

ENGROSSED SENATE
BILL NO. 671

By: Rozell of the Senate

and

Askins of the House

[sentencing - amending 20 O.S. 1991, Section 91.2, which relates to court dockets - amending 21 O.S. 1991, Section 3, which relates to punishment for public offense - amending 22 O.S. 1991, Section 991a, as last amended by Section 2, Chapter 188, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), which relates to the sentencing powers of the court - modifying language and reference - amending 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1994, Section 991a-4), which relates to the Community Service Sentencing Program - creating the Oklahoma Community Corrections Act - repealing 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 308, O.S.L. 1994 and 991a, as last amended by Section 1, Chapter 40, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), which relate to sentencing powers of the court and which are duplicate sections - effective date - emergency]

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

SECTION 1. AMENDATORY 20 O.S. 1991, Section 91.2, is amended to read as follows:

Section 91.2 To facilitate the trial and disposition of cases, actions filed in the district court shall be assigned to various dockets by the clerk of the court under the direction and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a community corrections docket, a traffic docket, a probate docket, a juvenile and family relations docket, and a small claims docket.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 3, is amended to read as follows:

Section 3. A crime or public offense is an act or omission forbidden by law, and to which is annexed, upon conviction, either of the following punishments:

1. Death;
2. Imprisonment;
3. Fine;
4. Reparation to the community and state;
5. Removal from office; or
- ~~5.~~ 6. Disqualification to hold and enjoy office of honor,

trust, or profit, under this state.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 2, Chapter 188, 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~~ 1. When a person is convicted of a criminal offense and the prescribed penalty is not death or life without parole, the jury or, if the jury is waived, the judge shall at the time of sentencing consider the most cost-effective punishment allowable by law to:

- a. punish the person for the offense,

- b. reduce the number of commitments to imprisonment in jails and state prison facilities within this state, and
- c. protect the public.

2. First shall be considered:

- a. restitution for the victims,
- b. imposition of the prescribed fine, and
- c. reparations to the community through any combination of repayment, work or service to local governments and community or state agencies.

3. Next shall be considered one or more treatment, education or rehabilitation services, with or without supervision or monitoring, which are designed to reduce the occurrence of repeat criminal behavior, detect and deter substance abuse, correct or manage psychological or psychiatric behaviors, conditions or disorders, or develop or enhance the ability of the person to be a contributing member of society.

4. Finally shall be considered the statutorily prescribed term of imprisonment, if any, and when a term of imprisonment is prescribed by law, a determination shall be made whether or not to impose all or part of that imprisonment, subject to any statutory prohibition against probation, or a suspended term of imprisonment, or subject to any mandatory imprisonment requirement.

B. The court is hereby authorized, in lieu of any term of imprisonment in any jail or state prison facility, to impose a punishment against the defendant other than one of imprisonment; provided, however, this authority shall not apply to any portion of a prescribed term of imprisonment which is mandatory or for which probation or a suspended term of imprisonment is prohibited. The punishment imposed in lieu of imprisonment shall be specifically tailored to the offense and the defendant as authorized by the

provisions of this act, or as may otherwise be provided by law for reparation to the community or state.

The court shall not impose a punishment in lieu of imprisonment which requires the defendant to be confined in any residential or restrictive facility for more than one (1) year. When the offense for which the defendant is convicted has a prescribed term of imprisonment, unless the defendant asserts his or her right to be punished by the term of imprisonment, the court may impose a punishment in lieu of that imprisonment as authorized by this act. The provisions of this act shall not confer any rights upon the defendant to avoid a term of imprisonment prescribed by law for the offense.

C. The judge shall, prior to making a determination or imposing any punishment authorized by subsection B or D this section, order an assessment and evaluation be made of the defendant to assist the court in determining whether or not the person is appropriate for:

1. Local punishment, treatment, education or rehabilitation;
2. A suspended term of imprisonment, with or without supervision and, with or without, conditional requirements authorized by this section; or

3. Imprisonment as prescribed by law for the offense.

The assessment and evaluation shall be utilized by the court prior to making the decision for punishment to identify the extent of the person's needs and the potential risk to the safety of local citizens. The assessment and evaluation shall be conducted by a person designated by the court and based upon an assessment and evaluation instrument developed jointly by the Department of Mental Health and Substance Abuse Services, the State Department of Education, the Department of Health, the Department of Vocational and Technical Education, and the Department of Corrections.

D. When sentencing a defendant convicted of a crime, the court shall consider any victim impact statements if submitted to the jury, or the judge, in the event a jury is waived.

E. 1. When a defendant is convicted of a crime and no death sentence is imposed and the person is not appropriate for a punishment in lieu of imprisonment, the court shall either:

1. Suspend

- a. impose the fine prescribed by law for the offense,
- b. commit the person for imprisonment as may be prescribed by law for the offense, or
- c. impose the fine and commit the person for imprisonment as prescribed by law, and
- d. in addition to paragraph a, b or c impose restitution, reimbursements, and repayments be paid to the victims as reparations to the community and state.

2. The court shall have authority to suspend any portion of a punishment, except where the Legislature specifically prohibits a suspended sentence or portion thereof. The court may, after imposing a punishment for the offense, suspend that punishment, in whole or part, including imposition of the fine, a term of imprisonment, or both the fine and imprisonment, and the suspension may be with or without any one or more conditional requirements authorized in this paragraph; or, unless the defendant asserts his or her right to a swift and sure punishment, the court may suspend the date of the execution of the 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 not to exceed a twelve-month period, and the suspension may be with or without any one or more conditional requirements authorized in this paragraph. Conditional requirements shall include:

- a. ~~to provide~~ restitution to the victim according to a schedule of payments established by the sentencing court, ~~together~~ with or without 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~~ reimbursement to 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~~ the defendant was convicted, which reimbursement shall be made directly to the state agency, with or without interest accruing thereon at the rate of twelve percent (12%) per annum,
- c. ~~to engage in~~ a term of community work or service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,
- d. ~~to pay~~ payment of 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~~ one (1) year,

- f. ~~to reimburse~~ reimbursement to the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which ~~he~~ the person is being sentenced,
- g. ~~to repay~~ repayment of the reward or part of the reward paid by a certified local crime stoppers program ~~and~~ or 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 crime stoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crime stoppers program" means a crime stoppers 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, ~~or~~
- h. ~~to reimburse~~ reimbursement to the Oklahoma State Bureau of Investigation for costs incurred by that agency during its investigation of the crime for which the defendant pleaded guilty, nolo contendere or was convicted, including compensation for laboratory, technical, or investigative services performed by the Bureau if, in the opinion of the court, the defendant is able to pay without imposing manifest hardship on

the defendant, and if the costs incurred by the Bureau during the investigation of the defendant's case may be determined with reasonable certainty.

~~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. Order the defendant to reimburse the Oklahoma State Bureau of Investigation for costs incurred by that agency during its investigation of the crime for which the defendant pleaded guilty, nolo contendere or was convicted, including compensation for laboratory, technical, or investigative services performed by the Bureau if, in the opinion of the court, the defendant is able to pay without imposing manifest hardship on the defendant, and if the costs incurred by the Bureau during the investigation of the defendant's case may be determined with reasonable certainty;~~

~~5. 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;~~

~~6. 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. 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;~~

~~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;~~

~~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~~

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

- ~~i. substance abuse education or treatment, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes or as ordered by the court,~~
- ~~j. attending a victims impact panel program or victim/offender reconciliation program and payment of a fee to the program of 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 offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay the fee,~~
- ~~k. installation of an ignition interlock device approved by the Department of Public Safety and at the defendant's own expense. The device shall be installed upon every motor vehicle operated by the defendant and the court shall require that a notation of this restriction be affixed to the defendant's driver's license. The restriction shall remain on the driver's license not exceeding two (2) years to be determined by the court. The restriction may be modified or removed only by order of the court and notice of any modification 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 a device during the period of restriction shall be a violation of the suspended sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "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,

1. confinement by electronically monitored home detention administered and supervised by the Department of Corrections, and payment of a monitoring fee to the Department, not to exceed Seventy-five Dollars (\$75.00) a month as determined by the court, if in the opinion of the court the defendant has the ability to pay the fee. Any fees collected pursuant to this paragraph 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. As used in this paragraph, "electronically monitored home detention" means imprisonment 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,
- m. one or more courses of treatment, education or rehabilitation for any conditions, behaviors,

deficiencies or disorders which may contribute to criminal conduct, including but not limited to alcohol and substance abuse, mental health, emotional health, physical health, propensity for violence, anti-social behavior, personality, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education or any other identified deficiency which may be treated appropriately in the community and for which a certified program or a program recognized by the court as having significant positive impact exists in the community. Any treatment, education or rehabilitation required to be certified pursuant to this subparagraph shall be certified by the appropriate state agency,

n. periodic testing for alcohol, intoxicating substance, or controlled dangerous substances,

o. payment of a fee and/or costs for treatment, education, supervision and/or participation in a program as determined by the court, based upon the defendant's ability to pay the fees or costs,

p. supervision by a probation officer or community corrections personnel or other person designated by the court. The court shall specify the manner in which the defendant is to be supervised and the duration of supervision,

q. positive behavior modeling by a trained mentor,

r. confinement in a restrictive facility available in the community or the county jail, at night and/or during weekends pursuant to Section 991a-2 of this title or for work release,

s. employment or employment-related activities,

- t. mandatory reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court,
- u. blood testing as required by subsection H of this section,
- v. repairing or restoring property damaged by the defendant's conduct, if the court determines the defendant possesses sufficient skill to repair or restore the property and the victim consents to the repairing or restoring of the property,
- w. restoring damaged property in kind or pay out-of-pocket expenses of the victim, if the court is able to determine the actual out-of-pocket expenses suffered by the victim, or
- x. any other provision specifically ordered by the court.

~~E. Probation~~ F. Supervision, 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, community corrections personnel or other persons designated by the court. Such supervision shall be initiated upon an order of probation or supervision 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. Supervision may include periodic supervision,

monitoring, general supervision, structured supervision, intensive supervision and reintegrative supervision following a term of imprisonment or residential confinement.

F. G. The Department of Corrections, the community corrections administrator, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution, repayments, fees, costs and service programs provided for by ~~subparagraphs a, c, and d of paragraph 1 of subsection A of this section~~ act, and the designated agency shall ensure that ~~restitution~~ payments are forwarded to the ~~victim~~ appropriate person or entity and that service assignments and court-ordered conditions are properly performed by the defendant.

~~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.~~

On or after July 1, 1996, every person convicted of an offense as provided in 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 submit to deoxyribonucleic acid (DNA) testing for law enforcement identification purposes in accordance with Section 150.27a of Title 74 of the Oklahoma Statutes 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 any defendant convicted of an offense specified in this subsection and who is not sentenced to the custody of the Department of Corrections. Submission to testing shall be done in accordance with Section 530.1 of Title 57 of the Oklahoma

Statutes for any defendant who is sentenced to the custody of the Department of Corrections. 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 sentencing shall not be required to submit to an additional test.

Every person convicted of an offense specified in this section who is in the custody of the Department of Corrections on or after July 1, 1996, shall provide a blood sample prior to release. Every person who is convicted of an offense specified in this subsection who is not sentenced to a term of imprisonment shall provide a blood sample as a condition of a suspended sentence or sentence in lieu of imprisonment.

Samples of blood for DNA testing required by this section shall be taken by employees of the Department of Corrections designated by the Director of the Department of Corrections. The 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 person appears for testing or within ten (10) days of the date the person comes into the custody of the Department of Corrections. The Department shall use sample kits provided by the Oklahoma State Bureau of Investigation and procedures promulgated by the Oklahoma State Bureau of Investigation.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1994, Section 991a-4), is amended to read as follows:

Section 991a-4. A. There is hereby created the "Community Service Sentencing Program". The purpose of the program shall be to provide an alternative to incarceration for nonviolent felony

offenders who would normally be sentenced to incarceration in a state institution. 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, as provided in this section. The Department shall establish criteria and specifications for contracts with counties for the programs. A county may apply to the Department 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 Department.

B. The Department is hereby authorized to provide technical assistance to any county in establishing a program. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements required by this section. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on the number of 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.

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

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

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

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

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

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

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

1. Community service, with or without compensation;
2. Education, vocational-technical education or literacy programs;
3. Substance abuse treatment programs;
4. Periodic testing for the presence of controlled substances;

5. Psychological counseling or psychiatric treatment;

6. Medical treatment;

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

8. Confinement in a county jail for a period not to exceed one (1) year, night or weekend incarceration pursuant to the provisions of Section 991a-2 of this title or incarceration by the Department of Corrections; provided, the Department of Corrections shall reimburse a county which does not receive payments from any other source for the cost of the necessary expenses of such persons during periods of such incarceration in an amount not to exceed Twenty Dollars (\$20.00) per day and any county receiving such payments in an amount not to exceed Ten Dollars (\$10.00) per day. The Department shall reimburse the county for the actual cost paid for any emergency medical care for physical injury or illness of such persons if the county is required by law to provide such care for inmates in the jail. The reimbursements provided by this section shall not exceed the cost that would have accrued to the state for the feeding, care or medical care of the persons had they been incarcerated with the Department. Except as otherwise provided by law, all provisions of the Oklahoma Corrections Act of 1967, Section 501 et seq. of Title 57 of the Oklahoma Statutes, shall apply to such persons, including but not limited to any provisions requiring payment by such persons of the costs of incarceration; or

9. Probation or conditional probation.

~~D.~~ E. In counties with a population of five hundred fifty thousand (550,000) or more persons that operate an existing program, the Department of Corrections is hereby authorized to reimburse the county sheriff, pursuant to paragraph 8 of subsection C of this section, the cost of necessary expenses for confinement in the

county jail for any eligible offender as defined in subsection B of this section. Such reimbursement shall be subject to appropriation by the Legislature. The Department may promulgate rules and procedures for submitting claims for reimbursements.

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

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

~~G.~~ H. The ~~Division~~ Department shall establish a list of federal, state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs willing to participate in the program to which offenders may be referred. The ~~Division~~ Department shall periodically contact agencies, organizations and programs to which offenders are assigned to determine if offenders have reported and performed satisfactorily. Any such agency or program shall immediately notify the ~~Division~~ Department if an offender fails to fulfill any requirement of the Program. The ~~Division~~ Department or the sentencing judge may require additional documentation of the offender's work performance.

~~H.~~ I. The ~~Division~~ Department shall ensure that the sentencing judge and prosecuting attorney are notified in writing when an

offender has successfully completed the assigned community service hours or other requirements of the Program or has failed to complete the requirements and provide any other relevant information required by the sentencing judge or prosecuting attorney.

~~I.~~ J. All state and local government agencies, community service agencies, nonprofit organizations, educational programs and other treatment programs participating in the Program are hereby immune from liability for any offender participating in the Program under the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and for torts committed by or against any offender participating in the Program to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

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

L. Offenders who have been sentenced by the court to this Program prior to November 1, 1995, and who are assigned to and participating in any program, work assignment, or treatment provision, and offenders who are incarcerated in the county jail or subject to periodic incarceration in the county jail pursuant to this Program, shall be transferred to and placed under the authority of the Oklahoma Community Corrections Act, Section 5 et seq. of this act on November 1, 1995. Transfer of programs, services or authority shall not operate to alter, amend or modify the terms and conditions of any court order pursuant to this Program, provided the order was entered prior to November 1, 1995. Any contracts authorized by this Program shall terminate on November 1, 1995, except, the Department shall continue to reimburse the county sheriff as required in this Program for terms of incarceration previously imposed by the court against offenders sentenced under the authority of this Program and not completed by November 1, 1995.

M. The court shall not sentence any offender to this Program on or after November 1, 1995, but may sentence eligible offenders pursuant to the Oklahoma Community Corrections Act, Section 5 et seq. of this act.

N. The Community Service Sentencing Program is hereby abolished on November 1, 1996, and the powers, duties and responsibilities exercised by a local Program shall be transferred to a local community corrections board established pursuant to the Oklahoma Community Corrections Act.

All unexpended funds, property, records, personnel and outstanding financial obligations and encumbrances of the local Program are transferred to the local community corrections board as provided by this act.

All transferred personnel shall retain their employment position and status. The Department of Corrections is hereby directed to coordinate the transfer of funds and outstanding financial obligations as provided in this subsection.

The county commissioners of any county, who currently operates a Community Service Sentencing Program, and who fails to establish or elects not to establish a community corrections board as provided in the Oklahoma Community Corrections Act, shall pay and discharge any debts or liabilities of the local Program, collect and distribute assets of the Program, and pay over any remaining proceeds or property to the sheriff of the county.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 615 of Title 57, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Community Corrections Act".

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 616 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. The purposes of the Oklahoma Community Corrections Act are to:

1. Promote accountability of offenders to the local community by requiring direct financial restitution to be made to victims of crime and that community service be made to local governments and community agencies representing the community;

2. Provide a safe, cost-efficient, community punishment and correctional program which provides punishments through the development of a range of sanctions and community services available for the judge at sentencing;

3. Reduce the number of offenders committed to correctional institutions and jails by punishing the offenders in alternative punishment settings;

4. Provide opportunities for offenders demonstrating special needs to receive services that enhance their abilities to provide for their families and become contributing members of their community; and

5. Encourage the involvement of local officials and citizens in their local punishment and correctional system.

B. There is hereby authorized in each county or group of counties of the state a community corrections program for offenders charged with or convicted of eligible criminal offenses. A program may be established by a county or counties as provided in this act. Each county desiring to participate in a community corrections program shall create a board of directors to administer and coordinate the program within its jurisdiction. A board may enter into interlocal governmental agreements with one or more adjoining counties to provide services pursuant to the provisions of this act, and, in addition, counties may establish multi-county corrections boards to administer programs within its jurisdiction in lieu of separate county boards.

C. A board shall consist of nine (9) members as follows:

1. A judge having criminal case responsibility in the jurisdiction who shall serve an initial term of three (3) years;

2. A district attorney of the jurisdiction or an assistant district attorney appointed by the district attorney who shall serve an initial term of two (2) years;

3. A county commissioner of the county wherein the program is to be established who shall serve an initial term of one (1) year;

4. The sheriff or a law enforcement officer having duties within the jurisdiction appointed by the sheriff who shall serve an initial term of one (1) year; and

5. Five local citizens: one citizen shall be appointed by the sheriff and shall serve an initial term of three (3) years; one citizen shall be appointed by the county commissioner and shall serve an initial term of two (2) years; one citizen who shall be appointed by the district attorney and shall serve an initial term of one (1) year; one citizen shall be appointed by the judge and shall serve an initial term of three (3) years; and one citizen to be appointed by a majority vote of the eight previously appointed members, and who shall serve an initial term of two (2) years.

D. Members shall ensure fair selection and representation of minority persons and women when appointing citizens. A citizen appointed as a board member shall, to the extent possible, be selected from a category listed below:

1. A criminal defense attorney or public defender;

2. An administrator of a victim services program or victim's advocate;

3. A representative of the Department of Mental Health and Substances Abuse Services, the State Department of Education, the Department of Vocational and Technical Education, the Department of Health, or the Oklahoma Employment Securities Commission;

4. A business owner or member of the local chamber of commerce;

5. A medical doctor, social worker or psychologist;

6. A probation officer, Department of Corrections employee or local corrections employee;

7. An administrator of a community corrections program;

8. A person who is recovering from chemical dependency or formerly convicted of a felony and considered to be rehabilitated and a productive citizen; or

9. A community religious leader.

E. A board may also select advisory members who shall serve as consultants, but not have voting privileges.

F. Following the initial term of office, members shall serve three-year terms of office. Members may be reappointed without limitation. Each appointing authority shall have the right to remove its appointed member at any time. Each member shall have one vote and a majority of voting members shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all the powers of the board. Any vacancy occurring in the office of an appointed member shall be filled for the unexpired term of office in the same manner as the original appointment. The judge shall convene the initial meeting of the board within thirty (30) days of the first citizen appointment.

G. At its initial meeting, each board shall elect a chair from its members who shall preside at all meetings of the board and perform such other duties as may be required by the board. The board shall elect another member to serve as vice-chair who shall perform duties of the chair during any period of absence or upon the refusal or inability of the chair to act. The board shall also elect a secretary who shall keep minutes of all meetings and who shall certify the actions of the board, and a treasurer who shall monitor and keep records of all financial transactions of the board. Other officers may be elected from the membership as necessary.

H. A board shall adopt written rules concerning meeting time and place and dates, conduct for conflicts of interest, removal of member for failure to attend certain number of meetings, financial reports, recordkeeping and any other provision necessary to implement the provisions of this act. The rules may be amended at any time when necessary to comply with the provisions of this act. Each board shall be subject to the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 617 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A board established pursuant to the provisions of this act shall administer and coordinate the jurisdiction's community corrections program subject to the provisions of this act and applicable rules. A board shall have the following powers and duties for its jurisdiction:

1. The authority to promulgate rules, procedures and forms necessary to implement the provisions of this act;

2. The duty to prepare specifications and plans for the program, including allocation of resources in a cost-effective manner;

3. The authority and duty to request bids for contracts for qualified services as may be necessary for the program;

4. The duty to determine methods of calculating resource allocation to meet the needs of the program;

5. The authority to contract for goods and services necessary for the administration and implementation of the program;

6. The authority to enter into interlocal governmental agreements for qualified services;

7. The authority to form multi-county boards as may be necessary to conserve resources or implement programs;

8. The duty to expend and budget money and assets of the program in a prudent and fiscally responsible manner;

9. The authority to hire, train and terminate personnel and to set and pay salaries;

10. The authority and duty to notify the court if an offender violates a court order or program provision;

11. The duty to review, audit, evaluate and modify the programs and services;

12. The authority to collect fees, restitution, reimbursements, fines and costs as ordered by the court;

13. The duty to keep records including, but not limited to, records concerning offender's participation, recidivism rates, commitment rates, services offered and court orders;

14. The authority to rent, lease or purchase personal property and equipment necessary for providing services and administration of the program;

15. The duty to apply for grants and solicit other sources of funding and resources for the program;

16. The duty to identify and specify services and programs and to modify or delete those services and programs where the needs of the program are not being met;

17. The authority and duty to develop criteria for evaluation of programs, services and the impact of those programs and services on offender recidivism, rehabilitation, community and state resource allocation and community involvement;

18. The authority to perform any other function necessary to administer, examine, modify, implement, and coordinate the community corrections system of the jurisdiction within available resources and according to law;

19. The duty to ensure protection of the public from criminal offenders through cost-effective community punishments and sanctions;

20. The duty to implement services which require offender accountability and promote prevention and rehabilitation;

21. The duty to inform local officials of available programs and services; the number of offenders to be served in each program; the costs to be allocated to the offender for participation, if any; the cost-effectiveness of programs; and any other information encouraging local responsibility for resources and offender accountability; and

22. The authority to contract with public agencies or private nonprofit organizations or for-profit organizations to administer programs. The board shall establish criteria and specifications for any contracts entered pursuant to this provision.

B. A county shall provide employees of a community corrections program medical benefits with or without cost to the employee, but employees of the community corrections program shall not be considered county or state employees for purposes of retirement and other benefits.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 618 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A community corrections program established pursuant to the provisions of this act shall submit a program plan to the Department of Corrections annually, which shall include, but not be limited to the following information pertaining to its jurisdiction:

1. For the previous two (2) years: the number and rates of arrests, number of felony convictions, admissions to probation, number of offenders sentenced to post-imprisonment supervision, number of offenders sentenced to county jail, length of sentence in county jail for each offender, number of offenders sentenced to the custody of the Department of Corrections, length of sentence in the custody of the Department of Corrections for each offender;

2. Current jail conditions, staff, capacity, and jail population data by offender-type including, but not limited to, misdemeanor, felony, trusty, post-trial detainee, pre-trial detainee, disciplinary sanction or juvenile;

3. A list of services and programs including costs and availability, the number of offenders participating, and average length of participation;

4. Range of punishment sanctions for offenders within the jurisdiction, including disciplinary sanctions for non-criminal behavior of offenders participating in the program;

5. A list of educational, vocational-technical, health, mental health, substance abuse treatment, and social services available to offenders or to be made available within a twelve-month period;

6. Restrictive residential facilities or other restrictive housing options available or to be made available within a twelve-month period; and

7. Details of the plan and supporting budget, including:

- a. identification of existing resources,
- b. additional resources needed,
- c. projected number of offenders to be served,
- d. types of offenders to be served,
- e. established disciplinary sanctions for non-criminal conduct against participating offenders,
- f. local policy statements,
- g. methods for allocating resources to support the program plan,
- h. methods for reciprocal program services,
- i. program evaluation methods,
- j. recordkeeping and provisions for audits,
- k. administrative structure of program and list of specific service providers participating in the programs, and

1. community participation.

B. When a program plan is approved by the Department the community corrections program is a certified program within the state criminal justice system. Failure of the Department of Corrections to disapprove a plan or recommend an amendment to the plan within thirty (30) days after the plan has been submitted for approval or disapproval shall constitute an approval and certification of the program plan.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 619 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. In addition to other powers and duties, the Department of Corrections shall have authority and responsibility pursuant to the provisions of this act as follows:

1. The authority to promulgate rules, procedures and forms necessary to implement the provisions of this act;
2. The duty to apply for and accept money and other assets to be utilized for support of community corrections programs;
3. The duty to review and analyze each community corrections program's plans submitted;
4. The authority and duty to establish statewide program goals;
5. The duty to evaluate, monitor and coordinate programs with the state;
6. The duty to provide technical assistance to programs established pursuant to the provisions of this act. The technical assistance shall include, but not be limited to:
 - a. correction system design,
 - b. administration,
 - c. monitoring and evaluating the programs,
 - d. program identification and specifications,
 - e. offender risk management,
 - f. planning,

g. grant applications, and

h. preparation and submission of budgets and plans;

7. The duty to provide community corrections coordinators to assist programs and coordinate with the Department of Corrections;

8. The authority to establish community corrections programs where the local community has not established a program;

9. The duty to provide an application process for state assistance grants and to distribute state funds as required by law;

10. The authority to conduct an audit of any community correction program;

11. The authority to negotiate and enter into contracts for services to renegotiate or cancel any contract according to the terms of the agreement or for noncompliance with any rule or law;

12. The duty to educate and disseminate information to local officials and programs concerning corrections issues including, but not limited to:

a. punishment options,

b. disciplinary sanctions,

c. resource allocation,

d. administration,

e. legal issues,

f. supervision and risk management,

g. treatment methodology and services,

h. education and vocational services,

i. service and program monitoring and evaluation methods,

j. grants and funding assistance,

k. data and recordkeeping, and

l. offender characteristics;

13. The authority to develop minimal standards for programs, services, safety of the public, staff, and offender, and for the administration of the system; and

14. The duty to develop cost-effective program models.

B. The Department shall make a report to the Legislature annually concerning community corrections programs. The report shall provide an evaluation of the effectiveness of the Oklahoma Community Corrections Act in terms of punishment sanctions, cost-effectiveness, resource allocation and reduced state and local institutional commitments.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 620 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A board established pursuant to the provisions of this act may apply for state assistance funding at the time the program plan is submitted as required in Section 8 of this act, or at any time when the board requires new programs, services or emergency assistance. Provided, however, each county must have allocated, or have commitments for allocations of local resources in support of programs. In addition, to be eligible for continued state funding, a program must ensure substantial compliance with the standards and rules promulgated by the Department of Corrections. Once local resources have been committed to a community corrections program under the provisions of this act, a county's allocation of resources shall not be reduced unless there is a documented significant reduction of total county revenue.

B. The Department of Corrections shall review, analyze, and evaluate all community corrections program plans and any application submitted for state assistance grants. The Department is directed to approve all plans complying with law and rules when the plan requires no state funding.

C. When state funding is required to implement a program, the Department shall approve the plan only to the extent funding supports program implementation. All funding shall be subject to appropriations from the legislature. The Department shall fund counties having community corrections programs under the following

formula. Of the funds appropriated by the Legislature each year, the Department shall have discretion over twenty percent (20%) of the total appropriated funds. These discretionary funds shall be expended in amounts to be determined by the Department for participating counties with innovative programs or counties operating cost-efficient programs for special target offender populations; ten percent (10%) of the total appropriated funds each year shall be divided equally between participating counties to provide a base funding for minimal operation of a program; fifty percent (50%) of the total appropriated funds each year shall be divided between participating counties based upon each county's proportional share of the state's population; and the remaining twenty percent (20%) of the total appropriated funds each year shall be divided between the participating counties based upon the crime rate for the county as compared to the statewide crime rate.

Assistance grant funds may be distributed quarterly or in the manner determined most efficient as provided by the Department rules.

State funds shall not be used to construct, renovate, remodel, expand or improve any jail, residential treatment facility, restrictive housing facility, or any other structure or for indirect costs associated with a program. State funding shall not be used to supplant or replace existing funding or other resources from the federal, state or county government for any existing community-based programs.

D. A county community corrections program receiving funding pursuant to this act may terminate its participation by delivering a resolution of the board to the Director of the Department of Corrections at the beginning of any calendar quarter. Upon withdrawal from the program, the board may adopt a resolution stating that it is in the best interests of the county that the board be dissolved, whereupon the county commissioners shall pay and discharge any debts and liabilities of the board, collect and

distribute assets of the board, and pay over any remaining proceeds or property to the sheriff.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 621 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. The Department of Corrections is authorized to apply for and accept grants, gifts, bequests and money from nonprofit private organizations, for-profit organizations, political subdivisions of this state, the United States and private citizens. Any money received by the Department under the provisions of this act shall be deposited in the Oklahoma Community Corrections Revolving Fund.

B. There is hereby created in the State Treasury a revolving fund for the Department of Corrections to be designated the "Oklahoma Community Corrections Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all funds appropriated to it by the Legislature, grants, gifts, bequests and money authorized by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Department of Corrections for state assistance grants to local community corrections programs pursuant to the provisions of the Oklahoma Community Corrections Act, Section 5 et seq. of this act. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 622 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. A community corrections program or services may be utilized as follows:

1. Any person convicted of a nonviolent crime not prohibited by subsection B of this section may be sentenced to punishment in a

community corrections program in lieu of imprisonment as authorized in subsection B of Section 991a of Title 22 of the Oklahoma Statutes;

2. Any person receiving a suspended term of imprisonment or a suspended execution date for imposition of a sentence for a crime not prohibited by subsection B of this section may receive services pursuant to a community corrections program;

3. Upon a diverted eligible criminal case, as provided in Section 17 et seq. of this act, the defendant may receive services from a community corrections program; or

4. In conjunction with a plea agreement or deferred sentence, the defendant may receive community corrections services.

B. The following crimes shall not be eligible for any consideration under community corrections programs or services:

1. Assault and battery with a dangerous weapon;
2. Aggravated assault and battery;
3. Poisoning with intent to kill;
4. Shooting with intent to kill;
5. Assault with intent to kill;
6. Assault with intent to commit a felony;
7. Murder in the first degree;
8. Murder in the second degree;
9. Manslaughter in the first degree;
10. Manslaughter in the second degree;
11. Kidnapping;
12. Burglary in the first degree;
13. Kidnapping for extortion;
14. Maiming;
15. Robbery;
16. Child beating;
17. Wiring any equipment, vehicle or structure with explosives;
18. Forcible sodomy;

19. Rape in the first degree;

20. Rape by instrumentation;

21. Lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age;

22. Use of a firearm or offensive weapon to commit or attempt to commit a felony;

23. Pointing a firearm;

24. Rioting; and

25. Arson in the first degree.

C. Community corrections programs and services are limited in funding and availability and once the state and local resources have been exhausted no person, whether statutorily eligible or not, may be sentenced to a program or service. Nothing in this act confers any rights upon any defendant to void any term of imprisonment or receive services under the provisions of this act or any local program. Community corrections programs are a privilege and the board, judges, prosecutors, defense attorneys and local citizens must carefully allocate available resources to best meet the needs of the local community and provide cost-effective punishments for criminal acts.

D. The court may assess a supervision fee against any offender sentenced under the provisions of the Oklahoma Community Corrections Act, Section 5 et seq. of this act. Any supervision fee assessed shall be based upon the offender's ability to pay and shall not deny the offender services under the provisions of the act if indigent. The supervision fee shall not exceed Five Hundred Dollars (\$500.00) per year. Supervision fees assessed by the court shall, when collected, be retained by the board and utilized for support and expansion of the program; except fees collected for probation or supervision services provided by the Department of Corrections employees shall be forwarded to the Department to be deposited in the Oklahoma Community Corrections Revolving Fund.

E. The court may impose a term of imprisonment not to exceed five (5) days in the county jail, work camp, work release center, or halfway house as a disciplinary sanction for offenders violating conditions of a sentence or program requirements or the court may impose other suitable methods to benefit the offender within the program. Nothing contained in this provision shall be construed to prohibit any person authorized pursuant to the provisions of this act from negotiating with the offender for appropriate disciplinary measures when there has been an infraction of a rule or program violation, however, all violations and infractions shall be reported to the court even after a negotiated disciplinary sanction has been completed.

F. A community corrections board shall ensure that restitution, reimbursements, fines and other payments are forwarded to the designated person or entity, and that court orders are properly performed by the offender and service providers.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 623 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. This act hereby authorizes and requires probation officers employed full time for the Department of Corrections to assist the community corrections programs by reporting program and court order violations by offenders directly to the court.

B. Supervision shall be initiated upon an order of the court for probation, periodic supervision, structured supervision, intensive supervision or reintegration supervision. Supervision services may be provided by the Department of Corrections probation officers or other services providers of the community corrections program.

C. Any supervisory person is authorized to negotiate disciplinary sanctions with offenders for noncriminal behaviors and conduct which violate any condition of the sentence, program or

court orders, provided, however, all negotiated disciplinary sanctions must be reported to the court at progress hearings. A participating offender shall not be required to negotiate any disciplinary sanction and has the right to be brought before the court for hearing, determination of the facts, and discipline.

D. When any offender is disciplined by imprisonment in the county jail or other facility, the sheriff or facility administrator may receive compensation as negotiated with the local board, but in no event shall the compensation exceed Twenty-Five Dollars (\$25.00) per day. The Department of Corrections is prohibited from accepting any offender participating in a community corrections program for disciplinary imprisonment sanctions.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 624 of Title 57, unless there is created a duplication in numbering, reads as follows:

Any law directing earned credits during periods of imprisonment or otherwise, including Sections 20, 58.3, 138, 138.1 and 224 of Title 57 of the Oklahoma Statutes and Section 615 of Title 69 of the Oklahoma Statutes, shall not be applicable to persons sentenced under the provisions of the Oklahoma Community Corrections Act, Section 5 et seq. of this act. However, nothing shall prohibit the sentencing judge from establishing a schedule of earned credits as part of a sentence or subsequently reducing any portion of a sentence when the offender successfully completes a component imposed in the sentence.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 625 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Any offender ordered to a community corrections program for punishment or services shall be advised of the conditions of the program.

B. Offenders participating in the Community Service Sentencing Program, Section 991a-4 of Title 22 of the Oklahoma Statutes, on November 1, 1995, shall be transferred from the Community Service Sentencing Program to a community corrections program upon implementation of similar services within the jurisdiction; provided, no transfer of service delivery shall be construed to alter, amend or modify the original sentence.

C. Offenders may not be ordered to participate in any service or program within a community corrections program which requires private transportation to reach the service location when the one-way trip driving distance is more than sixty (60) miles from the residence, except by written consent of the offender.

D. Prior to completing a sentence, offenders participating in a community corrections program may, under special conditions, request a reciprocal assignment in another jurisdiction to complete the terms and conditions of the program. Each board must have entered into a reciprocal agreement for services with the other jurisdiction and must have the approval of the receiving jurisdiction and a court order for transfer of the offender's case before any transfer shall be made.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 626 of Title 57, unless there is created a duplication in numbering, reads as follows:

All state and local government agencies, community service agencies, nonprofit organizations, education or vocational-technical entities, and other providers participating in a community corrections program are hereby granted immunity from liability for any offender participating in the system under the Workers' Compensation Act, Section 1 et seq. of Title 85 of the Oklahoma Statutes, and for torts committed by or against any offender participating in a community corrections system to the extent

specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 471 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The district courts of this state are hereby authorized to establish criminal case diversion programs, subject to funds available locally or as may be appropriated by the Legislature. Each diverted criminal case shall require separate docketing by the clerk of the court on the community corrections docket and shall be cross-referenced to the pending criminal case against the defendant. A criminal diversion program shall be designed and developed as an immediate and highly structured treatment, education or rehabilitation program for persons charged with a criminal offense who, after arrest and release from custody, voluntarily request to enter the diversion program and are subsequently approved by the court to participate in the program. Criminal diversion programs shall not apply to the following criminal offenses: murder in the first degree, rape in the first degree, kidnapping, robbery with a weapon, shooting with intent to kill, trafficking in illegal drugs and any sex-related offense wherein the victim is a child.

B. All state and local agencies and other governmental entities shall assist in developing and implementing criminal diversion programs and services which will assure maximum opportunity for successful treatment, education or rehabilitation of eligible offenders.

C. The judges of the district court where a criminal diversion program is established shall designate the judge or judges who shall have responsibility for judicial decisions in diverted criminal cases, program implementation, coordination and accountability of participating agencies and staff, and cost-effectiveness of the program through docketing and efficient case management.

D. Each criminal diversion program shall ensure, but not be limited to:

1. Strong linkage between participating agencies;
2. Direct access to full information on the defendant's progress;
3. Vigilant supervision and court monitoring procedures;
4. Random substance abuse testing;
5. Provisions for noncompliance, modification and termination hearings;
6. Residential treatment facilities; and
7. Measured application for accountability sanctions, including provisions for increased supervision, testing, treatment, short-term confinement not to exceed five (5) days, recycling the offender into a program, reinstating an offender into a program, and termination from a program.

E. Every defendant participating in a criminal diversion program shall have an individual treatment and rehabilitation plan which shall be based upon a written contingency contract between the court, the district attorney, the defendant, the defendant's attorney, the supervising staff, and participating agencies delivering services under the treatment plan provisions. The treatment plan will be designed to be completed within twelve (12) months and the court may extend a treatment program for three-month intervals not to exceed four such extensions totaling twelve (12) additional months to allow the defendant to complete the program. A defendant will be required to pay a fee, based on an assessment of the defendant's ability to pay and a payment schedule will be established by the court for payment of that fee. The defendant may, during participation in a criminal diversion program:

1. Have any bail bond or undertaking exonerated;

2. Be placed under a conditional oral recognizance bond requiring the defendant to appear at a place and time specified by the court;

3. Have a bail bond reduced; or

4. Be placed under an oral recognizance bond.

F. Before any defendant may be granted a diversion or recycled or reinstated into diversion from confinement, the defendant shall be released from custody and ordered to return to court for the diversion hearing.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 472 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. This act shall apply whenever a criminal case is before any district court which has a criminal diversion program established pursuant to Section 17 of this act, upon filing of an information or indictment, and it appears that all of the following apply to the defendant:

1. The defendant has been convicted of not more than three criminal offenses involving alcohol or an intoxicating substance prior to the alleged commission of the charged divertible offense;

2. There is no evidence of a violation relating to any controlled dangerous substance other than:

a. a first offense violation of:

(1) subsection B of Section 2-328 of Title 63 of the Oklahoma Statutes,

(2) paragraph 1 or 2 of subsection B of Section 2-401 of Title 63 of the Oklahoma Statutes,

(3) Section 2-403 of Title 63 of the Oklahoma Statutes,

(4) Section 2-406 of Title 63 of the Oklahoma Statutes,

(5) Section 2-407 of Title 63 of the Oklahoma Statutes,

(6) Section 2-408 of Title 63 of the Oklahoma Statutes, and

b. a violation of paragraph 3, 4 or 5 of subsection B of Section 2-401, Section 2-402, Section 2-404, 2-405, or Section 2-407.1 of Title 63 of the Oklahoma Statutes;

3. The defendant's charge does not involve a crime of violence or threat of violence against any person;

4. The defendant has never been revoked from probation or parole;

5. The defendant has not been diverted pursuant to this act within five (5) years prior to the alleged commission of the charged divertible offense;

6. The defendant has no prior felony conviction for a violent offense or threat of violence against a person prior to the alleged commission of the charged divertible offense; and

7. The offense for which the defendant is charged does not have a specific statutory provision prohibiting probation or a deferred or suspended sentence.

B. The district attorney shall determine initial eligibility by considering whether or not paragraphs 1 through 7 of subsection A of this section, and the prohibitions to diversion stated in subsection A of Section 17 of this act, are applicable to the defendant. This initial eligibility review by the district attorney shall be completed not later than the time of arraignment. If the defendant is initially determined to be eligible for diversion, the district attorney shall file with the court a declaration in writing and shall make this information available to the defendant and his or her attorney as provided in Section 19 of this act. This procedure is intended to allow the court to set the diversion hearing on the day following arraignment or as soon thereafter as possible. If the

defendant is found ineligible, the district attorney shall file with the court a declaration in writing or state for the record the grounds upon which the declaration is based, and shall make this information available to the defendant and his or her attorney. Provided, nothing shall prevent the court from making a finding of initial eligibility, whether or not the district attorney has made the initial determination of eligibility required in this subsection.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 473 of Title 22, unless there is created a duplication in numbering, reads as follows:

If the district attorney determines that a defendant may be eligible for diversion, the district attorney shall advise the defendant and the defendant's attorney in writing of that determination. This notification shall include the following:

1. A full description of the procedures of criminal diversionary investigation;
2. A general explanation of the roles and authorities of the supervising staff, the district attorney, the community program, and the court in the diversion process;
3. A clear statement that the court may decide in a hearing not to divert the defendant and that the defendant may have to stand trial for the alleged offense;
4. A clear statement that should the defendant fail in meeting the terms of diversion, or should the defendant be convicted of a misdemeanor which reflects a propensity for violence, or should the defendant be convicted of any felony, the defendant may be required, after a court hearing, to stand trial for the original alleged offense; and
5. An explanation of criminal record retention and disposition resulting from participation in the diversion and following successful completion of the diversion program.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 474 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If the defendant voluntarily consents and waives his or her right to a speedy trial, the court may refer the criminal case for diversionary investigation or the court may summarily grant diversion. When directed by the court, the supervising staff shall make an investigation and take into consideration the defendant's age, employment and military service records, educational background, community and family ties, prior substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would benefit by education, treatment or rehabilitation and is appropriate for diversion. The supervising staff shall also determine which community program or programs available would benefit the defendant and which programs would accept the defendant. The supervising staff shall report its findings and recommendations to the court, the district attorney and the defendant's attorney before the court makes its final ruling in the case. The court shall make the final determination whether or not to divert a criminal case as provided in Section 21 of this act. For purposes of this act, "supervising staff" means a probation officer, a community service sentencing coordinator or other personnel, a community corrections representative, a state or local agency representative, a private treatment provider or other person designated by the judge having authority over the court's diversion program.

B. 1. No statement, or any information procured therefrom, made by the defendant to any supervising staff or treatment worker, which is made during the course of any diversionary investigation conducted by the supervising staff or treatment program pursuant to the provisions of this section and no prior reporting of the

supervising staff's findings and recommendations to the court, shall be admissible in any criminal action or proceeding brought subsequent to the investigation.

2. No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, which is made to any supervising staff or program worker subsequent to the granting of diversion, shall be admissible in any criminal action or proceeding.

3. In the event that diversion is either denied, or is subsequently revoked once it has been granted, neither the investigation nor statements or information divulged during the investigation shall be used in any sentencing procedures.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 475 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The judge having authority over the community corrections docket shall hold the diversion hearing as soon as possible following arraignment, and after consideration of any information relevant to a decision, shall determine if the defendant consents to further proceedings pursuant to the provisions of this act and waives the right to a speedy trial, and if the defendant should be diverted and referred for education, treatment, or rehabilitation. The judge shall not grant any diversion when funding or program availability has been exhausted. If a diversion is granted, the defendant shall be immediately escorted to the supervising staff for a diagnostic evaluation and admission to a diversion program. If a diversion is denied, the defendant's case shall be returned to the criminal docket of the district court and proceed as any other criminal case.

B. After a criminal case is diverted it shall be docketed as a community corrections case and the judge having authority over the community corrections docket shall make a determination regarding

education, treatment or rehabilitation for the defendant. The judge shall also set hearings and make all judicial decisions concerning the case until the final disposition is entered. The judge shall periodically review the progress of the defendant under the provisions of the contingency contract. Supervising staff shall appear before the judge with the defendant at progress hearings and make direct reports of the defendant's progress. All referrals to diversion granted by the judge pursuant to this act shall be made only to programs which have been certified by the Department of Mental Health and Substance Abuse Services, the State Department of Education, the Department of Health, or the Department of Vocational and Technical Education or to programs which provide services at no cost to the participants and are deemed by the appropriate Department or the court to be credible and effective. The defendant may request to be referred to a program in any county, provided that program meets the criteria set forth in this subsection.

C. At the time a defendant's case is diverted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant may be exonerated or the judge may reduce the bail bond or undertaking, or deposit in lieu thereof, or place the defendant on a conditional oral recognizance bond requiring the defendant to appear at a place and time specified by the court, and the judge shall enter an order so directing.

D. The period during which the further criminal proceeding against the defendant may be diverted shall be for no less than six (6) months nor longer than two (2) years. Progress reports shall be filed by the supervising staff with the court as directed by the judge.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 476 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If it appears to the supervising staff that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is not benefiting from education, treatment, or rehabilitation, or the defendant is convicted of a misdemeanor which reflects a propensity for violence, or if the defendant is convicted of a felony, after notice to the defendant and his or her attorney, the judge shall hold a hearing to determine whether the criminal proceedings should be reinstated. If the judge finds that the defendant is not performing satisfactorily in the assigned program, or that the defendant is not benefiting from diversion, or the judge finds that the defendant has been convicted of a crime as indicated herein, the criminal case shall be referred back to the criminal docket for resumption of the criminal proceedings. If the defendant has performed satisfactorily during the period of diversion, at the end of the period of diversion, the criminal charges pending against the defendant shall be dismissed if the offense is a misdemeanor or a first felony offense, or for second and subsequent felony offenses, the criminal charges pending against the defendant shall be dispositioned as specified in the contingency agreement, including the defendant entering a plea of guilty or nolo contendere to the charge or a lesser charge and receiving a designated fine. No term of imprisonment shall be imposed on a second or subsequent felony offense when the defendant completes a treatment program to the satisfaction of the court. The judge shall be prohibited from amending a contingency agreement for disposition of the case after the disposition provision of the agreement has been agreed to by all parties to the contract. However, the judge may amend any provision relating to the treatment plan when the defendant is not benefiting from an assigned program.

B. Any record filed with the court clerk shall indicate the final disposition in the case diverted pursuant to this act and the disposition of the criminal case. Upon successful completion of a

diversion program the diversion case file shall be sealed. A record pertaining to an arrest resulting in successful completion of a diversion program shall not, without the defendant's consent, be used in any way which could result in the denial of any employment benefit.

C. Successful completion of a criminal diversion program shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license or privilege.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 477 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Department of Mental Health and Substance Abuse Services, the State Department of Health, the State Department of Education and the Department of Vocational and Technical Education are directed to jointly design, develop and implement community programs and services necessary to assist the district courts in implementing the provisions of this act. Such agencies shall develop a diagnostic evaluation for use by all district courts in the state and shall jointly promulgate rules necessary to implement agency requirements in this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 478 of Title 22, unless there is created a duplication in numbering, reads as follows:

The petition and waiver for a criminal diversion program pursuant to the provisions of this act shall be in a form as follows:

DISTRICT COURT
OF
_____ COUNTY, STATE OF OKLAHOMA

IN THE MATTER OF THE PETITION)
OF _____)

Case No. _____
CR Ref. No. _____

FOR ADMISSION TO CRIMINAL)
CASE DIVERSION)

Date of Hearing: _____
Time of Hearing: _____

PETITION

The undersigned, _____, petitions the court for admission to a diversion program.

In support of this Petition, the Petitioner has executed a document entitled Diversion Agreement and Waiver which lists the terms and conditions to which the Petitioner agrees if accepted by the court for participation in the program.

The Diversion Agreement and Waiver is attached hereto, marked Exhibit "A", and incorporated herein by reference.

Dated this _____ day of _____, 19____.

Signature of Petitioner

Public Defender

or

Attorney for the Petitioner

BY _____

DIVERSION AGREEMENT AND WAIVER

In support of a Petition for admission to the _____ County _____ diversion program to be filed with the district court, the below named Petitioner agrees to the terms, conditions and waivers listed below upon being accepted by the court for participation in the program:

Petitioner (name): _____

Last First Middle

Address: _____

Street Apt. No.

City State Zip

Phone: _____ D.O.B. _____

A. CRIMINAL CHARGES - PROCEEDINGS AND WAIVER

1. After my initial arrest, if a formal criminal charge is filed against me in district court, which charge falls within the eligibility criteria for a diversion program, I hereby agree to conditionally waive any right to a preliminary hearing on said charge and proceed upon the district attorney's information to be filed in the district court. I further understand that the prosecution of said charge will be held in abeyance by the court pending successful completion of my treatment program. I further understand that if I fail to complete the treatment program my case will be remanded back to district court for preliminary hearing and/or further criminal proceedings.

2. I understand and agree that if no criminal charge is filed against me in district court following my initial arrest that I will be so notified and that I will then have the option of either continuing in the diversion program on a voluntary basis or withdrawing from the program.

3. I understand and agree that the court has the discretion to terminate me from the diversion program if I am arrested and formally charged with a new crime while I am participating in the diversion program.

4. I understand I have a constitutional right to a speedy trial on any criminal charges filed against me and I knowingly and voluntarily waive my right to a speedy trial.

B. CRIMINAL CHARGES - DISMISSAL OR FINE

1. I further understand that if I successfully complete my treatment program as ordered by the court, that the court will either dismiss the criminal charges pending against me, or I will receive a conviction based on a negotiated plea agreement at the time I enter the diversion program for which the penalty will be a fine specified in writing in my contingency contract with the court.

2. I further understand that upon the dismissal of the criminal charge by the court that the district attorney may not prosecute said charge in the future.

C. TREATMENT PROGRAM

1. I agree to satisfactorily complete a diagnostic evaluation for my treatment program as ordered by the court and I hereby authorize the release of all treatment information by the provider to the court including any urinalysis test results with the understanding that such information shall not be utilized by the district attorney for any prosecution of criminal charges against me. I further understand and agree, however, that such information may be considered by the court in determining whether I should remain in the diversion program.

2. I agree to complete the treatment program to the satisfaction of the court.

3. I understand and agree that the treatment program is projected to be completed within a twelve-month period; however, I further understand and agree that the court may extend the treatment program for additional three-month periods not to exceed four extensions totaling twelve (12) months to allow me to successfully complete my requirements.

4. I understand and agree that any failure on my part of the treatment program as ordered by the court, such as missing treatment appointments, or any failure on my part to abide by the terms of this agreement or orders of the court, may result in a failure to comply hearing before the court which may result in a modification of my treatment program or termination from the program.

5. I agree to keep the treatment provider and the court advised of my current address at all times during the treatment program.

D. PAYMENT FOR THE DIVERSION PROGRAM

1. I understand and agree that the court will order me to pay a fee to the court for participation in the diversion program based on

an assessment of my ability to pay and that a payment schedule will be established by the court for payment of that fee.

2. I understand and agree that if I drop out of the treatment program that the fee set by the court is still due and owing and any funds previously paid by me are not refundable.

I have read the above statement of the rights that I will waive and the conditions by which I will abide and to which I am entitled if I am accepted into the diversion program. I understand what I have read and do hereby knowingly give up these rights and enter into said agreement with the court in support of my petition for admission to the _____ County diversion program.

Petitioner's Signature _____ Date _____

Public Defender _____ Date _____

or

Attorney for the Petitioner

SECTION 25. REPEALER 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 308, O.S.L. 1994 and 991a, as last amended by Section 1, Chapter 40, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), are hereby repealed.

SECTION 26. This act shall become effective July 1, 1995.

SECTION 27. 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 27th day of February, 1995.

President _____ of the Senate

Passed the House of Representatives the ____ day of
_____, 1995.

Speaker of the House of
Representatives