person. **Now, there are penalties proscribed for merely allowing the underage possession or consumption of any alcohol, including low-point beer, or illegal CDS.**

1st - Misdemeanor	Fine up to \$500
2nd in 10 years - Misdemeanor	Fine up to \$1,000
3rd in 10 years - Felony	0-5 years and/or up to \$2,500 fine
Violation + personal injury or death - Felony	0-5 years and/or \$2,500-5,000 fine

Enhancement

- The prior must be conviction of this statute or the same charge in another state or municipal court of record.

- The prior conviction must be within 10 years of the current charge section, or of [another state], or in a municipal court of record prohibiting the offense shall be guilty...” The action verb is left out.

- To be a felony, the charge must be within 10 years after 2 or more previous convictions.

SELLING ALCOHOL TO UNDER 21 PERSONS & MINORS IN POSSESSION 37 O.S. §§ 241 & 246 Amended by Cody’s Law

These statutes prohibit the selling of alcohol to minors, minors possessing or consuming alcohol and minors’ access to bar areas. The amendment adds to both statutes **the authorization to cities and**

towns to enact and enforce municipal ordinances prohibiting and penalizing the same conduct, but they cannot go beyond the statute in penalties and cannot be more stringent.