

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 2151

By: Dunegan

COMMITTEE SUBSTITUTE

An Act relating to state government; amending 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 339, O.S.L. 1993 (22 O.S. Supp. 1993, Section 991a), which relates to sentencing powers of the court; requiring DNA samples to be taken from certain convicted persons within certain time period under certain methodology; stating purposes; exempting certain persons from such testing; requiring certain employees of the Department of Corrections to take such samples; requiring certain training; limiting certain liability; establishing the OSBI DNA Offender Database; providing certain procedures for such DNA Offender Database; stating purposes; exempting such database from certain disclosure requirements; providing for certain privilege and inadmissibility as evidence for certain purposes; prohibiting certain disclosure; providing penalties; requiring the OSBI to promulgate certain rules; specifying scope of such rules; requiring the OSBI to provide certain training; amending 20 O.S. 1991, Section 1313.2, as amended by Section 4, Chapter 71, O.S.L. 1993 (20 O.S. Supp. 1993, Section 1313.2), which relates to penalties in addition to fines; authorizing the court to order the payment of certain DNA fee; exempting certain persons from payment of fee under certain circumstances; providing for the deposit of such fee; authorizing the retaining of portion of such fee; stating purposes of such monies from the DNA fee; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 339, O.S.L. 1993 (22 O.S. Supp. 1993, Section 991a), is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, 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,
- 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,
- 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,
- 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,
- e. to confinement in the county jail for a period not to exceed six (6) months,
- 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;

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;

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;

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 or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars (\$5.00) nor more than Fifteen Dollars (\$15.00) as set by the governing authority of the program and approved by the court, 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 or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,
- d. to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the license. Said restriction shall remain on the driver's license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of said

order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or

- e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

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;

7. In addition to the other sentencing powers of the court, in the case of a person convicted of any crime related to domestic abuse, as defined in Section 60.1 of this title, the court may require the defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of

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domestic abuse against the victim. The defendant may be required to pay all or part of the cost of the treatment or counseling services; or

8. In addition to the other sentencing powers of the court, the court, in the case of a sex offender, shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program must be approved by the probation officer who has supervisory authority over the defendant if the defendant is placed on probation, or the court if the court retains supervisory authority over the defendant. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

Provided, for the purposes of this section, the term "sex offense" shall not include a violation of paragraph 1 of subsection A of Section 1021 of Title 21 of the Oklahoma Statutes.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes and any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be referred, prior to sentencing, to an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person, based upon the person's ability to pay, to reimburse the facility or qualified practitioner for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse

service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review.

As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments.

C. 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 or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 5 of subsection A of this section.

D. When sentencing a person convicted of a crime, the court shall consider any victim impact statement if submitted to the court.

E. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, 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, except as otherwise provided by law. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years. Provided further any supervision provided for in this section 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.

F. 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.

G. 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.

H. As used in this section:

1. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater; and

2. "Electronically monitored home detention" means incarceration of the defendant within a specified location or locations with monitoring by means of a device approved by the Department of Corrections that detects if the person leaves the confines of any specified location.

I. A person convicted of an offense as provided in Sections 650, 650.2, 650.5, 651, 652, 701.7, 701.8, 711, 888, 1114 or 1123 of Title 21 of the Oklahoma Statutes shall submit to deoxyribonucleic acid testing for law enforcement identification purposes in accordance with Section 2 of this act and the rules

promulgated by the Oklahoma State Bureau of Investigation for the OSBI DNA Offender Database. Submission to testing shall be required within thirty (30) days of sentencing for those defendants who do not become subject to the custody of the Department of Corrections and submission to testing shall be done in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who enter the custody of the Department of Corrections as a result of sentencing. Convicted individuals who have previously submitted to DNA testing under this section and for whom a valid sample is on file in the OSBI DNA Offender Database at the time of their sentencing shall not be required to submit to additional testing.

Any person convicted of an offense as provided in this section who is in custody after July 1, 1996, shall provide a blood sample prior to his release. Every person who is convicted of an offense as provided in this subsection who is not sentenced to a term of confinement shall provide a blood sample as a condition of such sentence.

J. Samples of blood for DNA testing required by subsection I of this section shall be taken by employees of the Department of Corrections designated by the Director of the Department of Corrections. Said employees shall be properly trained to collect blood samples. Persons collecting blood for DNA testing pursuant to this section shall be immune from civil liability arising from this activity. The Department of Corrections shall collect the samples and mail them to the Oklahoma State Bureau of Investigation within ten (10) days of the time the subject appears for testing or within ten (10) days of the date the subject comes into the custody of the Department of Corrections. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 150.27a of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established within the Oklahoma State Bureau of Investigation the OSBI DNA Offender Database for the

purpose of collecting and storing blood samples, analyzing and typing of the genetic markers contained in or derived from DNA, and maintaining the records and samples of DNA of individuals convicted of violation of Sections 650, 650.2, 650.5, 651, 652, 701.7, 701.8, 711, 888, 1114 or 1123 of Title 21 of the Oklahoma Statutes. The purpose of this database is the detection or exclusion of individuals who are subjects of the investigation or prosecution of sex related crimes, violent crimes, or other crimes in which biological evidence is recovered, and such information shall be used for no other purpose.

B. The OSBI DNA Offender Database is specifically exempt from any statute requiring disclosure of information to the public. The information contained in the database is privileged from discovery and inadmissible as evidence in any civil court proceeding. The information in the database is confidential and shall not be released to the public. Any person charged with the custody and dissemination of information from the database shall not divulge or disclose any such information except to federal, state, county or municipal law enforcement or criminal justice agencies. Any person violating the provisions of this section upon conviction shall be deemed guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year.

C. The OSBI shall promulgate rules concerning the collection, storing, expungement and dissemination of information and samples for the OSBI DNA Offender Database. The OSBI shall determine the type of equipment, collection procedures, and reporting documentation to be used by the Department of Corrections in submitting DNA samples to the OSBI in accordance with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI shall provide training to designated employees of the Department of Corrections in the proper methods of performing the duties required by this section.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 1313.2, as amended by Section 4, Chapter 71, O.S.L. 1993 (20 O.S. Supp. 1993, Section 1313.2), is amended to read as follows:

Section 1313.2 A. As used in this section:

1. "Convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred or suspended sentence or judgment; and

2. "Court" means any state or municipal court having jurisdiction to impose a criminal fine or penalty.

B. Any person convicted of an offense punishable by a fine of Ten Dollars (\$10.00) or more or by incarceration, excluding parking and standing violations, or any person forfeiting bond when charged with such an offense, shall be ordered by the court to pay Four Dollars (\$4.00) as a separate penalty assessment and One Hundred Fifty Dollars (\$150.00) as a Laboratory Analysis Fee if applicable pursuant to subsection C of this section, and One Hundred Fifty Dollars (\$150.00) as a DNA fee if applicable pursuant to subsection G of this section, which assessment and fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense. The court shall provide for separate bail for the penalty assessment; provided that a defendant admitted to bail on an undertaking by a surety may include the amount of the penalty assessment in the undertaking.

C. Any person convicted of any misdemeanor or felony offense shall pay a Laboratory Analysis Fee in the amount of One Hundred Fifty Dollars (\$150.00) for each offense if forensic science or laboratory services are rendered or administered by the Oklahoma State Bureau of Investigation, by the Toxicology Laboratory of the Office of the Chief Medical Examiner or by any municipality or county in connection with the case.

The court clerk shall cause to be deposited the amount of One Hundred Fifty Dollars (\$150.00) as collected, for every conviction as described in this subsection. The court may retain fifteen percent (15%) of such monies to cover administrative costs pursuant to this subsection. The court clerk shall remit the remainder of the monies in said fund on a monthly basis either to:

1. The Oklahoma State Bureau of Investigation who shall deposit said monies into the OSBI Revolving Fund provided for in Section 150.19a of Title 74 of the Oklahoma Statutes for services

rendered or administered by the Oklahoma State Bureau of Investigation;

2. The Office of the Chief Medical Examiner who shall deposit said monies into the Office of the Chief Medical Examiner Toxicology Laboratory Revolving Fund provided for in Section 954 of Title 63 of the Oklahoma Statutes for services rendered or administered by the Toxicology Laboratory of the Office of the Chief Medical Examiner; or

3. The appropriate municipality or county for services rendered or administered by a municipality or county.

The monies from the Laboratory Analysis Fee Fund deposited into the OSBI Revolving Fund shall be used for the following:

1. Providing criminalistic laboratory services;

2. The purchase and maintenance of equipment for use by the laboratory in performing analysis;

3. Education, training, and scientific development of Oklahoma State Bureau of Investigation personnel; and

4. The destruction of seized property and chemicals as prescribed in Sections 2-505 and 2-508 of Title 63 of the Oklahoma Statutes.

D. Upon conviction or bond forfeiture, the court shall collect the penalty assessment provided for in subsection B of this section and deposit it in an account created for that purpose. As an administrative fee for handling funds collected as a penalty assessment, each court is authorized to retain two percent (2%) of such monies and may also retain all interest accrued thereon prior to the due date for deposits as provided in this subsection. Except as otherwise provided in subsection E of this section, for the fiscal year ending June 30, 1987, the remainder of such monies shall be forwarded quarterly by the court clerk to the State Treasury. Deposits shall be due July 15 for the preceding quarter ending June 30, October 15 for the preceding quarter ending September 30, January 15 for the preceding quarter ending December 31, and April 15 for the preceding quarter ending March 31. There shall be a penalty imposed for failure to make timely deposits. Such penalty shall be one percent (1%) of the

principal amount due per day beginning from the tenth day after payment is due and accumulating until the penalty reaches one hundred percent (100%) of the principal amount due. The State Treasurer shall deposit seventy percent (70%) of the monies received in the C.L.E.E.T. Fund, and thirty percent (30%) of the monies received in the General Revenue Fund. Beginning on July 1, 1987, ninety percent (90%) of the monies received by the State Treasurer from the court clerks pursuant to this section shall be deposited in the C.L.E.E.T. Fund and ten percent (10%) shall be deposited in the General Revenue Fund. Along with the deposits required by this subsection each court also shall submit a report stating the total amount of funds collected and the total number of penalty assessments imposed during the preceding quarter. Such report may be made on computerized or manual disposition reports.

E. Any municipality or county having a basic law enforcement academy approved by the Council on Law Enforcement Education and Training pursuant to the criteria developed by the Council for training law enforcement officers shall retain from monies collected pursuant to this section, Two Dollars (\$2.00) from each penalty assessment less the two percent (2%) administrative fee retained by the court. Such monies shall be deposited into an account for the sole use of the municipality or county in implementing its law enforcement training functions. Not more than seven percent (7%) of such monies shall be used for court and prosecution training. The court clerk of any such municipality or county shall furnish to the State Treasury the report required by subsection D of this section.

F. There is hereby created in the State Treasury a fund for the Council on Law Enforcement Education and Training to be designated the "C.L.E.E.T. Fund". The fund shall be subject to legislative appropriation and shall consist of any monies received from fees and receipts collected pursuant to the Oklahoma Open Records Act, reimbursements for parts used in the repair of weapons of law enforcement officers attending the basic academies, gifts, bequests, contributions, tuition, fees, devises, and the assessments levied pursuant to said fund pursuant to law.

G. Any person convicted of violating Section 650, 650.2, 650.5, 651, 652, 701.7, 701.8, 711, 888, 1114 or 1123 of Title 21 of the Oklahoma Statutes shall pay a DNA fee of One Hundred Fifty Dollars (\$150.00). Such fee shall not be collected if the person has a valid DNA sample in the OSBI DNA Offender Database at the time of sentencing.

The court clerk shall cause to be deposited the amount of One Hundred Fifty Dollars (\$150.00) as collected, for every conviction as described in this subsection. The court may retain fifteen percent (15%) of such monies to cover administrative costs pursuant to this subsection. The court clerk shall remit the remainder of the monies in said fund on a monthly basis to the Oklahoma State Bureau of Investigation who shall deposit said monies into the OSBI Revolving Fund provided for in Section 150.19a of Title 74 of the Oklahoma Statutes for services rendered or administered by the Oklahoma State Bureau of Investigation.

The monies from the DNA sample fee deposited into the OSBI Revolving Fund shall be used for creating, staffing, and maintaining the OSBI DNA Laboratory and OSBI DNA Offender Database.

SECTION 4. This act shall become effective July 1, 1996, 1994.

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