

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 1729

By: Paulk, Bonny, Bastin,
Steidley, Braddock,
Ferguson, Ingmire,
Liotta, Reese, Roach,
Smith (Hopper), Sullivan
(Leonard), Tyler, Worthen
and Easley of the House

and

Helton, Capps and Martin
of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to sex offenders; amending 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1), which relates to criminal history investigations for child care workers; adding criminal penalty for certain violations; amending 57 O.S. 1991, Sections 581, as amended by Section 1, Chapter 142, O.S.L. 1995, 582, as last amended by Section 2, Chapter 142, O.S.L. 1995, 583, 584, 585 and 587, as amended by Sections 3, 4, 5 and 7, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Sections 581, 582, 583, 584, 585 and 587), which relate to the Sex Offenders Registration Act; stating legislative findings; adding certain crimes to list for which conviction requires registration; stating exception; eliminating shortened registration period for persons completing treatment; requiring Department of Corrections to provide certain information to sex offenders; requiring sex offenders to provide blood sample under certain circumstances; establishing procedures regarding designation of predatory sex offenders; modifying availability of state and local sex offender registries; providing for promulgation of rules; requiring certain notification be made by law enforcement; listing information to be included in notifications; modifying penalty for failure to comply with act; amending 20 O.S. 1991, Section 1313.2, as last amended by Section 1 of Enrolled House Bill No. 1146 of the 1st Session of the 46th Oklahoma Legislature, which relates to penalties in addition to fines; adding certain crimes to list for which DNA fees are collected; amending 22 O.S. 1991, Section 991a, as last amended by Section 1 of Enrolled House Bill No. 2192 of the 1st Session of the 46th Oklahoma Legislature, which relates to sentencing powers of the court; modifying sentencing authority regarding certain offenders; expanding list of crimes for which convicted person must submit to DNA testing; amending Section 2, Chapter 40, O.S.L. 1994, as amended by Section 3, Chapter 153, O.S.L. 1996 (74 O.S. Supp. 1996, Section 150.27a),

which relates to the OSBI DNA Offender Database; authorizing testing of persons convicted of violation of certain federal laws or laws of other states; providing for requests for testing; requiring person tested to pay for test; specifying amount of payment; providing that certain persons shall not have a duty to provide notice regarding sex offenders; repealing 22 O.S. 1991, Section 991a, as last amended by Section 2 of Enrolled House Bill No. 1146 of the 1st Session of the 46th Oklahoma Legislature, which relates to sentencing powers of the court and which is a duplicate section; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1) is amended to read as follows:

Section 404.1 A. Every owner or administrator of a child care facility shall arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment and for any adult residing in a child care facility that is licensed or approved by a child-placing agency and located in a private residence. If the applicant for employment or resident has resided in Oklahoma for less than one (1) year, the criminal history investigation shall be obtained from the previous state of residence.

B. 1. Adults not required to obtain a criminal history investigation are:

- a. parent volunteers who transport children on an irregular basis, and
- b. a child of a foster, adoptive, group or family child care home who became an adult during continuous residence at the licensed facility.

2. These exemptions shall not preclude the Department from requesting a criminal history investigation or investigating criminal, abusive or harmful behavior, if warranted.

3. Prior to the acceptance of a foster family home for placement of any child in the custody of the Department of Human Services, the Department shall arrange for a criminal history

investigation, conducted by the Oklahoma State Bureau of Investigation, for a foster family applicant and for any adult residing in such foster family home. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall be done for any adult who moves into the residence at a later time.

4. The Department of Human Services shall promulgate rules to identify circumstances when a criminal history investigation of a foster family applicant and of any adult residing in such foster family home shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation.

C. A conviction for a crime shall not be an absolute bar to employment, except as provided in subsection ~~F~~ E of this section, but shall be considered in relation to specific employment duties and responsibilities.

D. 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner in a file that is separate from employment records. The information may be transmitted to the Department for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by the owner or administrator of a child care facility, the information received pursuant to a criminal history investigation shall not be made a part of that individual's personnel records. Such information, along with any other information relevant to the individual's ability to perform tasks that require direct contact with children, may be released to another child care facility in response to a request from an owner or administrator of a child care facility who is considering employing the individual.

3. Requirements for confidentiality and record keeping with regard to the information shall be the same for the owner or administrator receiving the information in response to a request as those provided for in paragraph 1 of this subsection for the owner or administrator releasing such information.

E. 1. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of

Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

2. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or allow continued employment of any person who is required to register pursuant to the Sex Offenders Registration Act. Any person required to register pursuant to the Sex Offenders Registration Act who violates any provision of this act shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment. Upon a determination of any violation of the provisions of this section, the violator shall be subject to an administrative fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 581, as amended by Section 1, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 581), is amended to read as follows:

Section 581. A. Sections 581 et seq. of this title shall be known and may be cited as the "Sex Offenders Registration Act".

B. The Legislature finds that sex offenders who commit other predatory acts against children and persons who prey on others as a result of mental illness pose a high risk of re-offending after release from custody. The Legislature further finds that the privacy interest of persons adjudicated guilty of these crimes is less important than the state's interest in public safety. The Legislature additionally finds that a system of registration will permit law enforcement officials to identify and alert the public when necessary for protecting the public safety.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 582, as last amended by Section 2, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 582), is amended to read as follows:

Section 582. The provisions of the Sex Offenders Registration Act, Sections 581 et seq. of this title, shall apply to any person who, after November 1, 1989, has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence for a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Sections 741, 865 et seq., 885, 888, 891, 1021, except for a crime provided for in paragraph 1 of subsection A of Section 1021, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state after November 1, 1989, and who has been convicted or received a suspended sentence for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall apply to any person who enters this state on or after September 1, 1993, and who has received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 741, 865 et seq., 885, 888, 891, 1021, except for a crime provided for in paragraph 1 of subsection A of Section 1021, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a maximum or medium correctional institution of the Department of Corrections.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 583, as amended by Section 3, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 583), is amended to read as follows:

Section 583. A. Any person who becomes subject to the provisions of the Sex Offenders Registration Act, Section 581 et seq. of this title, on or after November 1, 1989, shall register as follows:

1. With the Department of Corrections within ~~ten (10)~~ three (3) business days of being convicted or receiving a suspended sentence if the person is not incarcerated, or within ~~ten (10)~~ three (3) business days of release of the person from a correctional institution, except as provided in subsection B of this section; and

2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside for more than seven (7) days. The registration is required within ~~seven (7)~~ three (3) days after entering the jurisdiction of the law enforcement authority.

For purposes of this section, "local law enforcement authority" means the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state; or, the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state.

B. Any person who has been convicted of an offense on or after November 1, 1989, in another jurisdiction, which offense if committed or attempted in this state, would have been punishable as one or more of the offenses listed in Section 582 of this title and who enters and remains in this state shall register as follows:

1. With the Department of Corrections when the person enters and intends to be in the state for thirty (30) days or longer. Such registration is required within ~~thirty (30)~~ ten (10) days after entering the state; and

2. With the local law enforcement authority having jurisdiction in the area where the person intends to reside or to stay for more than seven (7) days. The registration is required with local law enforcement within ~~seven (7)~~ three (3) days after entering the jurisdiction of the law enforcement authority.

C. The registration with the Department of Corrections required by this section shall be maintained by the Department of Corrections for a period of ten (10) years from the date of registration; ~~however, persons who successfully complete the sex offender treatment program provided by the Department of Corrections, shall only be required to register with the Department for two (2) years after date of discharge. Repeat offenders after discharge shall be required to register for the full ten-year period.~~

D. The registration with the local law enforcement authority required by this section shall be maintained by such authority for five (5) years.

E. When registering an offender as provided in this section the Department of Corrections or the local law enforcement agency having jurisdiction shall:

1. Inform the offender of the duty to register and obtain the information required for registration as described in this section;

2. Inform the offender that if the offender changes address, the offender shall give the new address to the Department of Corrections in writing no later than three (3) days before the offender establishes residence or is temporarily domiciled at the new address;

3. Inform the offender that if the offender changes address to another state, the offender shall register the new address with the Department of Corrections and with a designated law enforcement agency in the new state not later than ten (10) days before the offender establishes residency or is temporarily domiciled in the new state, if the new state has a registration requirement; and

4. Require the offender to read and sign a form stating that the duty of the person to register under this act has been explained.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 584, as amended by Section 4, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 584), is amended to read as follows:

Section 584. A. The registration with the Department of Corrections required by the Sex Offenders Registration Act, Section 581 et seq. of this title, shall be in a form approved by the Department of Corrections and shall include the following information about the person registering:

1. The person's name and all aliases used or under which the person has been known;

2. A complete description of the person, including a photograph and fingerprints, and when requested by the Department of Corrections, such registrant shall submit to a blood test for purposes of a deoxyribonucleic acid (DNA) profile. Submission to testing for individuals registering shall be within thirty (30) days of registration. All individuals registered pursuant to the Sex Offenders Registration Act on July 1, 1997, shall provide a blood sample by October 1, 1997. Registrants who already have valid samples on file in the Oklahoma State Bureau of Investigation (OSBI) DNA Offender Database shall not be required to submit duplicate samples for testing;

3. The offenses listed in Section 582 of this title of which the person has been convicted or for which the person received a suspended sentence, where the offense was committed, where the person was convicted or received the suspended sentence, and the name under which the person was convicted or received the suspended sentence;

4. The name and location of each hospital or penal institution to which the person was committed for each offense listed in Section 582 of this title; and

5. Where the person resides, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the county and in the State of Oklahoma. The Department of Corrections shall conduct address verification of the sex offender on an annual basis by mailing a nonforwardable verification form to the last reported address of the person. The person shall return the verification form in person to the local law enforcement agency of that jurisdiction within ten (10) days after receipt of the form. The local law

enforcement agency shall forward the form to the Oklahoma Department of Corrections within three (3) days after receipt of the form. The verification form shall be signed by the person and state the current address of the person. Failure to return the verification form shall be a violation of this act. If the offender has been determined to be a predatory sex offender by the Department of Corrections, the address verification shall be conducted every ninety (90) days.

B. Conviction data and fingerprints shall be transmitted at the time of registration to the Oklahoma State Bureau of Investigation (OSBI) and the Federal Bureau of Investigation (FBI) if the state has not previously sent the information at the time of conviction.

C. The registration with the local law enforcement authority required by this act shall be in a form approved by the local law enforcement authority and shall include the following information about the person registering:

1. The person's full name, alias, date of birth, sex, race, height, weight, eye color, social security number, driver license number, and home address; and

2. A description of the offense for which the offender was convicted, the date of the conviction, and the sentence imposed, if applicable.

For purposes of this section, "local law enforcement authority" means the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state; or, the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state.

~~C.~~ D. Any person subject to the provisions of the Sex Offenders Registration Act who changes an address shall give written notification of the new address to the Department of Corrections within ten (10) business days after the change of address and the local law enforcement authority within three (3) business days after the change of address.

~~D.~~ E. The Department of Corrections shall maintain a file of all sex offender registrations. ~~The~~ A copy of the information contained in the registration shall be available to state, county and municipal law enforcement agencies. Said file shall ~~not~~ be made available for public inspection ~~and no person other than a law enforcement officer employed by a state, county or municipal law enforcement agency shall have access to said file~~ pursuant to rules promulgated by the Department of Corrections. The Department of Corrections shall provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living in their ~~respective jurisdictions~~ county.

~~E.~~ F. Each local law enforcement agency shall make its sex offender registry available as follows:

1. To all public and private elementary schools within the jurisdiction;

2. To all child care facilities licensed by the state within the jurisdiction;

3. To any parent using a child care provider;

4. To any state agency that licenses individuals to work with children;

~~4.~~ 5. To the State Office of Personnel Management to screen persons who may work with children; and

~~5.~~ 6. To other entities that provide services to children and request the registry, including churches.

~~The sex offender registry available to entities in paragraphs 2 and 5 of this subsection shall not contain the home address of any offender whose name appears on the registry.~~ When a law enforcement agency sends a copy of or otherwise makes the sex offender registry available to any entity ~~pursuant to this subsection~~ listed in paragraph 1 or 2 of this subsection, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense ~~against a child.~~ Continuing to employ a person whose name appears on this registry may result in civil liability for the employer."

G. Samples of blood for DNA testing required by subsection A of this section shall be taken by employees or contractors of the Department of Corrections. Said individuals shall be properly trained to collect blood samples. Persons collecting blood for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. The Department of Corrections shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation (OSBI) within ten (10) days of the time the subject appears for testing. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing pursuant to this section shall be required to pay to the Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant to this subsection shall be deposited in the Department of Corrections revolving account.

H. 1. Any person who prior to November 1, 1997 was subject to registration pursuant to this act and:

a. who subsequent to November 1, 1997 was convicted of a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as these terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Sections 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes, or

b. who enters this state after November 1, 1997, and who has been convicted of a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in subparagraph a of this paragraph,

shall, in addition to being subject to all of the registration requirements of this act, be designated by the Department of Corrections as a predatory sex offender. Designation as a predatory sex offender shall be for a period of not less than ten (10) years.

2. Upon registration of any person designated as a predatory sex offender, a local law enforcement authority shall notify, by any method of communication it deems appropriate, anyone that the local law enforcement authority determines appropriate, including, but not limited to:

- a. the family of the predatory sex offender,
- b. any prior victim of the predatory sex offender, and
- c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places that children or other potential victims may frequent.

3. The notification may include, but is not limited to, the following information:

- a. the name and physical address of the predatory sex offender,
- b. a physical description of the predatory sex offender, including, but not limited to, age, height, weight and eye and hair color,
- c. a description of the vehicle that the predatory sex offender is known to drive,
- d. any conditions or restrictions upon the probation, parole or conditional release of the predatory sex offender,
- e. a description of the primary and secondary targets of the predatory sex offender,
- f. a description of the method of offense of the predatory sex offender,
- g. a current photograph of the predatory sex offender, and
- h. the name and telephone number of the probation or parole officer of the predatory sex offender.

4. The local law enforcement authority shall make the notification provided for in this section regarding a predatory sex offender available to any person upon request.

I. Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under this act.

1. Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information in accordance with this act.

2. Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in this act.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 585, as amended by Section 5, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 585), is amended to read as follows:

Section 585. A. Each person in charge of a correctional institution from which a person subject to the provisions of the Sex Offenders Registration Act, Section 581 et seq. of this title, is released and each judge who suspends the sentence of a person subject to the provisions of the Sex Offenders Registration Act shall prior to discharge or release of said person:

1. Explain to the person the duty to register pursuant to the Sex Offenders Registration Act;

2. Require the person to sign a written statement that the duty to register has been explained and the person understands the duty to register;

3. Obtain the address at which the person is to reside upon discharge or release; and

4. Forward said information to the Department of Corrections.

B. The Department of Public Safety shall issue written notification of the registration requirements of the Sex Offenders Registration Act to any person who enters this state from another jurisdiction and makes an initial application for an operator's or chauffeur's license to operate a motor vehicle in this state.

C. The Department of Corrections shall coordinate with the Administrative Office of the Courts in promulgating rules to establish other necessary procedures for notifying offenders of

the obligation to register pursuant to this act and procedures for registration of those offenders.

SECTION 7. AMENDATORY 57 O.S. 1991, Section 587, as amended by Section 7, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 587), is amended to read as follows:

Section 587. Any person required to register pursuant to the provisions of the Sex Offenders Registration Act, Sections 581 et seq. of this title, who violates any provision of said act shall, upon conviction, be guilty of a ~~misdemeanor~~ felony punishable by incarceration in ~~the county jail~~ a correctional facility for not more than ~~one (1) year~~ five (5) years, a fine not to exceed ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 8. AMENDATORY 20 O.S. 1991, Section 1313.2, as last amended by Section 1 of Enrolled House Bill No. 1146 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1313.2 A. As used in this section:

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

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

3. "DNA" means Deoxyribonucleic acid.

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

penalty assessment; provided that a defendant admitted to bail on an undertaking by a surety may include the amount of the penalty assessment in the undertaking.

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

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

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

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

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

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

1. Providing criminalistic laboratory services;
2. The purchase and maintenance of equipment for use by the laboratory in performing analysis;
3. Education, training, and scientific development of Oklahoma State Bureau of Investigation personnel; and

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

D. Upon conviction or bond forfeiture, the court shall collect the penalty assessment provided for in subsection B of this section and deposit it in an account created for that purpose. As an administrative fee for handling funds collected as a penalty assessment, each court is authorized to retain two percent (2%) of such monies and may also retain all interest accrued thereon prior to the due date for deposits as provided in this subsection. Except as otherwise provided in subsection E of this section, for the fiscal year ending June 30, 1987, the remainder of such monies shall be forwarded quarterly by the court clerk to the State Treasury. Deposits shall be due July 15 for the preceding quarter ending June 30, October 15 for the preceding quarter ending September 30, January 15 for the preceding quarter ending December 31, and April 15 for the preceding quarter ending March 31. There shall be a penalty imposed for failure to make timely deposits. Such penalty shall be one percent (1%) of the principal amount due per day beginning from the tenth day after payment is due and accumulating until the penalty reaches one hundred percent (100%) of the principal amount due. The State Treasurer shall deposit seventy percent (70%) of the monies received in the C.L.E.E.T. Fund, and thirty percent (30%) of the monies received in the General Revenue Fund. Beginning on July 1, 1987, ninety percent (90%) of the monies received by the State Treasurer from the court clerks pursuant to this section shall be deposited in the C.L.E.E.T. Fund and ten percent (10%) shall be deposited in the General Revenue Fund. Along with the deposits required by this subsection each court also shall submit a report stating the total amount of funds collected and the total number of penalty assessments imposed during the preceding quarter. Such report may be made on computerized or manual disposition reports.

E. Any municipality or county having a basic law enforcement academy approved by the Council on Law Enforcement Education and Training pursuant to the criteria developed by the Council for Req. No. 7694Page 16

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

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

G. Any person convicted of violating Section 7115 of Title 10 of the Oklahoma Statutes or Section 645, 650, 650.2, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888, 1114, subsection B of Section 1021, 1021.2, 1021.3, 1087, 1088, 1123, 1173, or 1192.1 of Title 21 of the Oklahoma Statutes shall pay a DNA fee of One Hundred Fifty Dollars (\$150.00). Such fee shall not be collected if the person has a valid DNA sample in the OSBI DNA Offender Database at the time of sentencing.

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

150.19a of Title 74 of the Oklahoma Statutes for services rendered or administered by the Oklahoma State Bureau of Investigation.

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

SECTION 9. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 1 of Enrolled House Bill No. 2192 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

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

- a. to provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty,
- b. to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum,

- c. to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,
- d. to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss,
- e. to confinement in the county jail for a period not to exceed six (6) months,
- f. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced, or
- g. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established

by Section 150.18 of Title 74 of the Oklahoma Statutes.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence;

2. Impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section, Section 991a-4 of this title or Section 227 of Title 57 of the Oklahoma Statutes;

3. Commit such person for confinement provided for by law with or without restitution as provided for in this section;

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

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

- a. to participate in an alcohol and drug substance abuse course or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars (\$5.00) nor more than Fifteen Dollars (\$15.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant,

if in the opinion of the court the defendant has the ability to pay such fee,

- c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,
- d. to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the license. Said restriction shall remain on the driver's license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of said order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or
- e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections

Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

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

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

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

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

9. In addition to the other sentencing powers of the court, the court, in the case of a person convicted of child abuse or neglect, as defined in Section 7102 of Title 10 of the Oklahoma

Req. No. 7694Page 22

Statutes, may require the person to undergo treatment or to participate in counseling services. The defendant may be required to pay all or part of the cost of the treatment or counseling services.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written

evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review.

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

As used in this subsection, "qualified practitioner" means a person with at least a bachelor's degree in substance abuse treatment, mental health or a related health care field and at least two (2) years' experience in providing alcohol treatment, other drug abuse treatment, or both alcohol and other drug abuse treatment who is certified each year by the Department of Mental Health and Substance Abuse Services to provide these assessments. However, any person who does not meet the requirements for a qualified practitioner as defined herein, but who has been previously certified by the Department of Mental Health and Substance Abuse Services to provide alcohol or drug treatment or assessments, shall be considered a qualified practitioner provided all education, experience and certification requirements stated herein are met within two (2) years from the effective date of this act.

C. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may

sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 5 of subsection A of this section.

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

E. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years, except as otherwise provided by law. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years. Provided further any supervision provided for in this section may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

F. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

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

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

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

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

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

H. As used in this section:

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

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

I. A person convicted of an offense as provided in Section 7115 of Title 10 of the Oklahoma Statutes or Section 645, 650, 650.2, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888 ~~or~~, 1114, subsection B of Section 1021, ~~or Section~~ 1021.2, 1021.3, 1087, 1088, 1123, 1173 or 1192.1 of Title 21 of the Oklahoma Statutes or a person convicted of any felony who has a prior conviction for an offense listed in this subsection shall submit to deoxyribonucleic acid testing for law enforcement identification purposes in accordance with ~~Section 2 of this act~~ 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 those defendants who do not become subject to the custody of the Department of Corrections, and submission to testing shall be done in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who enter the custody of the Department of Corrections as a result of sentencing. Convicted individuals who have previously submitted to DNA testing under this section and for whom a valid sample is on file in the OSBI DNA Offender Database at the time of their sentencing shall not be required to submit to additional testing.

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

J. Samples of blood for DNA testing required by subsection I of this section shall be taken by employees or contractors of the Department of Corrections. Said individuals shall be properly trained to collect blood samples. Persons collecting blood for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. The Department of Corrections shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation within ten (10) days of

Req. No. 7694Page 27

the time the subject appears for testing or within ten (10) days of the date the subject comes into the custody of the Department of Corrections. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing who are not received at the Lexington Assessment and Reception Center shall be required to pay to the Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections revolving account.

SECTION 10. AMENDATORY Section 2, Chapter 40, O.S.L. 1994, as amended by Section 3, Chapter 153, O.S.L. 1996 (74 O.S. Supp. 1996, Section 150.27a), is amended to read as follows:

Section 150.27a A. There is hereby established within the Oklahoma State Bureau of Investigation the OSBI DNA Offender Database for the purpose of collecting and storing blood samples, analyzing and typing of the genetic markers contained in or derived from DNA, and maintaining the records and samples of DNA of individuals convicted of violation of Section 7115 of Title 10 of the Oklahoma Statutes or Section 645, 650, 650.2, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888 or 1114, subsection B of Section 1021, or Section 1021.2, 1021.3, 1087, 1088, 1123, 1173 or 1192.1 of Title 21 of the Oklahoma Statutes and of individuals required to register pursuant to the Sex Offenders Registration Act. The purpose of this database is the detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes in which biological evidence is recovered, and such information shall be used for no other purpose.

B. Upon the request to OSBI by the federal or state authority having custody of the person, any individual who was convicted of violating laws of another state or the federal government, but is currently incarcerated or residing in Oklahoma, shall submit to DNA profiling for entry of the data into the OSBI DNA Offender Database. This provision shall only apply when such federal or state conviction carries a requirement of sex offender registration and/or DNA profiling. The person to be profiled

shall pay a fee of One Hundred Fifty Dollars (\$150.00) to the OSBI.

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

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

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 858-514 of Title 59, unless there is created a duplication in numbering, reads as follows:

The provisions of the Sex Offenders Registration Act, Section 581 et seq. of Title 57 of the Oklahoma Statutes, shall not be construed as imposing a duty upon a person licensed under the Oklahoma Real Estate License Code to disclose any information regarding an offender required to register under such provision.

SECTION 12. REPEALER 22 O.S. 1991, Section 991a, as last amended by Section 2 of Enrolled House Bill No. 1146 of the 1st Session of the 46th Oklahoma Legislature, is hereby repealed.

SECTION 13. This act shall become effective November 1, 1997.

46-1-7694 LAC