

Cherokee Nation Code Annotated

Title 47: Motor Vehicles

Chapter 11: Rules of the Road

Article IX. Reckless Driving, Driving While Intoxicated and Negligent Homicide

§ 11-902. Persons under the influence of alcohol or other intoxicating substance or combination thereof

Cite as: 47 CNCA § 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 nation, 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 47 CNCA § 756, 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 2204 of Title 21 of the Cherokee Nation Code Annotated, 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 renders 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.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, 21 CNCA § 2101 et seq., and 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 functions.

C. 1. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a crime for the first offense and shall: a) participate in a substance abuse assessment and evaluation approved by the District Court 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).

2. Any person who within ten (10) years following the completion of the execution of any sentence or deferred judgment for a violation of this section or a violation pursuant to the provisions of any law of any state prohibiting the offenses provided in subsection (A) of this section and is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection (A) of this section shall be deemed guilty of a crime and shall be sentenced to: a) participate in a substance abuse assessment and evaluation approved by the District Court and shall follow all recommendations made in the assessment and evaluation at the defendant's expense, or b) incarceration for not less than one (1) year and not to exceed three (3) 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. However, if the treatment recommended for the defendant 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.

3. Any person who is convicted of a third or subsequent offense pursuant to the provisions of this section or a violation pursuant to the provisions of any law of any state or a violation pursuant to the provisions of any law of any federally-recognized Indian tribe shall participate in a substance abuse assessment and evaluation as approved by the District Court and shall be sentenced to: a) follow all recommendations made in the substance abuse assessment and evaluation 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, or b) incarceration for not less than one (1) year and not more than three (3) 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 the person shall serve a term of imprisonment of at least ten (10) days.

D. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the

Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The Court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the Court for the purpose of assisting the Court in its final sentencing determination.

Historical Data

LA 2–91, eff. February 9, 1991. Amended LA 10–13, eff. April 13, 2013. Amended LA 02-21, eff. January 11, 2021.