

Cherokee Nation Code Annotated

Title 47: Motor Vehicles

Chapter 11: Rules of the Road

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

§ 11-902.4. Operating or being in actual physical control of motor vehicle while under the influence while under age—Penalties

Cite as: 47 CNCA § 11-902.4

A. It is unlawful, and punishable as provided in subsection (B) of this section, for any person under twenty-one (21) years of age to drive, operate, or be in actual physical control of a motor vehicle within this Nation who:

1. has any measurable quantity of alcohol in the person's blood or breath at the time of a test administered within two (2) hours after an arrest of the person;
2. exhibits evidence of being under the influence of any other intoxicating substance as shown by analysis of a specimen of the person's blood, breath, saliva, or urine in accordance with the provisions of 47 O.S. § 752; or
3. exhibits evidence of the combined influence of alcohol and any other intoxicating substance.

B. Any person under twenty-one (21) years of age who violates any provision of this section shall be subject to the seizure of the driver license of that person at the time of arrest or detention and the person, upon conviction, shall be guilty of operating or being in actual physical control of a motor vehicle while under the influence while under age and shall be punished:

1. for a first conviction, by:

- a. a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00),
- b. assignment to and completion of twenty (20) hours of community service,
- c. requiring the person to attend and complete a treatment program, or
- d. any combination of fine, community service, or treatment;

2. upon a second conviction, by:

- a. assignment to and completion of not less than two hundred forty (240) hours of community service, and

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or devices for a period of not less than thirty (30) days.

In addition, a second conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection (D) of this section, or by both; or

3. upon a third or subsequent conviction, by:

a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or device for a period of not less than thirty (30) days.

In addition, a third or subsequent conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection (D) of this section, or by both.

C. The Court may assess additional community service hours in lieu of any fine specified in this section.

D. In addition to any penalty or condition imposed pursuant to the provisions of this section, the person shall be subject to:

1. upon a first conviction:

a. the cancellation or denial of driving privileges as ordered by the Court,

b. the continued installation of an ignition interlock device or devices, at the expense of the person after the mandatory period of cancellation, denial or revocation of driving privileges;

2. upon a second or subsequent conviction:

a. the cancellation or denial of driving privileges,

b. an assessment of the person's degree of alcohol abuse, which may result in treatment as deemed appropriate by the Court, and

c. the continued installation of an ignition interlock device or devices, at the expense of the person, after the mandatory period of cancellation, denial or revocation of driving privileges.

E. Nothing in this section shall be construed to prohibit the filing of charges pursuant to 47 CNCA § 11–902 when the facts warrant.

F. As used in this section:

1. The term "**conviction**" includes a juvenile delinquency adjudication by a court; and
2. The term "**revocation**" includes the cancellation or denial of driving privileges by any state's Department of Public Safety.

Historical Data

LA 10-13, eff. April 13, 2013.