ENGROSSED HOUSE
BILL NO. 1188

By: Worthen, Key, Sullivan (Leonard), Greenwood, Tyler and Paulk of the House

and

Smith of the Senate

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 308, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), which relates to sentencing powers of the court; clarifying certain discretionary powers of court; requiring certain persons to install devices on their vehicles; providing for certain notices to Department of Public Safety; providing for notation of certain information on driver's license; providing for court's authority upon failure to have device installed; providing for monitoring of device; providing for certain payments; providing exception to having device installed; creating the Ignition Interlock Fund; prohibiting certain conduct regarding certain devices; providing exception; 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 308, O.S.L. 1994 (22 O.S. Supp. 1994, 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, Section 991a-4 of this title or Section 227 of Title 57 of the Oklahoma Statutes;

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 may, 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, or

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. a. 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 other intoxicating substances, or in the case of a person convicted of operating a motor vehicle while the ability of the person to operate a motor vehicle was impaired due to the consumption of alcohol or other intoxicating substance or a combination of alcohol or other intoxicating substances, the court shall:

(1) restrict any person who is granted probation to operate only a motor vehicle equipped with an ignition interlock device, approved by the Department of Public Safety, during the period of probation,

(2) stipulate on the record the requirement for, the date by which the installation is to be completed, and the period of the use of an ignition interlock device,

(3) order that an ignition interlock device be installed upon every motor vehicle operated by the person, at the person's own expense,

(4) provide a list of approved vendors and their locations to the person,

(5) immediately notify the Department of Public Safety, and

(6) require that a notation of this restriction be affixed to the person's driver license at the time of reinstatement of the license.

b. (1) Failure of the person to have the device installed on or before the date by which the installation of the ignition interlock device was to be completed or show cause why the order was not complied with shall, unless excused, constitute sufficient basis for a finding by the court that the person has failed to comply with the terms of probation.

(2) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the person's failure to comply with the court's order.

c. If the use of an ignition interlock device is required under this section and a person has the device installed on or before the date indicated on the court record, the manufacturer or dealer installing the device shall:

(1) submit to the monitor, a copy of the installation order issued by the court that indicates the date on which the installation of the device was completed,

(2) provide, to the person, a form stipulating the terms and conditions of the ignition interlock program, and

(3) provide a certificate to the person, embossed with the manufacturer or dealer's seal, that

certifies the date on which the installation of the device was completed.

d. (1) Upon presentation of the certificate by a person, the Department of Public Safety shall issue that person a driver license indicating that person is restricted to only operate a motor vehicle equipped with an ignition interlock device.

(2) Upon expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order.

e. (1) Any person required to install an ignition interlock device shall have the device monitored by the manufacturer or dealer of the device for proper use and accuracy at least every sixty-seven (67) days.

(2) A report of the monitoring and the person's compliance or noncompliance with the terms and conditions of the ignition interlock program shall be issued by the manufacturer or dealer to the monitor within ten (10) days following each monitoring.

f. (1) If an ignition interlock device is ordered installed, the person shall pay the reasonable cost of leasing, installing and maintaining the device.

(2) A person may not be excluded from this section for inability to pay the costs, unless:

(a) the person files a pauper's affidavit, and

(b) the court enters a finding that the person is indigent.

(3) In lieu of waiver of the entire amount of the cost, the court may, when appropriate, waive up to, but not to exceed, fifty percent (50%) of the reasonable cost of leasing, installing and maintaining the device, and shall direct the person to make payments accordingly.

g. (1) An additional fee of Seventy-five Dollars ($75.00) shall be paid to the court in advance by each person ordered to lease, install and maintain an ignition interlock device pursuant to this subsection.

(2) There is hereby created in the State Treasury of Oklahoma the "Ignition Interlock Fund". All fees collected by the court under the provisions of this act shall be promptly deposited into this Fund. All funds to the credit of this Fund are hereby appropriated for use as provided in this act and shall not be expended except as provided in this act.

(3) Each manufacturer or dealer installing and maintaining the ignition interlock device provided to a person whom the court has entered a finding of indigency and waived a portion of the lease, installation and monitoring of the device shall be entitled to a reimbursement from the Fund.

(4) Reimbursements shall equal, but not exceed, the amount of the lease, installation and monitoring waived under this subsection.

(5) Failure to pay the fees required under subparagraph g of this paragraph shall constitute sufficient basis for a finding by the court that

the probationer has failed to comply with the terms of the probation.

h. (1) If a person is required in the course and scope of employment to operate a farm tractor or implement of husbandry owned by the person's employer, the person may operate that farm tractor or implement of husbandry in the course and scope of employment without installation of an ignition interlock device.

(2) (a) To the extent that an employer-owned motor vehicle is made available to a person subject to this section, no exemption under this section shall apply.

(b) A person intending to operate an employer-owned motor vehicle who is restricted to the operation of a motor vehicle equipped with an ignition interlock device shall notify the employer and obtain consent in writing from the employer to install a device in the employer-owned motor vehicle.

i. Upon conviction for violation of this section, the court shall:

(1) notify the manufacturer or dealer maintaining the ignition interlock device of the violation and cause the manufacturer or dealer maintaining the ignition interlock device to terminate the person from the ignition interlock program, and

(2) notify the Department of Public Safety to immediately revoke the person's driver license for the remainder of the period of probation.

j. (1) It is a misdemeanor for a person to:

(a) attempt to circumvent, bypass or tamper with the installation or operation of an ignition interlock device or the ignition interlock device itself,

(b) circumvent, bypass or tamper with the installation or operation of an ignition interlock device or the ignition interlock device itself,

(c) knowingly furnish a motor vehicle without an ignition interlock device to someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an ignition interlock device,

(d) rent, lease, or borrow a motor vehicle without an ignition interlock device if a driving restriction is imposed under this section,

(e) request another person to blow into an ignition interlock device, if the person is required to have a device and the person requests or solicits another to blow into the device to start the motor vehicle in order to circumvent the device,

(f) blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to another person required to have the device,

(g) advertise for sale, offer for sale, sell, or lease an ignition interlock device unless the device has been certified by the Department of Public Safety and the

manufacturer of the device has affixed a warning label as approved by the Department of Public Safety on the device, stating, in effect, that any individual tampering, circumventing, or misusing the device shall be subject to prosecution and/or civil liability,

(h) fail to return the ignition interlock device to the manufacturer or dealer immediately upon program completion or termination, and

(i) advertise for sale, offer for sale, sell, buy, lease or knowingly conceal an ignition interlock device subject to the provisions of subparagraph h of this paragraph.

(2) This subparagraph does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of mechanical repair of the device or the motor vehicle and the person subject to the court order does not drive the motor vehicle;

7. 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.~~ 8. 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 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.~~ 9. 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 or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, 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 to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars ($75.00). The evaluation shall be conducted at a certified facility, the office of

a qualified practitioner or at another location as ordered by the court. 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. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection.

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. However, any

person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from the effective date of this act.

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 judge shall consider any victim impact statements if submitted to the jury, or the judge in the event a jury is waived.

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.

SECTION 2. This act shall become effective November 1, 1995.

Passed the House of Representatives the 15th day of March, 1995.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate