

ENGROSSED HOUSE
BILL NO. 1942

BY: SETTLE, LARASON and
NIEMI of the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO CRIMES AND PUNISHMENTS; DEFINING
TERMS; SPECIFYING WHAT CONSTITUTES THE SEXUAL CRIME
OF RAPE, SPOUSAL RAPE, AGGRAVATED RAPE, RAPE BY
INSTRUMENTATION, AGGRAVATED RAPE BY
INSTRUMENTATION, CHILD SODOMY, AGGRAVATED CHILD
SODOMY, LEWD MOLESTATION, LEWD PROPOSAL TO A CHILD,
AND OFFENSIVE SEXUAL CONTACT; PROVIDING THAT
CERTAIN RELATIONSHIP IS NOT A DEFENSE; PROVIDING
PENALTIES; AMENDING 10 O.S. 1991, SECTION 1104.2,
WHICH RELATES TO REVERSE CERTIFICATION OF CERTAIN
JUVENILES, 21 O.S. 1991, SECTION 142.20, WHICH
RELATES TO THE SEXUAL ASSAULT FUND, 21 O.S. 1991,
SECTION 701.7, WHICH RELATES TO FIRST DEGREE
MURDER, 21 O.S. 1991, SECTION 845, WHICH RELATES TO
CHILD ABUSE, 22 O.S. 1991, SECTION 40, WHICH
RELATES TO THE DOMESTIC ABUSE REPORTING ACT, 22
O.S. SECTION 152, WHICH RELATES TO THE STATUTE OF
LIMITATIONS FOR CRIMES, 22 O.S. 1991, SECTION 991a-
4, WHICH RELATES TO THE COMMUNITY SERVICE
SENTENCING PROGRAM, 22 O.S. 1991, SECTION 996.1,
WHICH RELATES TO THE DELAYED SENTENCING PROGRAM FOR
YOUNG ADULTS, 22 O.S. 1991, SECTION 1077, WHICH
RELATES TO BAIL ON APPEAL, 57 O.S. 1991, SECTION

510.1, WHICH RELATES TO TIME AWAY FROM CORRECTIONAL FACILITIES, 57 O.S. 1991, SECTION 571, WHICH RELATES TO THE OKLAHOMA PRISON OVERCROWDING EMERGENCY POWERS ACT, 57 O.S. 1991, SECTION 582, WHICH RELATES TO THE SEX OFFENDERS REGISTRATION ACT, 63 O.S. 1991, SECTION 1-1950.1, WHICH RELATES TO CRIMINAL ARREST CHECKS FOR PROSPECTIVE EMPLOYEES FOR HEALTH CARE FACILITIES, 63 O.S. 1991, SECTION 1-524, WHICH RELATES TO EXAMINATIONS OF CERTAIN PRISONERS, 63 O.S. 1991, SECTION 1-525, WHICH RELATES TO DISCLOSURE OF CERTAIN EXAMINATION RESULTS, AND 63 O.S. 1991, SECTION 1-818.2, WHICH RELATES TO THE GROUP HOMES FOR THE DEVELOPMENTALLY DISABLED OR PHYSICALLY HANDICAPPED PERSONS ACT; MODIFYING TERMINOLOGY TO REFLECT TERMINOLOGY OF NEW LAWS PERTAINING TO SEXUAL CRIMES; REPEALING 21 O.S. 1991, SECTIONS 1111, 1111.1, 1112, 1113, 1114, 1115, 1116 AND 1123, WHICH RELATE TO SEXUAL OFFENSES; 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 1111.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

In sexual crimes:

1. "Deceit" means the victim submits to sexual intercourse, sexual intrusion or sodomy under the belief that the person committing the act is that person's spouse, or as a result of the defendant's artifice, pretense, or concealment, the victim is

unaware that sexual intercourse, sexual intrusion or sodomy has taken place;

2. "Incapable of legally consenting" means being incapacitated or helpless, by reason of intoxication, unsoundness of mind or physical impairment, to such an extent that the person lacks the ability to effectively communicate unwillingness to participate in the act or to protect that person from the sexual intercourse, sexual intrusion or sodomy;

3. "Incapacitated" means any person who is disabled by reason of mental or physical illness or disability to the extent that the person lacks the ability to effectively engage in self protection;

4. "Sexual intercourse" means the actual contact of the sexual organs of a male and a female, with an actual penetration, however slight, into the body of the female;

5. "Sexual intrusion" means any unlawful penetration of the vagina or anus, however slight, by any animate or inanimate object, not amounting to sexual intercourse or sodomy;

6. "Sexual misconduct" means any behavior performed in a lewd and lascivious manner when such behavior relates in any way to sexual matters or sexual interest other than as these terms relate to obscenity or pornography;

7. "Sexual relations" means sexual intercourse, sodomy or sexual intrusion; and

8. "Sodomy" means sexual contact between persons of the same or the opposite sex involving the sex organs of one person and the anus of another with penetration, however slight, or the sex organs of one person and the mouth of the other.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.3 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Rape occurs when a person engages in sexual intercourse with another person who is not the spouse of the actor and:

1. Force or violence is used upon or threatened against the victim or another person in the immediate vicinity;

2. The victim is between fourteen (14) and sixteen (16) years of age and the actor is at least four (4) years older than the victim;

3. The victim is physically or mentally incapable of legally consenting to sexual intercourse;

4. Consent is obtained through deceit; or

5. Consent is obtained through the belief, intentionally induced by the actor, that engaging in sexual intercourse will influence the exercise of the actor's official authority as an employee or agent of an entity which has legal custody of the victim.

B. Spousal rape occurs when a person engages in sexual intercourse with one's own spouse and force or violence is used or threatened against the victim or another person in the immediate vicinity.

C. Aggravated rape occurs when all of the elements of rape or spousal rape are present and, in addition:

1. It is accomplished by use of a dangerous weapon;

2. Serious bodily injury is inflicted upon the victim or another person in the immediate vicinity as a result of the crime;
or

3. The victim is under fourteen (14) years of age.

D. Any person convicted of violating subsection A or B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than fifty (50) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

E. Any person convicted of violating subsection C of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than

ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.4 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Rape by instrumentation occurs when a person commits an act of sexual intrusion upon another person and:

1. Force or violence is used or threatened against the victim or another person in the immediate vicinity;

2. The victim is between fourteen (14) and sixteen (16) years of age;

3. The victim is physically or mentally incapable of legally consenting to sexual intrusion;

4. Consent is obtained through deceit; or

5. Consent is obtained through the belief, intentionally induced by the actor, that engaging in sexual intrusion will influence the exercise of the actor's official authority as an employee or agent of an entity which has legal custody of the victim.

B. Aggravated rape by instrumentation occurs when all of the elements of rape by instrumentation are present and, in addition:

1. It is accomplished by use of a dangerous weapon;

2. Serious bodily injury is inflicted upon the victim as a result of the crime; or

3. The victim is under fourteen (14) years of age.

C. Any marital relationship, whether established statutorily or by common law, shall not be a defense to any offense prohibited by this section.

D. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than fifty (50) years, or by the

imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

E. Any person convicted of violating subsection B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.5 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Child sodomy occurs when a person engages in sodomy with another person who is between fourteen (14) and sixteen (16) years of age and the actor is at least four (4) years older than the victim.

B. Aggravated child sodomy occurs when all of the elements of child sodomy are present and, in addition, the victim is under fourteen (14) years of age.

C. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than fifty (50) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

D. Any person convicted of violating subsection B of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than ten (10) years or more than ninety-nine (99) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.6 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Lewd molestation occurs when a person intentionally touches the breasts, buttocks or genitalia of a child whom the person knew or should have known was under sixteen (16) years of age in a lewd and lascivious manner and the actor is at least three (3) years older than the victim.

B. Any person convicted of violating subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than ten (10) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

C. Knowingly and intentionally and in a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.7 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Lewd proposal to a child occurs when a person, who is at least three (3) years older than the victim:

1. Makes any oral or written proposal to a child whom the person knew or should have known was under sixteen (16) years of age to engage in sexual misconduct or sexual relations with any person;
or

2. Asks, invites, entices or persuades a child whom the person knew or should have known was under sixteen (16) years of age to go with any person to a secluded, remote or secret place with the intent to engage in sexual misconduct or sexual relations.

B. Any person convicted of violating any provision of subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not more than ten (10) years, or by the imposition of a fine of not more than Fifty Thousand Dollars (\$50,000.00), or by both such fine and imprisonment.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111.8 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Offensive sexual contact occurs when a person intentionally touches the breasts or genitalia of another person in a lewd and lascivious manner and without the consent of that person.

B. Any person convicted of violating subsection A of this section shall be guilty of a misdemeanor, punishable by imprisonment in the county jail for not less than ten (10) days or more than twelve (12) months, or by the imposition of a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

SECTION 8. AMENDATORY 10 O.S. 1991, Section 1104.2, is amended to read as follows:

Section 1104.2 A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping for purposes of extortion, robbery with a dangerous weapon, rape ~~in the first degree,~~ aggravated rape, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, shooting with intent to kill, manslaughter in the first degree, ~~nonconsensual forcible sodomy,~~ aggravated forcible sodomy, child sodomy, aggravated child sodomy, or manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, shall be considered as an adult. Upon the arrest and detention, such sixteen- or seventeen-year-old accused

shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

B. 1. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

C. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above

considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

D. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child to the juvenile division of the district court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

E. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection D of this section shall be a final order, appealable when entered.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 142.20, is amended to read as follows:

Section 142.20 A. A Sexual Assault Examination Fund shall be established for the purpose of providing to a victim of a sexual assault a medical examination for the procurement of evidence to aid in the investigation and prosecution of a sexual assault offense and to provide to the victim medications as directed by the medical examiner. Pursuant to this subsection, medications provided to the victim by the medical examiner shall only be provided to said victim on a one-time initial basis for the immediate trauma and medical examination of said victim.

B. The words "sexual assault" as used in this section mean:

1. Rape, aggravated rape, spousal rape, or rape by instrumentation, as defined in Sections ~~1111, 1111.1 and 1114~~ 1, 2 and 3 of this ~~title act~~ act; or

2. Forcible sodomy, aggravated forcible sodomy, child sodomy or aggravated child sodomy, as defined in Section ~~888~~ 4 or 5 of this ~~title act~~ act.

C. The Crime Victims Compensation Board is authorized to pay for this examination and the medications directed by the medical examiner upon application submitted by the victim of a sexual assault and approved by the district attorney who has jurisdiction

over the prosecution of the sexual assault offense. The Crime Victims Compensation Board shall establish the procedures for disbursement of the Sexual Assault Examination Fund, but in no event shall the Crime Victims Compensation Board pay an amount to exceed One Hundred Fifty Dollars (\$150.00) for the claim submitted by the victim for a sexual assault examination, regardless of the amount of any individual bills comprising the claim. Only one claim may be submitted for each incident.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 701.7, is amended to read as follows:

Section 701.7 A. A person commits murder in the first degree when he unlawfully and with malice aforethought causes the death of another human being. Malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

B. A person also commits the crime of murder in the first degree when he takes the life of a human being, regardless of malice, in the commission of forcible rape, aggravated rape, robbery with a dangerous weapon, kidnapping, escape from lawful custody, first degree burglary, first degree arson, unlawful distributing or dispensing of controlled dangerous substances, or trafficking in illegal drugs.

C. A person commits murder in the first degree when the death of a child results from the willful or malicious injuring, torturing, maiming or using of unreasonable force by said person or who shall willfully cause, procure or permit any of said acts to be done upon the child pursuant to Section 843 of this title.

D. A person commits murder in the first degree when he unlawfully and with malice aforethought solicits another person or persons to cause the death of a human being in furtherance of unlawfully manufacturing, distributing or dispensing controlled dangerous substances, as defined in the Uniform Controlled Dangerous

Substances Act, unlawfully possessing with intent to distribute or dispense controlled dangerous substances, or trafficking in illegal drugs.

SECTION 11. AMENDATORY 21 O.S. 1991, Section 845, is amended to read as follows:

Section 845. A. It is the policy of this state to provide for the protection of children who have had physical injury inflicted upon them and who, in the absence of appropriate reports concerning their condition and circumstances, may be further threatened by the conduct of those responsible for their care and protection.

B. As used in Sections 846 through 848 of this title:

1. "Abuse and neglect" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare. Harm or threatened harm to a child's health or welfare can occur through: Nonaccidental physical or mental injury; sexual abuse, as defined by state law; sexual exploitation or negligent treatment or maltreatment, including the failure to provide adequate food, clothing, shelter, or medical care except as provided for in Section 846 of this title;

2. "Child" means a person under the age of eighteen (18) years. A person responsible for a child's health or welfare includes the child's parent, guardian, or other person responsible for the child's health or welfare, whether in the same home as the child, a relative's home, a foster care home, or a residential institution;

3. "Sexual abuse" includes rape, incest, child sodomy, aggravated child sodomy, lewd molestation, and lewd ~~or indecent acts~~ ~~or~~ proposals, as defined by law, by a person responsible for the child's welfare; and

4. "Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, by a person responsible for the child's welfare or allowing, permitting, encouraging, or engaging in the lewd, obscene, or

pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, by a person responsible for the child's welfare.

SECTION 12. AMENDATORY 22 O.S. 1991, Section 40, is amended to read as follows:

Section 40. As used in Sections 40 through 40.4 of this title:

1. "Rape" means an act of sexual intercourse accomplished with a person pursuant to ~~Sections 1111, 1111.1 and 1114 of Title 21 of the Oklahoma Statutes~~ Section 1, 2 or 3 of this act;

2. "Forcible sodomy" means the act of forcing another person to engage in ~~the detestable and abominable crime against nature pursuant to Sections 886 and 887 of Title 21 of the Oklahoma Statutes~~ sodomy pursuant to subsection A or B of Section 4 of this act or pursuant to Section 5 of this act;

3. "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor age sixteen (16) or seventeen (17) years against another adult, emancipated minor or minor child who are family or household members; and

4. "Family or household members" means spouses, ex-spouses, present spouses of ex-spouses, parents, children, persons otherwise related by blood or marriage, persons living in the same household or who formerly lived in the same household, or persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped.

SECTION 13. AMENDATORY 22 O.S. 1991, Section 152, is amended to read as follows:

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money,

bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of lewd molestation of or ~~indecent~~ lewd proposals ~~or acts against~~ to children, pursuant to Section ~~1123 of Title 21 of the Oklahoma Statutes~~ 6 or 7 of this act, the crimes of involving minors in pornography, pursuant to Sections 1021.2 and 1021.3 of Title 21 of the Oklahoma Statutes, the crime of sodomy, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma Statutes shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any state income tax laws shall be commenced within five (5) years after the commission of such violation.

C. Prosecutions for the crime of rape, aggravated rape, spousal rape, rape by instrumentation, child sodomy, aggravated child sodomy, aggravated sodomy, or forcible sodomy, pursuant to ~~Sections 888, 1111, 1111.1, 1113 or 1114 of Title 21 of the Oklahoma Statutes~~ Section 1, 2, 3, 4 or 5 of this act, shall be commenced within seven (7) years after the discovery of the crime.

D. Prosecutions for criminal violations of any provision of the Oklahoma Wildlife Conservation Code shall be commenced within three (3) years after the commission of such offense.

E. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

SECTION 14. AMENDATORY 22 O.S. 1991, Section 991a-4, is amended to read as follows:

Section 991a-4. A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent felony offenders who would normally be sentenced to incarceration in a state institution.

B. Any eligible offender may be sentenced, at the discretion of the judge, to a Community Service Sentencing Program pursuant to the provisions of this section. For purposes of this section, "eligible offender" shall mean any person who:

1. Is not participating in the Delayed Sentencing Program for Young Adults pursuant to the provisions of Section 996 through 996.3 of this title;

2. Has not previously been convicted of two or more felonies;

3. Has been convicted of a nonviolent felony offense which shall be defined as any felony offense except assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, aggravated forcible sodomy, child sodomy, aggravated child sodomy, rape in the first degree or, aggravated rape, spousal rape, rape by instrumentation, lewd or indecent proposition molestation of or lewd ~~or indecent act~~ with proposal to a child under sixteen (16) years of age, use of a

firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting or arson in the first degree;

4. Has properly completed and executed all necessary documents; and

5. Is not otherwise ineligible by law or court rule.

C. The Probation and Parole Division of the Department of Corrections shall administer the Program, except in counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program. The Division shall conduct a presentence investigation pursuant to the provisions of Section 982 of this title if the court determines the offender is to be assigned to the Program. As part of such presentence investigation, the Division shall interview the offender and advise him of the requirements and conditions of the Program. The Division shall recommend an assignment of the offender to any one or combination of the following areas:

1. Community service, with or without compensation;

2. Education, vocational-technical education or literacy programs;

3. Substance abuse treatment programs;

4. Periodic testing for the presence of controlled substances;

5. Psychological counseling or psychiatric treatment;

6. Medical treatment;

7. Restitution, to be paid either to the victim of the offense or to the Crime Victims Compensation Revolving Fund created pursuant to the provisions of Section 142.17 of Title 21 of the Oklahoma Statutes;

8. Confinement in a county jail for a period not to exceed one (1) year, night or weekend incarceration pursuant to the provisions of Section 991a-2 of this title or incarceration by the Department of Corrections; provided, the Department of Corrections shall reimburse a county which does not receive payments from any other

source for the cost of the necessary expenses of such persons during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00) per day and any county receiving such payments in an amount not to exceed Ten Dollars (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for any emergency medical care for physical injury or illness of such persons if the county is required by law to provide such care for inmates in the jail. The reimbursements provided by this section shall not exceed the cost that would have accrued to the state for the feeding, care or medical care of the persons had they been incarcerated with the Department. Except as otherwise provided by law, all provisions of the Oklahoma Corrections Act of 1967, Section 501 et seq. of Title 57 of the Oklahoma Statutes, shall apply to such persons, including but not limited to any provisions requiring payment by such persons of the costs of incarceration; or

9. Probation or conditional probation.

D. The judge shall consider the criminal history of the offender, the nature of the offender's criminal conduct, the employment and family history of the offender and any other factors he deems relevant when sentencing persons to the Program. Following the presentence investigations and recommendation, the judge shall impose sentence. The judge may accept the recommendation, with or without modifications thereto, or may reject the recommendation and impose any sentence allowed by law.

E. The provisions of Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes and any other provisions of law relating to earned credits for certain acts or service shall not apply to persons participating in the Program. The judge may establish a schedule of earned credits as part of the sentence.

F. The Division shall establish a list of federal, state and local government agencies, community service agencies, educational

programs and other treatment programs willing to participate in the program to which offenders may be referred. The Division shall periodically contact agencies and programs to which offenders are assigned to determine if offenders have reported and performed satisfactorily. Any such agency or program shall immediately notify the Division if an offender fails to fulfill any requirement of the Program. The Division or the sentencing judge may require additional documentation of the offender's work performance.

G. The Division shall ensure that the sentencing judge and prosecuting attorney are notified in writing when an offender has successfully completed the assigned community service hours or other requirements of the Program or has failed to complete the requirements and provide any other relevant information required by the sentencing judge or prosecuting attorney.

H. The State of Oklahoma, all counties and municipalities of this state and all nonprofit or educational organizations or institutions participating in the Program are hereby immune from liability for torts committed by or against any offender participating in the Program to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

I. Any offender participating in the Program shall be advised of the provisions of this section and shall, in writing, acknowledge that he has been advised of and understands the provisions of the Program.

SECTION 15. AMENDATORY 22 O.S. 1991, Section 996.1, is amended to read as follows:

Section 996.1 As used in the Delayed Sentencing Program for Young Adults:

"Offender" means any adult eighteen (18) through twenty-one (21) years of age or a juvenile who has been certified to stand trial as an adult, who has committed a felony offense, who has not previously been convicted of two or more felonies, and who has not been

convicted of assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, aggravated forcible sodomy, child sodomy, aggravated child sodomy, rape in the first degree, spousal rape, aggravated rape, or rape by instrumentation, lewd molestation of or indecent proposition ~~or lewd or indecent act with~~ proposal to a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree.

SECTION 16. AMENDATORY 22 O.S. 1991, Section 1077, is amended to read as follows:

Section 1077. Bail on appeal shall be allowed on appeal from a judgment of conviction of misdemeanor, or in felony cases where the punishment is a fine only, and when made and approved shall stay the execution of such judgment. Bail on appeal after the effective date of this act shall not be allowed after conviction of any of the following offenses:

1. Murder in any degree;
2. Kidnapping for purpose of extortion;
3. Robbery with a dangerous weapon;
4. Rape ~~in any degree~~, aggravated rape, spousal rape or rape by instrumentation;
5. Arson in the first degree;
6. Shooting with intent to kill;
7. Manslaughter in the first degree;

8. Forcible sodomy, aggravated sodomy, child sodomy, or aggravated child sodomy;

9. Any felony conviction for which the evidence shows that the defendant used or was in possession of a firearm or other dangerous or deadly weapon during the commission of the offense;

10. Trafficking in illegal drugs; or

11. Any other felony after former conviction of a felony.

The granting or refusal of bail after judgment of conviction in all other felony cases shall rest in the discretion of the court, however, if bail is allowed, the trial court shall state the reason therefor.

SECTION 17. AMENDATORY 57 O.S. 1991, Section 510.1, is amended to read as follows:

Section 510.1 A. The Department of Corrections may extend the limits of the place of confinement of a committed offender at any of the state correctional facilities by authorizing such committed offender under special conditions to be away from such correctional facility but within the state. Such authority may be granted for any of the following purposes:

1. To attend the funeral of a relative;

2. To visit a critically ill relative;

3. To obtain medical, psychiatric, sociological or social services in the community; or

4. To participate in public works projects.

B. Except as provided in subsection C of this section, the Department of Corrections may extend the limits of the place of confinement of a committed offender at any of the state correctional facilities by granting the offender a pass authorizing the committed offender to be away from the correctional facility, but within the state, for any of the following purposes:

1. To contact prospective employers;

2. To secure a suitable residence for use upon release on parole or discharge;

3. To participate in work, educational and training programs in the community; or

4. For any other reasons consistent with the reintegration of a committed offender into the community, if authorized by law.

C. Offenders whose controlling, concurrent, or consecutive sentence is for a sex or incest related offense or a drug distribution or drug trafficking offense or who have a prior conviction for a sex or incest offense or a drug distribution or drug trafficking offense shall not be eligible for passes authorized by subsection B of this section at minimum security facilities. Offenders assigned to a community treatment center or a community security facility whose controlling, concurrent, or consecutive sentence is for a sex or incest related offense or a drug distribution or drug trafficking offense or who have a prior conviction for a sex or incest offense or a drug distribution or drug trafficking offense shall not be eligible for passes authorized by subsection B of this section until they are within eleven (11) months of current release date or on a parole stipulation for work release of one hundred eighty (180) days or less, except that offenders with a conviction for forcible sodomy, aggravated forcible sodomy, child sodomy, aggravated child sodomy, rape in the first degree, aggravated rape, spousal rape, rape by instrumentation, or lewd or indecent act with molestation of or lewd proposals to a child shall not be eligible for passes until they are within six (6) months of current release date or in the final ninety (90) days of a parole stipulation.

D. For the purpose of this section, "relative" means the committed offender's father, mother, child, brother, sister, spouse, grandparents, uncle, aunt or foster parents acting as his parents.

E. A person away from a correctional facility, pursuant to this section, and who is classified in medium or higher security shall be accompanied by an officer or other employee of the Department.

F. A committed offender is, during his absence, to be considered as in the custody of the correctional facility and the time of such absence is to be considered as part of the term of sentence. Failure to return to the facility shall be deemed an escape and subject to such penalty as provided by law.

G. Except as provided in subsection C of this section and subject to the approval of the Department, the administrator of a county or municipal jail or correctional facility may grant leave authority to a committed offender in such jail or facility for the purposes specified in subsections A or B of this section.

SECTION 18. AMENDATORY 57 O.S. 1991, Section 571, is amended to read as follows:

Section 571. As used in this act:

1. "Capacity" means the actual available bedspace as certified by the State Board of Corrections subject to applicable federal and state laws and the rules and regulations promulgated under such laws;

2. "Department" means the Department of Corrections of the State of Oklahoma;

3. "Director" means the Director of the Department of Corrections;

4. "Emergency time credit" means time reduction of sentence allowed when ninety-five percent (95%) of capacity is exceeded pursuant to this act; and

5. "Nonviolent offense" means any felony offense except the following, or any attempts to commit or conspiracy or solicitation to commit the following crimes:

- a. assault, battery, or assault and battery with a dangerous weapon;

- b. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;
- c. poisoning with intent to kill;
- d. shooting with intent to kill;
- e. assault with intent to kill;
- f. assault with intent to commit a felony;
- g. assaults while masked or disguised;
- h. murder in the first degree;
- i. murder in the second degree;
- j. manslaughter in the first degree;
- k. manslaughter in the second degree;
- l. kidnapping;
- m. burglary in the first degree;
- n. burglary with explosives;
- o. kidnapping for extortion;
- p. maiming;
- q. robbery;
- r. robbery in the first degree;
- s. robbery in the second degree;
- t. armed robbery;
- u. robbery by two (2) or more persons;
- v. robbery with dangerous weapon or imitation firearm;
- w. child beating;
- x. wiring any equipment, vehicle or structure with explosives;
- y. forcible sodomy, aggravated forcible sodomy, child sodomy, or aggravated child sodomy;
- z. rape ~~in the first degree~~ or spousal rape;
- aa. aggravated rape ~~in the second degree;~~
- bb. rape by instrumentation;

- cc. ~~lewd or indecent proposition~~ molestation of or lewd ~~or~~
~~indecent act with~~ proposals to a child;
- dd. use of a firearm or offensive weapon to commit or
attempt to commit a felony;
- ee. pointing firearms;
- ff. rioting;
- gg. inciting to riot;
- hh. arson in the first degree;
- ii. injuring or burning public buildings;
- jj. sabotage;
- kk. criminal syndicalism;
- ll. extortion;
- mm. obtaining signature by extortion;
- nn. seizure of a bus, discharging firearm or hurling
missile at bus; or
- oo. mistreatment of a mental patient, or any other offense
specified in Section 995.1 of Title 22 of the Oklahoma
Statutes.

SECTION 19. AMENDATORY 57 O.S. 1991, Section 582, is amended to read as follows:

Section 582. The provisions of the Sex Offenders Registration Act shall apply to any person who, after November 1, 1989, has been convicted or received a suspended sentence for a crime or an attempt to commit a crime provided for in ~~Sections~~ Section 885, ~~888,~~ 1021, 1021.2, 1021.3, 1087, or 1088, ~~1114 or 1123~~ of Title 21 of the Oklahoma Statutes or Section 1, 2, 3, 4, 5, 6 or 7 of this act or who enters this state after November 1, 1989, and who has been convicted or received a suspended sentence for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall

not apply to any such person while the person is incarcerated in a correctional institution of the Department of Corrections.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-1950.1, is amended to read as follows:

Section 1-1950.1 A. For purposes of this section:

1. "Nurses aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Nontechnical Medical Care Program of the Oklahoma Department of Human Services;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
- b. an adult day care center as such term is defined in Section 1-872 of this title,
- c. a home health or home care agency, and
- d. the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers of the Nontechnical Medical Care Program;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such

persons, and includes any subunits or branch offices of a parent home health or home care agency; and

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a nurses aide or other person to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal arrest check to be made on the nurses aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal arrest check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection D of this section, an employer is authorized to obtain any criminal arrest records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The employer shall request the Bureau to conduct a criminal arrest check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Ten Dollars (\$10.00) to the Bureau for each criminal arrest check that is conducted pursuant to such a request.

4. The requirement of a criminal arrest check shall not apply to an offer of employment made to:

a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title;

- b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts;
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act;
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act;
- f. a social worker licensed pursuant to the provisions of the Social Workers' Licensing Act;
- g. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act;
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act;
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act; or
- j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal arrest check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a nurses aide or other person pending the results of the criminal arrest check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or

contract with a person on a permanent basis until the results of the criminal arrest check are received.

2. An employer may accept a criminal arrest report less than one (1) year old of a person to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person.

D. 1. The Bureau shall not provide to the employer the criminal arrest records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person;
- b. any felony or misdemeanor classified as a crime against public decency or morality;
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act;
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act; and
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving a request to conduct a criminal arrest check, the Bureau shall complete the criminal arrest check and report the results of the check to the requesting employer.

E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal arrest record before making an offer

of permanent employment or contract to a nurses aide or other person described in subsection B of this section.

F. 1. If the results of a criminal arrest check reveal that the subject person has been convicted of any of the following offenses, the employer shall not hire or contract with the person:

- a. assault, battery, or assault and battery with a dangerous weapon;
- b. aggravated assault and battery;
- c. murder or attempted murder;
- d. manslaughter, except involuntary manslaughter;
- e. rape, aggravated rape, spousal rape, rape by instrumentation, incest ~~or~~, forcible sodomy, aggravated forcible sodomy, child sodomy, or aggravated child sodomy;
- f. indecent exposure and indecent exhibition;
- g. pandering;
- h. child abuse;
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession;
- j. burglary in the first or second degree;
- k. robbery in the first or second degree;
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm;
- m. arson in the first or second degree;
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;
- o. grand larceny; or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal arrest check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract.

G. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

H. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

I. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

J. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility or home required to obtain criminal records to ensure such facilities or homes are in compliance with the provisions of this section.

SECTION 21. AMENDATORY 63 O.S. 1991, Section 1-524, is amended to read as follows:

Section 1-524. A. The keeper of any prison or penal institution in this state shall cause to be examined every person

confined in such prison or penal institution, to determine whether such person is an infected person.

B. Any licensed physicians may examine persons who are arrested by lawful warrant for prostitution, or other sex crimes not specified in subsection C of this section, for the purpose of determining if they are infected with a venereal disease or a communicable disease including, but not limited to, the human immunodeficiency virus (HIV). Any such examination shall be made subsequent to arrest and if the examination is for the human immunodeficiency virus, upon order of the court issued at the arraignment of the arrested person. Every person shall submit to the examination and shall permit specimens to be taken for laboratory examinations. Such person may be detained until the results of the examination are known. The examination shall be made by a licensed physician. A determination as to whether or not the person is infected shall not be based on any prior examination. Any person found to be infected with a venereal disease shall be treated by the Commissioner or local health officer, or a physician of such person's own choice, until such person is noninfectious or dismissed by the Commissioner or local health officer or physician. In the event a person infected with a venereal disease refuses or fails to submit to treatment, then such person may be quarantined for the purpose of treatment, and a report thereof shall be made to the State Commissioner of Health.

C. A licensed physician shall examine persons who are arrested by lawful warrant for the offense ~~of first or second degree rape,~~ aggravated rape, forcible sodomy, aggravated forcible sodomy, child sodomy, aggravated child sodomy, or the intentional infection or attempt to intentionally infect a person with the human immunodeficiency virus pursuant to Section 1192.1 of Title 21 of the Oklahoma Statutes, for the purpose of determining if they are infected with a venereal disease or a communicable disease

including, but not limited to, the human immunodeficiency virus (HIV). The court shall issue an order for this examination upon the arraignment of the person arrested for any of the offenses specified in this subsection. The order requiring such test shall not include the name and address of the alleged victim but shall provide that the alleged victim shall be notified of the test results.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 1-525, is amended to read as follows:

Section 1-525. A. Except as otherwise provided by law, the prescription and records required by the foregoing provisions to be filed and kept shall not be exposed to any person other than the State Commissioner of Health or local health officer, or when properly ordered by a court of competent jurisdiction to be used as evidence in such court, and no information whatever shall be given to any person concerning any infected person except to appropriate persons for use in the proper courts of this state. Provided, that records of diagnosis and treatment may be transmitted to physicians and to health authorities in this and other states upon written request of the person affected. Provided further, results of examinations conducted on persons arrested by lawful warrant for the offense of ~~first or second degree rape~~, aggravated rape, forcible sodomy, aggravated forcible sodomy, child sodomy, aggravated child sodomy, or intentional infection or attempted infection of a person with the human immunodeficiency virus, shall be provided to the alleged victim of the crime upon the request of the victim, the parent of the victim if the victim is a minor, or upon request of the legal guardian or custodian of the victim. The name of the arrested and examined person shall not be disclosed on the transmitted record. The State Department of Health shall provide to the victims the positive test results. The Department shall provide free testing to the alleged victim for any venereal or communicable disease for which the arrestee tests positive, as indicated in the

transmitted record of diagnosis. Such testing shall be accompanied with pretest and post-test counseling. Such counseling shall include the provision of information to the victim or the parent, legal guardian or custodian of the victim concerning the venereal or communicable disease indicated in the transmitted record and the location of public and private facilities in the vicinity offering tests and counseling for persons who have the venereal or communicable disease.

B. The State Board of Health shall promulgate rules and regulations for the examination authorized or required by Section 1-524 of this title and for the release of records containing results of examinations authorized by subsection A of this section. The rules and regulations shall establish procedural guidelines which respect the rights of the person arrested for the alleged offense and the victim of the alleged offense.

SECTION 23. AMENDATORY 63 O.S. 1991, Section 1-818.2, is amended to read as follows:

Section 1-818.2 As used in the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act:

1. "Abuse" means any intentional abuse, neglect, and exploitation, as those terms are defined by the Protective Services for the Elderly and for Incapacitated Persons Act, and any sexual assault inflicted on a resident of a group home;

2. "Access" means the right of a person to enter a group home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person designated by the owner who has authority and responsibility for the programs and operation of a group home for developmentally disabled and physically handicapped adults;

4. "Advisory Board" means the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Advisory Board established by Section 1-818.4 of this title;

5. "Board" means the State Board of Health;
6. "Commissioner" means the State Commissioner of Health;
7. "Department" means the State Department of Health;
8. "Developmental disability" means a severely chronic

disability of a person which:

- a. is attributable to a physical or mental impairment or a combination of physical and mental impairments; and
- b. is manifested before the person attains the age of twenty-two (22); and
- c. is likely to continue indefinitely; and
- d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) self-care,
 - (2) receptive and expressive language,
 - (3) learning,
 - (4) mobility,
 - (5) self-direction,
 - (6) capacity for independent living,
 - (7) economic self-sufficiency;
- e. reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong or of extended duration and are individually planned and coordinated;

9. "Group home for developmentally disabled and physically handicapped adults" means any establishment or institution other than a hotel, motel, fraternity or sorority house, or college or university dormitory for not more than twelve (12) residents eighteen (18) years of age or older who are developmentally disabled or physically handicapped and which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence

of the residents and supportive assistance to any of its residents requiring supportive assistance. Said residents shall not require intermediate care facility services;

10. "Habilitation" means procedures and interventions designed to assist a developmentally disabled individual achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that a resident of a group home will make progressively independent and responsible decisions about social behaviour, quality of life, job satisfaction and personal relationships;

11. "Home" and "group home" means a group home for developmentally disabled and physically handicapped adults;

12. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act;

13. "Neglect" means a failure to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury to a resident;

14. "House manager" means the person who is not the administrator but who manages the group home;

15. "Owner" means a person, corporation, partnership, association, or other entity which owns a home or leases a home. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the home;

16. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs, or general supervision of the physical and mental well-being of a person, who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his person, whether or not a guardian has been appointed for such person;

17. "Physically handicapped" means a condition which causes the restricted use of his or her extremities by an individual or affects other bodily functions of an individual and which require the specialized training, habilitation or rehabilitation services provided by a group home;

18. "Program certification" means certification by the Department that a group home meets and is in compliance with the rules and regulations adopted by the Board as standards for the training, habilitation or rehabilitation of residents of a group home;

19. "Resident" means a person residing in a group home for developmentally disabled or physically handicapped persons due to a developmental disability or physical handicap;

20. "Representative of a resident" means a court-appointed guardian or conservator, or if there is no court-appointed guardian or conservator, an adult designated in writing by the resident to be his or her representative;

21. "Sexual assault" means rape, aggravated rape, rape by instrumentation, forcible sodomy, aggravated forcible sodomy, incest, lewd and indecent acts or proposals, as defined by law, by a person responsible for the resident's welfare and includes the allowing, permitting, or encouraging a resident to engage in prostitution or the lewd, obscene, or pornographic photographing, filming or depiction of a resident;

22. "Supervision" means the provision of on-site staffing in the group home or on the premises of the group home when residents are present who require on-site staffing, as determined by an assessment by a qualified professional;

23. "Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to training, supervision, assistance in housekeeping,

assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person; and

24. "Transfer" means a change in location of living arrangements of a resident from one group home to another group home.

SECTION 24. REPEALER 21 O.S. 1991, Sections 1111, 1111.1, 1112, 1113, 1114, 1115, 1116 and 1123, are hereby repealed.

SECTION 25. This act shall become effective September 1, 1992.

Passed the House of Representatives the 11th day of March, 1992.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate