

ENROLLED SENATE
BILL NO. 467

By: Douglass, Gustafson and
Hendrick of the Senate

and

Worthen, Kirby, Vaughn
(Ray), Maddux (Elmer),
Caldwell and Johnson (Rob)
of the House

An Act relating to prisons; amending 57 O.S. 1991, Sections 332.7, 510.2, 510.3, 510.4, 513.2, 521, 530, 530.1, 571 and 574.1, which relate to parole consideration, alternatives to incarceration, notification requirements, classification and assignment, reception of inmates, duties of the Department, definitions, and mandatory assessment; modifying language; deleting language; adding limitation to eligibility for house arrest; authorizing Department to collect certain costs; requiring district attorney to disseminate certain information; construing certain failure to be granted parole; authorizing disciplinary action; providing for escapes; prohibiting certain future assignment; requiring certain procedure for parole interview and investigation; directing the Department to promulgate certain rules; expanding certain priority placement; creating the Electronic Monitoring Program; setting eligibility criteria; requiring reception at Lexington Assessment and Reception Center; authorizing certain discretion in making assignments to the Program; excluding certain inmates; restricting eligibility to Preparole Conditional Supervision Program; stating duration of assignment; requiring certain supervision and monitoring; authorizing the Department to take necessary disciplinary action; requiring the Department to take certain action when inmate becomes eligible for parole consideration; prohibiting waiver of consideration for parole; requiring certain notifications before placement of inmate in community setting; authorizing certain payment of fee and costs; directing the Department to determine ability of inmate to pay certain fee and costs; directing the Department to promulgate certain rules; authorizing assignment to alternatives to incarceration; authorizing certain contracts for treatment of inmates assigned to alternatives to incarceration; deleting statutory reference to repealed section of law; removing certain prohibition on granting emergency time credits; providing that failure to achieve parole recommendation shall not bar

participation in certain programs; amending 21 O.S. 1991, Section 443, which relates to escape of certain prisoners; modifying language; including escape from alternative to incarceration; amending 47 O.S. 1991, Section 11-902, as amended by Section 7, Chapter 382, O.S.L. 1992 (47 O.S. Supp. 1992, Section 11-902), which relates to driving under the influence of intoxicating substance; deleting language; modifying language; authorizing assignment to the Electronic Monitoring Program; authorizing assignment to other alternatives to incarceration; requiring certain evaluation report be furnished to the Department of Corrections; modifying and relocating the Department of Mental Health and Substance Abuse Services provisions for convicted DUI offenders and certain definitions; replacing certain electronically monitored home detention provisions for convicted DUI offenders with the Electronic Monitoring Program and relocating certain provisions; authorizing the Department of Corrections to use certain monitoring device for certain inmates; construing provisions; requiring certain rules be promulgated; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 332.7, is amended to read as follows:

Section 332.7 A. Upon completion of one-third (1/3) of the sentence of any person ~~confined in a penal institution in the state custody of the Department of Corrections,~~ such person shall be eligible for consideration for a parole, and it shall be the duty of the Pardon and Parole Board, ~~with or without application being made,~~ to cause an examination to be made at the penal institution where the person is ~~confined~~ assigned, and to make inquiry into the conduct and the record of the said person during his ~~confinement in said penal institution~~ custody in the Department of Corrections, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed one-third (1/3) of his sentence if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

B. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of three or more felonies arising out of separate and distinct transactions, with three or more incarcerations for such felonies, unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and

Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date.

C. Upon application of any person convicted and sentenced by a court of this state and relinquished to the custody of another state or federal authorities pursuant to Section 61.2 of Title 21 of the Oklahoma Statutes, the Pardon and Parole Board may determine a parole consideration date consistent with the provisions of this section and criteria established by the Pardon and Parole Board.

D. No person who is appearing out of the normal processing procedure shall be eligible for consideration for parole without the concurrence of at least three (3) members of the Pardon and Parole Board.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 510.2, is amended to read as follows:

Section 510.2 A. The Department of Corrections may implement a house arrest program for persons in the custody of the Department, who meet the following guidelines:

1. Only inmates who are incarcerated for a nonviolent offense as defined in Section 571 of ~~Title 57 of the Oklahoma Statutes~~ this title, or inmates who are within six (6) months of their projected release date, except those convicted of a sex-related offense or denied parole within the previous twelve (12) months pursuant to Section 332.7 of this title, shall be eligible to participate in the house arrest program.

2. An inmate shall serve at least fifteen percent (15%) of his sentence of incarceration prior to being ~~placed on~~ assigned to the house arrest program.

B. The total number of persons ~~placed in~~ assigned to the house arrest program shall not exceed fifteen percent (15%) of the total population of persons committed to the custody of the Department of Corrections, excluding those on probation and parole; provided, if said total population of persons committed to the custody of the Department decreases so that the percentage of persons on house arrest exceeds fifteen percent (15%) of that population, the Department shall not be required to remove inmates from the program. ~~If, on June 28, 1985, the total number of persons on house arrest exceeds fifteen percent (15%) of the total population of persons committed to the Department of Corrections, the Department shall not be required to remove inmates from the program and shall be authorized to allow any inmate participating in the program on June 28, 1985, to~~ Inmates assigned to the house arrest program shall remain in the program until the completion of the sentence of the inmate or until the inmate is otherwise removed from the program. An inmate assigned to the house arrest program may be required to pay the costs of supervision or other costs or fees associated with the program while assigned to the house arrest program. The Department of Corrections shall determine whether the inmate has the ability to pay all or part of such costs and fees.

C. ~~Prior to the placement of an any eligible inmate on assigned to the house arrest program being placed in a community setting, the Department shall provide deliver~~ written notification to the sheriff and district attorney of the county in which any person on house arrest is to be placed, and to the chief law enforcement officer of any incorporated city or town in which said person inmate is to be placed of the placement of the person on supervised under the house arrest within the county or incorporated city or town program. The district attorney shall disseminate such information to victims of

the crime for which the inmate is serving sentence, when the victims are known to live in the same city, town or county.

D. After an inmate has been assigned to the house arrest program, failure to be granted parole pursuant to Section 332.7 of this title shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the house arrest program, if otherwise eligible, until the completion of the sentence.

E. Any inmate violating any rule, regulation or condition of the house arrest program shall be subject to disciplinary proceedings as established by the Department of Corrections. Any inmate who escapes from the house arrest program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Any inmate removed from the house arrest program for violation of any rule, regulation or condition of the program and reassigned by the Department to imprisonment in a correctional facility shall not be eligible for any future assignment to the house arrest program.

G. Upon an inmate assigned to the house arrest program becoming eligible for parole consideration, pursuant to Section 332.7 of this title, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the house arrest program shall not be allowed to waive consideration or recommendation for parole.

H. The Department of Corrections shall promulgate and adopt rules, regulations and procedures to implement the provisions of this section.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 510.3, is amended to read as follows:

Section 510.3 The Department of Corrections shall implement procedures to ensure that eligible inmates who complete vocational-technical training shall be transferred to a community treatment center ~~or~~, to the house arrest program, Section 510.2 of this title, or to other alternatives to incarceration authorized by law. Those inmates shall have priority for such placement over other inmates who have not completed such programs, ~~for such placement.~~

SECTION 4. AMENDATORY 57 O.S. 1991, Section 510.4, is amended to read as follows:

Section 510.4 It shall be the responsibility of the Department of Corrections to administer the house arrest program ~~or~~, the Electronic Monitoring Program pursuant to Section 5 of this act and any other alternatives to incarceration, ~~and the~~ authorized by law. The employees of the Department of Corrections shall have the direct responsibility for oversight and supervision of inmates involved in such programs.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 510.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Electronic Monitoring Program for inmates in the custody of the Department of Corrections who are sentenced for a nonviolent offense as defined by Section 571 of Title 57 of the Oklahoma Statutes.

B. All eligible inmates assigned to the Electronic Monitoring Program shall first be processed and received through the Lexington Assessment and Reception Center. The Director of the Department of Corrections shall exercise his discretion in selecting eligible inmates for assignment to the Electronic Monitoring Program;

provided, however, the following inmates shall not be eligible for assignment to the program:

1. Inmates convicted of a violent offense within the previous ten (10) years;

2. Inmates convicted of any violation of the provisions of the Trafficking in Illegal Drugs Act, Section 2-414 et seq. of Title 63 of the Oklahoma Statutes;

3. Inmates denied parole within the previous twelve (12) months pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes;

4. Inmates convicted pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes who are not receptive to substance abuse treatment and follow-up treatment;

5. Inmates removed from the Electronic Monitoring Program or any other alternative to incarceration authorized by law for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

6. Inmates deemed by the Department to be a security risk or threat to the public; or

7. Inmates requiring educational, medical or other services or programs not available in a community setting as determined by the Department.

In addition, any inmate removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility shall not be eligible for consideration for the Preparole Conditional Supervision Program, pursuant to Section 365 of Title 57 of the Oklahoma Statutes, until after the expiration of at least twelve (12) consecutive months of imprisonment at a correctional facility.

C. Every eligible inmate assigned to the Electronic Monitoring Program shall remain in such program until one of the following conditions has been met:

1. The inmate discharges the term of the sentence;

2. The inmate is removed from the Electronic Monitoring Program for violation of any rule, regulation or condition of the program and reassigned to imprisonment in a correctional facility;

3. The inmate is assigned by the Department to another alternative to incarceration authorized by law, except inmates assigned to the Electronic Monitoring Program shall not be considered for the Preparole Conditional Supervision Program, Section 365 of Title 57 of the Oklahoma Statutes, except as provided in subsection B of this section; or

4. The inmate is paroled by the Governor pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes.

D. After an inmate has been assigned to the Electronic Monitoring Program, failure to be granted parole pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes shall not be cause for removal from the program, provided the inmate has not violated the rules, regulations or conditions of the program. The inmate may remain assigned to the program, if otherwise eligible, until the completion of the sentence.

E. The Electronic Monitoring Program shall require active supervision of the inmate in a community setting by a correctional officer or other employee of the Department of Corrections with monitoring by an electronic bracelet or other device approved by the Department under such rules, regulations and conditions as may be established by the Department. If an inmate violates any rule, regulation or condition of the program, the Department may take necessary disciplinary action consistent with the rules established pursuant to this act, including reassignment to a higher level of

security or removing the inmate from the program with reassignment to imprisonment in a correctional facility. Any inmate who escapes from the Electronic Monitoring Program shall be subject to the provisions of Section 443 of Title 21 of the Oklahoma Statutes.

F. Upon an inmate assigned to the Electronic Monitoring Program becoming eligible for parole consideration, pursuant to Section 332.7 of Title 57 of the Oklahoma Statutes, the Department of Corrections shall deliver the inmate, in person, to a correctional facility for interview, together with any Department records necessary for the Pardon and Parole Board's investigation. Inmates assigned to the Electronic Monitoring Program shall not be allowed to waive consideration or recommendation for parole.

G. Prior to any eligible inmate assigned to the Electronic Monitoring Program being placed in a community setting, the Department of Corrections shall deliver a written notification to the sheriff and district attorney of the county, and the chief law enforcement officer of any incorporated city or town in which the inmate is to be monitored and supervised under the program. The district attorney shall disseminate such information to victims of the crime for which the inmate is serving sentence, if any, when the victims are known to live in the same city, town or county.

H. An inmate assigned to the Electronic Monitoring Program may be required to pay the Department of Corrections for all or part of any monitoring equipment or fee, substance abuse treatment program or follow-up treatment expense, supervision cost, or other costs while assigned to the program. The Department shall determine whether the inmate has the ability to pay all or part of such fee or costs.

I. The Department of Corrections shall promulgate and adopt rules, regulation and procedures necessary to implement the Electronic Monitoring Program, including but not limited to methods of monitoring and supervision, disciplinary action, reassignment to higher and lower security levels, removal from the program, and costs of monitoring and supervision to be paid by the inmate, if any.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 513.2, is amended to read as follows:

Section 513.2 The Department of Corrections shall notify the district attorney or requesting law enforcement agency of the sentencing county whenever an inmate completes his sentence or is otherwise discharged from the ~~physical~~ custody of the Department, except those discharged under the procedures and supervision of the Pardon and Parole Board. The notification shall be on a monthly basis and shall be made within ten (10) days following the month reported upon. ~~The notification shall include the names of those inmates released to the community under the "house arrest" provisions of Section 510.1 of this title, or any other provision of law which allows an inmate to reside outside of a Department facility for a period in excess of thirty (30) days.~~ The notification shall include the names of those inmates released under the provisions of the Oklahoma Prison Overcrowding Emergency Powers Act, Section 570 et seq. of this title. For the purposes of this section, "sentencing county" shall mean the county from which the inmate received the last sentence served prior to release but shall not refer to any sentences received which include inmate status as an element of the offense. Should the inmate be released from concurrent sentences then each sentencing county district attorney shall receive the notification. The district attorney shall disseminate the information provided herein to any and all law enforcement agencies deemed appropriate by the district attorney and

to any victim of the crime for which the inmate was convicted. Notification shall be made to a victim by mailing the notification to the last-known address of the victim, if such information is requested by the victim. The district attorney shall not give the address of the inmate to any victim of the crime for which the inmate was convicted. The notifications required herein shall commence within ten (10) days following the first full month subsequent to the effective date of this act.

SECTION 7. AMENDATORY 57 O.S. 1991, Section 521, is amended to read as follows:

Section 521. Whenever a person is convicted of a felony and is sentenced to imprisonment that is not to be served in a county jail, he shall be committed to the custody of the Department of Corrections and shall be classified and assigned to ~~the Oklahoma State Penitentiary~~ a correctional facility, or to the Oklahoma State Reformatory Electronic Monitoring Program pursuant to Section 5 of this act, or to another facility or program designated by the Department and authorized by law.

SECTION 8. AMENDATORY 57 O.S. 1991, Section 530, is amended to read as follows:

Section 530. It is the intent of the State Legislature that all new prisoners sentenced to be incarcerated in a state institution or facility the custody of the Department of Corrections will be processed through the Lexington Assessment and Reception Center. The Center shall administer physical and psychological examinations, inventory vocational skills, and assess educational and training needs. The Center shall determine initial security and custody classifications, plan for immediate or possible future assignment to an institution ~~or~~, community treatment center or other alternative to incarceration authorized by law, provide orientation and instruction with respect to rules and procedures for prisoners, and perform other such activities deemed necessary by the Department of Corrections.

SECTION 9. AMENDATORY 57 O.S. 1991, Section 530.1, is amended to read as follows:

Section 530.1 A. The Department of Corrections, by the rules and regulations of that Department, shall have the following duties which shall be performed as part of the assessment and reception process of the Department of Corrections, upon reception of each inmate:

1. To administer, or cause to be administered, physical and psychological examination of all inmates;
2. To inventory the vocational skills of all inmates;
3. To assess the educational and training needs of all inmates;
4. To determine initial security and custody classifications;
5. To determine and recommend for placement in an alcohol or substance abuse treatment facility or program, as hereinafter provided for, any inmate convicted of alcohol related offenses or otherwise in need of alcohol or substance abuse treatment;
6. To determine and recommend for placement in the Department of Corrections Special Care Unit at the State Penitentiary at McAlester any inmate who is in need of acute psychiatric care;
7. To plan for immediate assignments to institutions, community treatment centers, alcohol or substance abuse treatment centers or programs, alternatives to incarceration authorized by law, or other facilities, public or private, designated by the Department;
8. To recommend possible future assignments to institutions, community treatment centers, alcohol or substance abuse treatment centers or programs, alternatives to incarceration authorized by law, or other facilities designated by the Department; and

9. To provide orientation and instruction with respect to rules and procedures for prisoners.

B. An alcohol or substance abuse treatment center in which an inmate is placed shall provide services and standards of treatment as provided by the Department of Mental Health and Substance Abuse Services under its rules and regulations for alcoholism or substance abuse treatment. Upon placement of a prisoner in a center for alcoholism or substance abuse treatment, the Department of Corrections shall enter into a third party contract with such center for the custodial and professional services rendered to any prisoner, ~~such~~. Such contract may include requirements imposed by law on the Department of Corrections or reimbursement for such services, if necessary. The Department of Corrections is further authorized to enter into third party contracts for substance abuse treatment programs which are certified by the Department of Mental Health and Substance Abuse Services to provide professional services on an outpatient basis to prisoners in need of substance abuse treatment and follow-up treatment while assigned to alternatives to incarceration.

C. The Department of Corrections shall adopt rules and regulations governing the implementation of this act within sixty (60) days from the effective date of this act.

SECTION 10. 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;
- z. rape in the first degree;
- aa. rape in the second degree;
- bb. rape by instrumentation;
- cc. lewd or indecent proposition or lewd or indecent act with 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 11. AMENDATORY 57 O.S. 1991, Section 574.1, is amended to read as follows:

Section 574.1 A. The Pardon and Parole Board, ~~with or without application being made,~~ shall begin assessing the conduct and record of an inmate during confinement, who qualifies for emergency time credits, as follows:

1. If the inmate has been sentenced to a maximum term of confinement of five (5) years or more, within twenty-one (21) months of his projected release date;

2. If the inmate has been sentenced to a maximum term of confinement of three (3) years or more, but less than five (5) years, within eighteen (18) months of his projected release date; and

3. If the inmate has been sentenced to a maximum term of confinement of one (1) year or more, but less than three (3) years, within fifteen (15) months of his projected release date.

B. The Board shall determine whether or not the inmate shall qualify for either parole or the Preparole Conditional Supervision Program, Section 365 of this title, provided however, any inmate assigned to the Electronic Monitoring Program or other alternative to incarceration authorized by law shall not be eligible for the Preparole Conditional Supervision Program while assigned to such other program. The assessment and determination by the Board shall be completed within three (3) months. Any inmate ~~who, upon consideration by the Board, is not recommended for either parole or the Preparole Conditional Supervision Program,~~ or who refuses consideration for either parole or the Preparole Conditional Supervision Program, shall not be eligible for further emergency time credits provided for in the Oklahoma Prison Overcrowding Emergency Powers Act, Section 570 et seq. of this title. Failure to be recommended for parole or the Preparole Conditional Supervision

Program pursuant to this section shall not be construed to prohibit otherwise eligible inmates from assignment to the Electronic Monitoring Program or other alternatives to incarceration authorized by law.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 443, is amended to read as follows:

Section 443. A. Any person having been imprisoned in a county or city jail awaiting charges on a felony offense or prisoner awaiting trial or having been sentenced on a felony charge to ~~confinement with the custody of~~ the Department of Corrections who escapes from a county or city jail, either while actually confined therein, while permitted to be at large as a trusty, or while awaiting transportation to a Department of Corrections facility for execution of sentence, is punishable by imprisonment of not less than one (1) year nor more than seven (7) years.

B. Any person who is an inmate ~~confined in any institution or facility operated by~~ in the custody of the Department of Corrections who escapes from said ~~confinement~~ custody, either while actually confined ~~therein~~ in a correctional facility, while assigned to the house arrest program authorized by Section 510.2 of Title 57 of the Oklahoma Statutes or other alternative to incarceration authorized by law, while assigned to the Preparole Conditional Supervision Program as authorized by Section ~~&~~ 365 of this ~~act~~ title or while permitted to be at large as a trusty, shall be punishable by imprisonment of not less than two (2) years nor more than seven (7) years.

C. For the purposes of this section, an inmate assigned to the house arrest program, other alternative to incarceration authorized by law, or to the Preparole Conditional Supervision Program shall be considered to have escaped if the inmate cannot be located within a twenty-four hour period or if he fails to report to a ~~confining~~ correctional facility or institution, as directed.

D. For the purposes of this section, if the individual who escapes has felony convictions for offenses other than the offense for which he was serving imprisonment at the time of his escape, those previous felony convictions may be used for enhancement of punishment pursuant to the provisions of Section 51 of Title 21 of the Oklahoma Statutes. The fact that any such convictions may have been used to enhance punishment in the sentence for the offense for which he was imprisoned at the time of the escape shall not prevent such convictions from being used to enhance punishment for the escape.

SECTION 13. AMENDATORY 47 O.S. 1991, Section 11-902, as amended by Section 7, Chapter 382, O.S.L. 1992 (47 O.S. Supp. 1992, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;
2. Is under the influence of alcohol;
3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or
4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and ~~within ten (10) years prior to the conviction pursuant to the provisions of this section,~~ in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section and within ten (10) years of such municipal conviction is convicted under the provision of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00).

D. When a ~~sentence of incarceration is imposed~~ person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center. The Department of Corrections shall classify and assign the person to one or more of the following:

1. ~~Assign the person to the~~ The Department of Mental Health and Substance Abuse Services pursuant to subsection E of this section paragraph 1 of subsection A of Section 13 of this act;

2. ~~Place the person under electronically monitored home detention and, if appropriate, require completion of a substance abuse treatment plan, pursuant to subsection F of this section~~ The Electronic Monitoring Program pursuant to Section 5 of this act with participation in a substance abuse treatment program and follow-up treatment; or

3. ~~Place the person in an institution~~ A correctional facility operated by the Department of Corrections; or

4. Other alternative to incarceration authorized by law.

~~E. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person may be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. Any order by the~~

~~court requiring such reimbursement, if willfully disobeyed, may be enforced as an indirect contempt of court. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures.~~

~~F. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the Department may place the person on electronically monitored home detention and, if deemed appropriate by the Department, require the person to complete a substance abuse treatment plan selected by the Department as a condition of PreParole Conditional Supervision, when approved by the Pardon and Parole Board. As used in this subsection, "substance abuse treatment plan" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services to provide substance abuse treatment and "electronically monitored home detention" means incarceration of the person 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. The inmate shall be required to pay the Department of Corrections for all or part of the monitoring fee and pay the entity providing the substance abuse treatment plan for all or part of the cost of the plan, if at the time the sentence of incarceration is imposed the court determines that the convicted person has the ability to pay for all or part of the monitoring fee and, if appropriate, treatment plan. The monitoring fee shall not exceed Seventy-five Dollars (\$75.00) a month. The court shall determine the amount of the monitoring fee and treatment plan costs the convicted person shall pay. Any order by the court for the payment of the monitoring fee or treatment plan costs, if willfully disobeyed, may be enforced as an indirect contempt of court. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. Any violation of the electronically monitored home detention or the treatment plan or any other condition of PreParole Conditional Supervision may result in the inmate's reassignment to a correctional facility of the Department of Corrections.~~

~~G. E. In the event a felony conviction does not result in a sentence of incarceration as provided for in this subsection the person being sentenced to the custody of the Department of Corrections, the person shall be required to serve not less than ten (10) days of community service, or to undergo inpatient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.~~

~~H.~~ F. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program ~~provided for in subsection E of this section~~ and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive.

~~I.~~ G. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect his existing driving privilege.

~~J.~~ H. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. 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.

~~K.~~ I. Any person who is found guilty of a violation of the provisions of this section may be required by the court 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.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 611 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Any person convicted of violating the provisions of Section 11-902 of Title 47 of the Oklahoma Statutes and sentenced to the custody of the Department of Corrections shall be processed through the Lexington Assessment and Reception Center, classified and assigned as follows:

1. To the Department of Mental Health and Substance Abuse Services for substance abuse treatment, if the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk. The inmate may be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate is assigned to the Department of Mental Health and Substance Abuse Services. The Department of Corrections shall determine whether the inmate has the ability to pay for all or part of the cost of treatment. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional

facility of the Department of Corrections. Upon successful completion of the treatment program the inmate shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment;

2. To the Electronic Monitoring Program pursuant to Section 5 of this act, with participation in a substance abuse treatment program and follow-up treatment, when the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk;

3. To another alternative to incarceration authorized by law;
or

4. To a correctional facility when:

- a. the person is evaluated not to be receptive to treatment,
- b. the person is evaluated to be a security risk,
- c. the person requires educational, medical or other services or programs not available in the community setting as determined by the Department, or
- d. alternatives to incarceration are not available or are otherwise inappropriate as determined by the Department.

B. As used in this section:

1. "Substance abuse treatment program" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services and selected by the Department of Corrections to provide substance abuse treatment for the inmate; and

2. "Electronic monitoring" means monitoring of the inmate within a specified location or locations in a community setting by means of an electronic bracelet or other device approved by the Department of Corrections with active supervision by correctional officers or other employees of the Department of Corrections.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 510.6 of Title 57, unless there is created a duplication in numbering, reads as follows:

The Department of Corrections is hereby authorized to use electronic monitoring devices, as defined by Section 14 of this act, for any inmate sentenced to the custody of the Department, when such inmate is assigned, as provided by law, to an alternative to incarceration or approved for placement under the provisions of the Preparole Conditional Supervision Program, Section 365 of Title 57 of the Oklahoma Statutes.

The electronic monitoring of an inmate pursuant to this section shall be in addition to active supervision required by law and shall be considered a level of security and confinement for the inmate within the assigned program. The provisions of this section shall not be construed to alter, amend or modify the criteria for eligibility for any alternative to incarceration program authorized by law or any of the provisions of the Electronic Monitoring Program, pursuant to Section 5 of this act.

The Department shall promulgate and adopt rules, regulations and procedures necessary to implement the provisions of this section.

SECTION 16. 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 11th day of May, 1993.

President of the Senate
Passed the House of Representatives the 21st day of May, 1993.

Speaker of the House of
Representatives