

ENGROSSED SENATE
BILL NO. 1007

BY: ROZELL, WILKERSON,
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the SENATE

and

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[PRISONERS - AMENDING 63 O.S., SECTIONS 2-503, 2-
506 AND 2-508 AND 22 O.S., SECTION 991a - PROPERTY
SUBJECT TO FORFEITURE - SEIZURE OF PROPERTY -
DISPOSITION OF SEIZED PROPERTY - SENTENCING POWERS
OF THE COURT - EMERGENCY]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 2-503
(Section 32, Chapter 216, O.S.L. 1991), is amended to read as
follows:

Section 2-503. A. The following shall be subject to
forfeiture:

1. All controlled dangerous substances which have been
manufactured, distributed, dispensed, acquired, concealed or
possessed in violation of the Uniform Controlled Dangerous
Substances Act, Section 2-101 et seq. of this title.

2. All raw materials, products and equipment of any kind and
all drug paraphernalia as defined by the Uniform Controlled
Dangerous Substances Act, which are used, or intended for use, in

manufacturing, compounding, processing, delivering, importing or exporting, injecting, ingesting, inhaling, or otherwise introducing into the human body any controlled dangerous substance in violation of the provisions of the Uniform Controlled Dangerous Substances Act.

3. All property which is used, or intended for use, as a container for property described in paragraphs 1 and 2 of this subsection.

4. All conveyances, including aircraft, vehicles, vessels, or farm implements which are used to transport, conceal, or cultivate for the purpose of distribution as defined in Section 2-101 of this title, or in any manner to facilitate the transportation or cultivation for the purpose of sale or receipt of property described in paragraphs 1 or 2 of this subsection or when such property is unlawfully possessed by an occupant thereof, except that:

- a. no conveyance used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of the Uniform Controlled Dangerous Substances Act unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of the Uniform Controlled Dangerous Substances Act; and
- b. no conveyance shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and if the act is committed by any person other than such owner the owner shall establish further that the conveyance was unlawfully in the possession of a person other than the owner in

violation of the criminal laws of the United States,
or of any state.

5. All books, records and research, including formulas, microfilm, tapes and data which are used in violation of the Uniform Controlled Dangerous Substances Act.

6. All things of value furnished, or intended to be furnished, in exchange for a controlled dangerous substance in violation of the Uniform Controlled Dangerous Substances Act, all proceeds traceable to such an exchange, and all monies, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of the Uniform Controlled Dangerous Substances Act.

7. All moneys, coin and currency found in close proximity to forfeitable substances, to forfeitable drug manufacturing or distribution paraphernalia or to forfeitable records of the importation, manufacture or distribution of substances, which are rebuttably presumed to be forfeitable under this act. The burden of proof is upon claimants of the property to rebut this presumption.

8. All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenance or improvement thereto, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of the Uniform Controlled Dangerous Substances Act which is punishable by imprisonment for more than one (1) year, except that no property right, title or interest shall be forfeited pursuant to this paragraph, by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of that owner.

9. All weapons possessed, used or available for use in any manner to facilitate a violation of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title.

B. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence

that such property or thing of value was acquired by such person during the period of the violation of the Uniform Controlled Dangerous Substances Act or within a reasonable time after such period and there was no likely source for such property or thing of value other than the violation of the Uniform Controlled Dangerous Substances Act.

C. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all or part of a fine imposed pursuant to the provisions of Section 2-415 of this title.

D. Any property or thing of value of a person is subject to forfeiture if it is established by a preponderance of the evidence that the person has not paid all of the costs of incarceration imposed pursuant to the provisions of Section 5 of this act.

E. All items forfeited ~~in~~ pursuant to this section shall be forfeited ~~under the procedures established as provided~~ in Section 2-506 of this title. ~~Whenever any item is forfeited pursuant to this section except~~ Except for items confiscated by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission, whenever any item is forfeited pursuant to this section, the district court ~~of the district~~ shall order ~~that~~ such item, money, or monies derived from the sale of ~~such~~ any item to be deposited by the state, county or city law enforcement agency which seized the item in the revolving fund provided for in distributed as provided in paragraph L of Section 2-506 of this title; provided, however, such item, money or monies derived from the sale of ~~such~~ any item forfeited due to nonpayment of a fine imposed pursuant to ~~the provisions of~~ Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Items, money or monies seized pursuant to subsections A and B of this section shall not be

~~applied or considered toward satisfaction of the~~ used to satisfy any
fine imposed ~~by~~ pursuant to Section 2-415 of this title. All raw
materials used or intended to be used by persons to unlawfully
manufacture or attempt to manufacture any controlled dangerous
substance in violation of the Uniform Controlled Dangerous
Substances Act shall be summarily forfeited pursuant to the
provisions of Section 2-505 of this title.

~~E.~~ F. All property taken or detained ~~under~~ pursuant to this
section by the Oklahoma State Bureau of Narcotics and Dangerous
Drugs Control, the Oklahoma Department of Public Safety, the
Oklahoma State Bureau of Investigation or the Alcoholic Beverage
Laws Enforcement Commission shall not be repleviabale, but shall
remain in the custody of the Bureaus, Department, or Commission,
respectively, subject only to the orders and decrees of a court of
competent jurisdiction. The Director of the Oklahoma State Bureau
of Narcotics and Dangerous Drugs Control, the Commissioner of Public
Safety, the Director of the Oklahoma State Bureau of Investigation
or the Director of the Alcoholic Beverage Laws Enforcement
Commission shall follow the procedures outlined in Section 2-506 of
this title ~~dealing with~~ for notification of seizure, intent of
forfeiture, final disposition procedures, and release to innocent
claimants with regard to all property included in this section
detained by the Oklahoma State Bureau of Narcotics and Dangerous
Drugs Control, the Oklahoma Department of Public Safety, the
Oklahoma State Bureau of Investigation or the Alcoholic Beverage
Laws Enforcement Commission. Property taken or detained by the
Oklahoma Department of Public Safety, the Oklahoma State Bureau of
Investigation or the Alcoholic Beverage Laws Enforcement Commission
shall be disposed of or sold pursuant to the provisions of Section
2-508 of this title.

~~F.~~ G. The proceeds of any forfeiture of items seized by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control shall be distributed as follows:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring a forfeiture orders a distribution to such person; ~~and~~

2. To the Department of Corrections to be deposited in the Incarceration Revolving Fund in the amount necessary to pay the defendants' costs of incarceration pursuant to Section 5 of this act, if any; and

3. The balance to the Oklahoma State Bureau of Narcotics' revolving fund or the Bureau's agency special account established pursuant to Section 7.2 of Title 62, provided the Bureau may enter into agreements with municipal, county, state or federal law enforcement agencies, assisting in the forfeiture or underlying criminal investigation, to return to such an agency a percentage of said proceeds.

The Bureau may expend up to Five Hundred Thousand Dollars (\$500,000.00) of the forfeited funds within a fiscal year without prior approval of the Legislature. Documentation of such expenditures shall be forwarded to the Governor, Speaker of the House of Representatives and the President Pro Tempore of the Senate on a quarterly basis. Any additional expenditures of forfeited funds shall be pre-approved by the annual appropriations process or the Contingency Review Board.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 2-506 (Section 1, Chapter 318, O.S.L. 1991), is amended to read as follows:

Section 2-506. A. Any peace officer of this state shall seize the following property:

1. Any property described in paragraph 4 or 6 of subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered;

2. Any property described in subsection B of Section 2-503 of this title; ~~or~~

3. Any property described in subsection C of Section 2-503 of this title; or

4. Any property described in subsection D of Section 2-503 of this title.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the agency seeking forfeiture according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney in the office of the agency prosecuting the action to recover unpaid fines, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within forty-five (45) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of forty-five (45) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in paragraphs 4 and 6 of subsection A or subsections B ~~and~~, C and D of Section 2-503 of this title, the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the state by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the state and sold under judgment of the court, as on sale upon execution, except as otherwise provided for in Section 2-503 of this title.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was

seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall be subject to the provisions of ~~subsection D~~ subsections F and G of Section 2-503 of this title.

L. The proceeds of the sale of any property not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation or the Alcoholic Beverage Laws Enforcement Commission shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property; ~~and~~

3. To the Department of Corrections to be deposited in the Incarceration Revolving Fund in the amount necessary to pay the defendants' costs of incarceration as provided in Section 5 of this act; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse

education, or any lawful purpose and maintained by the district attorney in his discretion for those purposes with a yearly accounting to the board of county commissioners in whose county the fund is established and to the District Attorneys Council; provided, one hundred percent (100%) of the balance of the proceeds of such sale of property forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Said revolving fund shall be audited by the State Auditor and Inspector at least every two (2) years in the manner provided in Section 171 of Title 19 of the Oklahoma Statutes. Said audit shall include, but not be limited to, a compliance audit. A district attorney may enter into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, Section 2-101 et seq. of this title, the district court of jurisdiction may order that the vehicle, airplane or vessel seized may be retained by the state, county or city law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the court finds that the state failed to satisfy the required showing provided for in subsection G of this section, the court shall order the property released to the owner or owners.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 2-508, is amended to read as follows:

Section 2-508. A. Except as otherwise provided, all property described in paragraphs 1 and 2 of subsection A of Section 2-503 of this title which is seized or surrendered pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, shall be destroyed. The destruction shall be done by or at the direction of the Oklahoma State Bureau of

Investigation, who shall have the discretion prior to destruction to preserve samples of the substance for testing. In any county with a population of four hundred thousand (400,000) or more according to the latest Federal Decennial Census, there shall be a located site, approved by the Oklahoma State Bureau of Investigation, for the destruction of the property. Any such property submitted to the Oklahoma State Bureau of Investigation which it deems to be of use for investigative, training, educational, or analytical purposes may be retained by the Oklahoma State Bureau of Investigation in lieu of destruction.

B. All other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or a district attorney may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Bureau or district attorney, the Bureau shall hold the property for at least two (2) years prior to filing a petition for disposal with the district court except for laboratory equipment which may be forfeited when no longer needed in connection with litigation, unless the property is perishable. The Director or district attorney shall file a petition in the district court of Oklahoma County or in the case of a district attorney, the petition shall be filed in a county within the district attorney's jurisdiction requesting the authority to conduct a sale of the property or to convert title of the property to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control or to the district attorney's office for donation in accordance with subsection F of this section. The Director or district attorney shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Bureau or district attorney, and the name and address of the owner,

if known. The notice of the hearing of the petition for the sale of the property, except laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. Notice of a hearing on a petition for forfeiture or sale of laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the Uniform Controlled Dangerous Substances Act shall not be required. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director or district attorney to donate the property pursuant to subsection F of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Director or district attorney shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be used for the ~~purpose~~ purposes of payment of the defendants' costs of incarceration as provided in Section 5 of this act, if any, and purchasing controlled dangerous substances to be used as evidence in narcotic cases and fees for informers, or employees and other associated expenses necessary to apprehend and convict violators of the laws of the State of Oklahoma regulating controlled dangerous substances. These funds shall be transferred first to the

Department of Corrections to be deposited in the Incarceration Revolving Fund to pay the defendants' costs of incarceration then to the agency special account established pursuant to Section 7.2 of Title 62 of the Oklahoma Statutes or the Bureau of Narcotics Revolving Fund or in the case of a district attorney, the revolving fund in that district for drug education and enforcement. The Director of the Bureau of Narcotics and Dangerous Drugs Control and the Director of State Finance are hereby authorized and directed to promulgate in writing the necessary rules and regulations requiring strict accountability relative to the expenditure of the above funds. In the case of a district attorney, the accountability relative to the expenditure of the fund shall be according to rules already existing for county revolving funds. In the case of the Department of Corrections, the Director of the Department of Corrections and the Director of State Finance are hereby authorized and directed to promulgate in writing the necessary rules and regulations regulating strict accountability relative to the expenditure of funds from the Incarceration Revolving Fund for payment of the costs of incarceration for each prisoner.

C. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma Department of Public Safety may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Department, the Department shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Commissioner of Public Safety shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Oklahoma Department of Public Safety. The Commissioner of Public Safety

shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Department, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Commissioner of Public Safety to donate the property pursuant to subsection F of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Commissioner of Public Safety shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be distributed first to the Department of Corrections to be deposited in the Incarceration Revolving Fund in the amount necessary to pay the costs of incarceration for the defendants pursuant to Section 5 of this act, if any, with the balance of the money, if any, deposited in the Department of Public Safety Revolving Fund ~~and shall to~~ be expended for law enforcement purposes.

D. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Alcoholic Beverage Laws Enforcement Commission may be disposed of by

order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Alcoholic Beverage Laws Enforcement Commission, the Commission shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Director of the Alcoholic Beverage Laws Enforcement Commission shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Alcoholic Beverage Laws Enforcement Commission. The Director of the Alcoholic Beverage Laws Enforcement Commission shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Alcoholic Beverage Laws Enforcement Commission, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner appears and establishes ownership of the property, the court may enter an order authorizing the Director of the Alcoholic Beverage Laws Enforcement Commission to donate the property pursuant to subsection F of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Director of the Alcoholic Beverage Laws Enforcement Commission shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser

title to the property so purchased. The money received from the sale shall be distributed first to the Department of Corrections to be deposited in the Incarceration Revolving Fund in the amount necessary to pay the costs of incarceration for the defendants pursuant to Section 5 of this act, if any, with the balance of the money, if any, deposited in the General Revenue Fund of the state.

E. Except as provided in subsection A of this section, all other property not otherwise provided for in the Uniform Controlled Dangerous Substances Act which has come into the possession of the Oklahoma State Bureau of Investigation may be disposed of by order of the district court when no longer needed in connection with any litigation. If the owner of the property is unknown to the Bureau, the Bureau shall hold the property for at least six (6) months prior to filing a petition for disposal with the district court, unless the property is perishable. The Director of the Oklahoma State Bureau of Investigation shall file a petition in the district court of Oklahoma County requesting the authority to conduct a sale of the property or to convert title of the property to the Oklahoma State Bureau of Investigation. The Director of the Oklahoma State Bureau of Investigation shall attach to the petition a list describing the property, including all identifying numbers and marks, if any, the date the property came into the possession of the Bureau, and the name and address of the owner, if known. The notice of the hearing of the petition for the sale of the property shall be given to every known owner, as set forth in the petition, by certified mail to the last-known address of the owner and party in last possession if applicable, at least ten (10) days prior to the date of the hearing. The notice shall contain a brief description of the property, and the location and date of the hearing. In addition, notice of the hearing shall be posted in three public places in the county, one such place being the county courthouse at the regular place assigned for the posting of legal notices. At the hearing, if no owner

appears and establishes ownership of the property, the court may enter an order authorizing the Director of the Oklahoma State Bureau of Investigation to donate the property pursuant to subsection F of this section or to sell the property to the highest bidder after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The Director of the Oklahoma State Bureau of Investigation shall make a return of the sale and, when confirmed by the court, the order confirming the sale shall vest in the purchaser title to the property so purchased. The money received from the sale shall be distributed first to the Department of Corrections to be deposited in the Incarceration Revolving Fund in the amount necessary to pay the costs of incarceration for the defendants pursuant to Section 5 of this act, if any, with the balance of the money, if any, deposited in the OSBI Revolving Fund and shall to be expended for law enforcement purposes.

F. Any property, including but not limited to uncontaminated laboratory equipment used in the processing, manufacturing or compounding of controlled dangerous substances in violation of the provisions of the Uniform Controlled Dangerous Substances Act, upon a court order, may be donated for classroom or laboratory use by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, Oklahoma Department of Public Safety, district attorney or the Alcoholic Beverage Laws Enforcement Commission to any public secondary school or vocational-technical school in this state or any institution of higher education within The Oklahoma State System of Higher Education.

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

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is

convicted of a crime and no death sentence is imposed, the court shall either:

1. suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

- a. To provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, or
- b. To reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, or
- c. To engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted, or
- d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the

State of Oklahoma wherein such victim has incurred a financial loss, or

- e. To confinement in the county jail for a period not to exceed six (6) months, or
- f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or
- g. To repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a

combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; ~~or~~

2. impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. commit such person for confinement provided for by law with or without restitution as provided for in this section. Pursuant to Section 5 of this act, the court shall assess the costs of incarceration in any drug-related conviction when confinement is ordered;

4. in the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; ~~or~~

5. in addition to the other sentencing powers of the court, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

- a. To participate in an alcohol and drug substance abuse course, pursuant to Sections 11-902.2 and 11-902.3 of Title 47 of the Oklahoma Statutes,
- b. To attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,

c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph; or

6. in addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony.

C. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

D. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for

by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

E. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 557.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Beginning on the effective date of this act, the Department of Corrections shall assess each prisoner the costs of incarceration. Costs shall include board, food, clothing, dental and medical services, and all other incidentals necessary to maintain a prisoner during the entire period of incarceration. Such costs shall be deemed a debt of the prisoner owed to the Department of Corrections and shall be collected by the Department as provided by law for the collection of other debts, except as provided in subsection C of this section.

B. The Department of Corrections is authorized to promulgate rules necessary to implement the provisions of this act.

C. The Department of Corrections shall present to the court at the time of sentencing for any drug-related conviction the current daily cost of incarceration. The court shall multiply this daily cost figure by the total number of days the defendant is sentenced to incarceration, if any, to arrive at an estimated cost of incarceration to be paid by the defendant. This cost shall be paid in all drug-related convictions in advance whenever possible, first from any item or money seized, next from the proceeds of the sale of any property forfeited pursuant to Sections 2-503, 2-506 and 2-508 of Title 63 of the Oklahoma Statutes, and last from other property of the defendant. Any money applied toward the incarceration debt of the prisoner shall be distributed to the Department of Corrections to be deposited in the Incarceration Revolving Fund established in subsection D of this section. The Department shall be required to maintain strict accountability relative to expenditures of money from the fund. No prisoner shall have a claim to any of the money remaining in the fund during or after his term of incarceration. If there is a shortage or overpayment of the

costs of incarceration for any prisoner, when the costs of incarceration have been paid in advance from items or money seized or money derived from the sale of forfeited property, the Department of Corrections shall proceed as follows:

1. If the prisoner is released from the custody of the Department before the amount established for his costs of incarceration has been depleted, when the amount collected for his costs of incarceration were derived from items or money seized or monies derived from the sale of forfeited property, the balance of the escrowed amount, if any, shall be distributed to the appropriate revolving fund of the agency where the money originated; and

2. If the prisoner is incarcerated for a period of time exceeding the original sentence, or if the items or money seized or money derived from the sale of a forfeited property pursuant to Sections 2-503, 2-506 and 2-508 of Title 63 of the Oklahoma Statutes are insufficient to pay the costs of incarceration, the Department shall proceed to assess the debt against the prisoner. Such debt shall then be collected as provided by law for the collection of other debts.

D. There is hereby created in the State Treasury a revolving fund for the Department of Corrections to be designated the "Incarceration Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of court-ordered transfers of items or money seized or monies derived from the sale of forfeited property pursuant to the provisions of Sections 2-503, 2-506 and 2-508 of Title 63 of the Oklahoma Statutes, all money paid by a prisoner for his costs of incarceration, and any other money collected from judgments or other sources for the debt of the prisoner for his costs of incarceration. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Corrections for reimbursement of the costs of a prisoner's

incarceration. The Department shall maintain strict accountability of the amount of each prisoner's costs and payments for incarceration. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 6. REPEALER 63 O.S. 1991, Sections 2-503 (Section 6, Chapter 306, O.S.L. 1991) and 2-506 (Section 33, Chapter 216, O.S.L. 1991), are hereby repealed.

SECTION 7. This act shall become effective July 1, 1992.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 3d day of March, 1992.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1992.

Speaker of the House of Representatives