

ENGROSSED SENATE
BILL NO. 721

By: Rozell of the Senate

and

Steidley of the House

[criminal justice - Oklahoma Community Correctional Act -
codification -
effective date -
emergency]

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

SECTION 1. 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 2. 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. There is hereby authorized to be established in each county or group of counties in this state a community corrections system established pursuant to the provisions of the Oklahoma Community Corrections Act for offenders charged with or convicted of eligible criminal offenses. Each county desiring to participate in a community corrections system pursuant to the provisions of the Oklahoma Community Corrections Act shall notify the Department of Corrections of its intent to participate and shall thereafter create

an advisory council to coordinate the system and administer the correctional resources within its jurisdiction when the system is established. The notification of intent to participate shall be made by delivering a letter from either a sheriff, district attorney, judge, or a county commissioner to the Director of the Department of Corrections stating that the county intends to begin the process of forming the required advisory council. Once an advisory council is established, it shall notify the Department of its members and shall then be eligible for technical assistance. The advisory council may enter into interlocal governmental agreements with one or more adjoining counties to provide services pursuant to the provisions of the Oklahoma Community Corrections Act, and counties may establish multicounty advisory councils to coordinate a multicounty system.

B. An advisory council for a single county shall consist of nine (9) members as follows:

1. A district attorney of the jurisdiction whose term shall be concurrent with the office;

2. A county commissioner of the county wherein the local community corrections system is to be initially established to be appointed by the board of county commissioners of that county who shall serve an initial term of one (1) year;

3. A county sheriff whose term shall be concurrent with the office;

4. A judge of the jurisdiction appointed by the district judge who shall serve an initial term of three (3) years and who shall be a nonvoting member;

5. A criminal defense attorney who shall be appointed by the district judge who shall serve an initial term of two (2) years; and

6. Four local citizens: one citizen, who shall be appointed by the sheriff, shall serve an initial term of one (1) year; one citizen, who shall be appointed by the county commissioner, shall

serve an initial term of two (2) years; one citizen, who shall be appointed by the district judge, shall serve an initial term of three (3) years; and one citizen, who shall be appointed by a majority vote of the other eight members, shall serve an initial term of two (2) years.

C. Each citizen appointed to an advisory council shall, to the extent possible, be selected from one of the categories listed below and shall reside or have employment duties in the jurisdiction:

1. An administrator of a victim services program or victim's advocate;
2. A representative of the Department of Mental Health and Substance Abuse Services;
3. A representative of the State Department of Education;
4. A representative of the Oklahoma Department of Vocational and Technical Education;
5. A representative of the State Department of Health;
6. A representative of the Oklahoma Employment Security Commission;
7. A business owner or member of the local chamber of commerce;
8. A medical doctor, social worker or psychologist;
9. A probation officer, Department of Corrections employee or local corrections employee;
10. An administrator of a community corrections program;
11. A person who is recovering from chemical dependency and considered to be rehabilitated and a productive citizen;
12. A community religious leader; or
13. A local citizen.

D. An advisory council may also select other members who shall serve as consultants but shall have no voting privileges.

Multicounty advisory councils may be composed of any number of voting members and shall have of those voting members at least one

sheriff, one district attorney, one judge, one county commissioner, and one citizen from each participating county.

E. Following the initial term of office, members with terms not designated to run concurrent with an elected position shall serve terms of three (3) years. Members may be reappointed without limitation. Each appointing authority shall have the right to remove and replace 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. No vacancy shall impair the right of the remaining voting members to exercise all the powers of the advisory council. 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 advisory council within thirty (30) days of the first citizen appointment.

F. At its initial meeting, each advisory council shall elect a chair from its voting members who shall preside at all meetings of the council and perform such other duties as may be required. The advisory council 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 advisory council shall also elect a secretary who shall keep minutes of all meetings and who shall certify the actions of the council, and a treasurer who shall monitor and keep records of all financial transactions. Other officers may be elected from the membership as necessary.

G. An advisory council shall adopt written rules concerning meeting times, places, dates, conduct for disclosing and handling conflicts of interest, removal of member for failure to attend a certain number of meetings, financial reports, recordkeeping, and any other provision necessary to implement the provisions of the Oklahoma Community Corrections Act. The written rules promulgated

by the local advisory council shall not be subject to the Administrative Procedures Act but shall be filed with the clerk of the district court or courts of the jurisdiction to be served by the community corrections system. The rules may be amended at any time, provided a thirty-day written notice detailing the change or addition is filed with the court clerk where the original rules are filed before the provision may be considered for vote by the council. Each advisory council shall be subject to the provisions of the Oklahoma Open Meeting Act and the Oklahoma Open Records Act.

SECTION 3. 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. An advisory council established pursuant to the provisions of Section 2 of this act shall administer and coordinate the jurisdiction's community corrections system and resources subject to the provisions of the Oklahoma Community Corrections Act and the rules promulgated by the Department of Corrections for the Oklahoma Community Corrections Act. An advisory council shall have the following powers and duties within its jurisdiction:

1. The authority to promulgate rules, procedures and forms necessary to implement the provisions of the Oklahoma Community Corrections Act;

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

3. The duty to operate the local community corrections system within the approved budget and plan;

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

5. The duty to determine methods of calculating resource allocation to meet the needs of the system;

6. The authority to contract for goods and services necessary for the administration and implementation of the system;

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

8. The authority to form multicounty community corrections systems as may be necessary to conserve resources or implement appropriate programs or services within the jurisdiction;

9. The duty to expend and budget money and assets of the local community corrections system in a prudent and fiscally responsible manner;

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

11. The duty to review, audit and evaluate the local services and programs offered to the court;

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

13. The authority to rent, lease or purchase personal property and equipment necessary for providing services and administration of the local corrections system;

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

15. The duty to identify and specify services and programs for the local jurisdiction and to modify or delete those services and programs where the needs of the local corrections system are not being met;

16. The authority and duty to develop performance-based criteria for evaluation of the local programs and services in the community corrections system, including the impact of specific programs and services on offender recidivism, rehabilitation, community and state resource allocation, and community involvement;

17. 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;

18. The duty to provide appropriate community corrections programs or services to be available to the judge at sentencing;

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

20. 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 appropriateness of programs for certain offenders; and any other information encouraging local responsibility for resources and offender accountability within the local community corrections system; and

21. The authority to contract with public agencies or private nonprofit organizations or for-profit organizations to administer programs within the local community corrections system. The advisory council shall establish criteria and specifications for any contracts entered pursuant to this provision.

B. An advisory council shall hire a director for the local community corrections system. The director shall hire other staff as necessary to provide support to the advisory council and administer the local system. All staff shall be deemed unclassified state employees, except county employees may retain their employment position and status with the approval of the board of county commissioners when the county transfers an existing community service program to a local community corrections system pursuant to the provisions of this act or otherwise agrees to fund any personnel for the local system. Community corrections staff shall ensure that restitution, reimbursements, fines, costs and other payments are forwarded to the designated person or entity, and that court orders

are properly performed by the offender and service providers. The community corrections staff shall have such other duties and responsibilities as may be delegated or assigned by the advisory council to administer the local community corrections system. Employees of selected programs which are under contract with the local community corrections system shall not be deemed employees of the community corrections system or the state.

SECTION 4. 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 local community corrections system established pursuant to the provisions of the Oklahoma Community Corrections Act shall submit a complete system plan for the jurisdiction to the Department of Corrections annually, which may 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, average length of sentence served in county jail, number of offenders sentenced to the custody of the Department of Corrections, average length of sentence served in the custody of the Department of Corrections;

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 available in the community, including costs, space availability, the number of offenders participating, the average length of participation and performance-based data;

4. Range of punishment sanctions available for offenders within the jurisdiction, including disciplinary sanctions for noncriminal 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 local community corrections system plan with a supporting budget, including:

- a. identification of existing resources, including cash, professional services, in-kind resources, property, or other sources of resources,
- b. additional resources needed, identified by type and amount,
- c. projected number of offenders to be served in each sanction option and projected total of offenders to be served by the system,
- d. types and priority groups 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 programs and services included in the plan,
- h. methods for reciprocal program services,
- i. performance-based program evaluation methods and criteria,
- j. recordkeeping and provisions for audits or reviews,
- k. administrative structure of the system and list of specific service providers participating in the

system, including detailed qualifications of staff and program administrators, and

1. extent of community participation.

B. A plan may be modified or expanded within the plan year by submitting the written modification for approval to the Department of Corrections. When a community corrections system plan is approved by the Department, the community corrections system in that jurisdiction shall be an approved corrections system within the state. Failure of the Department of Corrections to disapprove a plan or recommend modification to the plan within ninety (90) days after the plan has been submitted for approval or disapproval shall constitute an approval of the local community corrections system plan.

SECTION 5. 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. An advisory council established pursuant to the provisions of Section 2 of this act may apply for state assistance funding at the time the local community corrections system plan is submitted for approval as required in Section 4 of this act, or at any time when the advisory council requires modification or expansion to programs or services, or for emergency assistance. Each county shall be required to have local resources, or have commitments for allocations of local resources in support of the annual plan for the local community corrections system. To remain eligible for continued state funding, a community corrections system must ensure performance-based evaluations of all programs and services within two (2) years of their implementation and every two (2) years thereafter, demonstrate substantial compliance with delivery of an adequate range of services to the priority offender groups as set forth in Section 6 of this act, and comply with the rules promulgated by the Department of Corrections. Once local resources

have been committed to an approved community corrections system pursuant to the provisions of the Oklahoma Community Corrections Act, a county's commitment to allocate 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 system plans and budgets together with any applications submitted for state assistance funding. The Department is directed to automatically approve all plans complying with the laws and rules when the plan requires no state funding.

C. When state funding is required to implement a local community corrections system, the Department shall approve the plan only to the extent that the jurisdiction's proportionate share of the state funding will support the implementation of the system. All state assistance funding shall be subject to appropriations by the Legislature. The Department shall disburse funds to the participating advisory councils of approved community corrections systems requesting funding in the priority manner as follows:

1. To all participating systems to provide base funding for minimal operation and hiring of a director;

2. To all participating systems operating effective performance-based or innovative programs for priority offenders in paragraphs 1, 2 and 3 of Section 6 of this act. For purposes of this paragraph, all programs shall have two (2) years from their implementation date to demonstrate performance-based effectiveness;

3. To all systems able to demonstrate cost-effectiveness in budgeting and allocation of state funds in relation to the numbers of offenders served;

4. To systems with innovative programs serving priority offender groups or for innovative prevention programs;

5. To systems for emergency assistance or where it can be demonstrated that the jurisdiction needs special assistance; and

6. To provide temporary services when an approved system has been withdrawn or for program expansion during a plan year.

D. State assistance funds may be distributed quarterly or in the manner determined most efficient as provided by the rules promulgated for the Oklahoma Community Corrections Act. State funds disbursed for approved community corrections systems shall not be used to construct, renovate, remodel, expand or improve any jail, residential treatment facility, restrictive housing facility, or any other structure. State funding disbursed for approved community corrections systems shall not be used to supplant or replace existing funding or other resources from the federal, state, county or city government for any existing community-based programs or services. State funds for approved community corrections systems shall not be disbursed to any jurisdiction where there is a lack of demonstrated innovation or performance-based effectiveness of the system. Any state funds not budgeted or disbursed by the Department in any funding period may be subsequently budgeted and disbursed to approved community corrections systems as necessary. Funds accruing for the benefit of approved community corrections systems shall not be expended for any other purpose.

E. An approved community corrections system receiving funding pursuant to the provisions of this section may terminate its participation after sixty (60) days from the delivery of a notice of termination from the local advisory council signed by a majority of the voting members to the Director of the Department of Corrections. Such notice of termination may be delivered at the beginning of any calendar quarter. Upon a notice of intent to withdraw an approved community corrections system, the advisory council shall adopt a resolution stating that it is in the best interests of the jurisdiction that the current advisory council be dissolved and the reason for the dissolution. Another advisory council may be formed as provided by the rules promulgated by the Department of

Corrections, or the board of county commissioners shall pay and discharge any debts and liabilities of the withdrawn community corrections system, collect and distribute assets, and pay over any remaining proceeds or property to the Department of Corrections for deposit in the Oklahoma Community Corrections Revolving Fund created by Section 17 of this act. Upon dissolution of an approved community corrections system, the Department may temporarily continue the contracts with any appropriate providers in the jurisdiction for services to persons serving sentences or participating in court-ordered services, or the Department may notify the court of the need to resentence the offenders as may be necessary to punish the offenders according to law and to protect the public. The cost of temporary contracting for services shall be paid from the Oklahoma Community Corrections Revolving Fund. The jurisdiction withdrawing an approved community corrections system shall not be deemed to have an approved community corrections system pursuant to the provisions of this act until such time as a new system is formed and is in compliance with the provisions of the Oklahoma Community Corrections Act.

SECTION 6. 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 local community corrections system established pursuant to the provisions of the Oklahoma Community Corrections Act and its programs and services shall target offender groups and prioritize spending for services as follows:

1. Defendants with an eligible second or subsequent felony conviction sentenced to an alternative to incarceration as authorized in Section 21 of this act;

2. Defendants with an eligible second or subsequent felony conviction sentenced to a suspended sentence with supervision and

conditions, a term of imprisonment in the county jail or a delayed sentence as authorized by Section 23 of this act;

3. Persons released on conditions of parole or otherwise assigned to the community from a correctional facility to serve the remainder of a sentence for a felony offense;

4. Defendants with an eligible felony conviction sentenced to a suspended sentence with one or more conditional requirements or requiring supervision as authorized by Section 23 of this act;

5. Defendants with an eligible felony offense sentenced to a deferred judgment pursuant to Section 991c of Title 22 of the Oklahoma Statutes;

6. Defendants with an eligible felony offense on a deferred prosecution agreement pursuant to Section 305.1 of Title 22 of the Oklahoma Statutes;

7. Defendants convicted of two or more misdemeanor offenses;
and

8. Persons arrested for or convicted of a misdemeanor offense.

SECTION 7. 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 following types of offenses shall not be eligible for any consideration pursuant to any community corrections system authorized by the Oklahoma Community Corrections Act, Section 21 of this act or pursuant to Sections 991a-2 or 991a-4 of Title 22 of the Oklahoma Statutes:

1. Any assault and battery with a dangerous weapon;
2. Any aggravated assault and battery;
3. Poisoning with intent to kill;
4. Shooting with intent to kill;
5. Assault with intent to kill;
6. Drive-by shootings;
7. Assault with intent to commit a felony;

8. Murder in the first degree;
9. Murder in the second degree;
10. Manslaughter in the first degree;
11. Manslaughter in the second degree;
12. Kidnapping;
13. Kidnapping for extortion;
14. Maiming;
15. Robbery;
16. Child beating;
17. Wiring any equipment, vehicle or structure with explosives;
18. Sodomy;
19. Forcible sodomy;
20. Rape in the first degree;
21. Rape in the second degree;
22. Rape by instrumentation;
23. Any lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age;
24. Use of a firearm or offensive weapon to commit or attempt to commit a felony;
25. Any felony offense relating to use of a firearm;
26. Rioting;
27. Arson in the first degree;
28. Arson in the second degree; and
29. Any offense pursuant to the provisions of the Trafficking In Illegal Drugs Act.

B. When the person has any prior conviction for a prohibited offense the court shall take into consideration at the time of sentencing whether or not there is a substantial risk to public safety, and the court may refuse a community corrections consideration.

SECTION 8. 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. Local community corrections systems, established and approved pursuant to the Oklahoma Community Corrections Act, are limited in the number of offenders which each may serve and the duration of services which may be delivered based upon program design, funding, and availability of services within the jurisdiction. Once the state and local resources are exhausted or a program or service has reached capacity, no person, whether or not statutorily eligible, may be sentenced to the system, program or service. Nothing in the Oklahoma Community Corrections Act confers any rights upon any defendant to avoid any term of imprisonment or to receive any services established pursuant to the provisions of the Oklahoma Community Corrections Act. The State of Oklahoma shall not be obligated to fund any community corrections system beyond the budget approved pursuant to Section 4 of this act and may refuse to award state funds for any plan submitted for any system which does not:

1. Demonstrate performance-based effectiveness after two (2) years of the implementation of a program;
2. Budget and expend state funds efficiently; and
3. Target offender populations for services and priority funding.

B. Community corrections services are a privilege, and the local advisory council, judges, prosecutors, defense attorneys, and citizens shall carefully monitor and allocate available resources to best meet the safety needs of the local community while providing appropriate punishments and treatment for eligible offenders within budgeted amounts.

C. Any person sentenced to a community corrections punishment as an alternative to incarceration as authorized by Section 21 of

this act, or as provided in Section 991a-2 of Title 22 of the Oklahoma Statutes, shall not be deemed to be an inmate, nor shall the person be considered to be in the custody of the Department of Corrections, nor shall the person require processing through the Lexington Reception and Assessment Center. Except as provided in Section 991a-2 of Title 22 of the Oklahoma Statutes, the Department of Corrections shall not automatically reimburse any medical expenses for persons participating in any community corrections system or confined in any restrictive facility as part of a community corrections punishment. A local system must budget annually for minor medical expenses and may petition the Department for emergency medical assistance in excess of budgeted amounts for persons not incarcerated pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes. The Department shall provide emergency medical assistance and may consider other medical requests on a case-by-case basis. Any felony offender requiring extensive medical treatment or services relating to confinement may be transferred to the Department for appropriate treatment upon order of the court.

SECTION 9. 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. Community corrections systems, established pursuant to the Oklahoma Community Corrections Act, shall include those services and punishment sanctions established, included, and funded pursuant to the annual plan submitted and approved by the Department of Corrections pursuant to Sections 4 and 5 of this act and any services subsequently added and approved by the Department during a plan year. Each community corrections system shall be required to provide an appropriate range of punishment sanctions and treatment services to the court for offenders sentenced to the local community corrections system as an alternative to incarceration as authorized by Section 21 of this act, and shall provide as many services to the

court as possible to assist offenders in meeting any other requirements of a sentence.

B. The following intermediate sanctions may be available to the court through an approved community corrections system:

1. Restitution to the victim according to a schedule of payments established by the sentencing court, with or without interest which shall not exceed the rate of twelve percent (12%) per annum;

2. 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 the defendant is convicted, with or without interest accruing thereon at the rate of twelve percent (12%) per annum;

3. A term of community work or service without compensation, with a specified date for completion and according to a schedule consistent with the employment and family responsibilities of the person convicted;

4. 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, which provides restitution payments by convicted defendants to victims of crimes committed within this state wherein such victim has incurred a financial loss;

5. Payment of a reasonable sum to the Crime Victims Compensation Board, Section 142.2 et seq. of Title 21 of the Oklahoma Statutes for the benefit of crime victims;

6. Confinement in the county jail for a period not to exceed one (1) year as authorized in Section 991a-2 of Title 22 of the Oklahoma Statutes;

7. Reimbursement to the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which the person is being sentenced;

8. Repayment of the reward or part of the reward paid by a certified local crime stoppers program, the State Crime Stoppers Program, or the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider 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 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 Title 22 of the Oklahoma Statutes. The "Oklahoma Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes;

9. Reimbursement to the Oklahoma State Bureau of Investigation for costs incurred by that agency during its investigation of the crime for which the defendant pleads guilty, nolo contendere or is convicted, including compensation for laboratory, technical, or investigative services performed by the Bureau if the costs incurred by the Bureau during the investigation of the defendant's case may be determined with reasonable certainty;

10. Payment of court costs incurred in the case for which the defendant is convicted;

11. 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;

12. Placement in a victims impact panel program or victim/offender reconciliation program and payment of a fee to the program of not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program to offset the cost of participation by the defendant;

13. Installation of an ignition interlock device approved by the Department of Public Safety 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 license. The restriction shall remain on the driver 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 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;

14. Confinement by electronic monitoring administered and supervised by the Department of Corrections or a community corrections provider, and payment of a monitoring fee to the supervising authority, not to exceed Seventy-five Dollars (\$75.00) a month. Any fees collected pursuant to this paragraph shall be deposited with the appropriate supervising authority. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "electronic monitoring" means confinement of the defendant within a specified location or locations with supervision by means of an electronic device approved by the Department of

Corrections which is designed to detect if the defendant is in the court-ordered location at the required times and which records violations for investigation by a qualified supervisory agency or person;

15. 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, attitudes, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education, or any other identifiable deficiency which may be treated appropriately in the community and for which a certified provider or a program recognized by the court as having significant positive impact exists in the community. Any treatment, education or rehabilitation provider required to be certified pursuant to law or rule shall be certified by the appropriate state agency or a national organization;

16. Periodic testing for alcohol, intoxicating substance, or controlled dangerous substances by a qualified laboratory;

17. Payment of a fee, costs for treatment, education, supervision, participation in a program, or any combination thereof as determined by the court, based upon the defendant's ability to pay the fees or costs;

18. Supervision by a Department of Corrections employee, community corrections provider, or other person designated by the court;

19. Positive behavior modeling by a trained mentor;

20. Confinement in a restrictive housing facility available in the community;

21. Confinement in the county jail at night or during weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes or for work release;

22. Employment or employment-related activities;

23. Mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court;

24. Day fines not to exceed fifty percent (50%) of the net wages earned. For purposes of this paragraph, "day fine" means the offender is ordered to pay an amount calculated as a percentage of net daily wages earned. The day fine shall be paid to the local community correction system as reparation to the community. Day fines shall be used to support the local system;

25. Blood testing as required by Section 38 of this act;

26. Repair or restoration of 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;

27. Restoration of damaged property in-kind or payment of out-of-pocket expenses to the victim, if the court is able to determine the actual out-of-pocket expenses suffered by the victim;

28. Attendance to a victim-offender mediation program if the victim agrees to participate and the offender is deemed appropriate for participation; and

29. Any other restorative provision specifically ordered by the court and able to be provided or supervised by the local community corrections system.

SECTION 10. 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:

A. In addition to the provisions of the Oklahoma Community Corrections Act, the court shall exercise the authority and duties

prescribed in Sections 20, 21, 22 and 23 of this act and the authority otherwise provided by the Oklahoma Statutes when considering and imposing community corrections punishments, services and alternatives to incarceration.

B. Any offender sentenced to any community corrections sanction pursuant to the provisions of the Oklahoma Community Corrections Act which requires supervision shall be required to pay a supervision fee. The supervising agency shall establish the fee amount not to exceed Forty Dollars (\$40.00) per month based upon the offender's ability to pay. In hardship cases the supervising agency may expressly waive all or part of the fee. No supervising agency participating in the Oklahoma Community Corrections Act shall deny any offender services for the sole reason that the offender is indigent. In addition to any supervision fee, offenders participating in the Oklahoma Community Corrections Act shall be required to pay a user fee for administrative services provided by the system. The user fee shall not exceed Twenty Dollars (\$20.00) per month. Supervision and user fees when collected shall be retained by the local community corrections system and utilized for support and expansion of the local community corrections system, except that fees collected for supervision services provided by the Department of Corrections shall be paid directly to the Department to be deposited in the Department of Corrections Revolving Fund.

C. In addition to any supervision fee or user fee authorized by this section, the court may assess program costs, restitution, and fines to be paid by the offender based upon the person's ability to pay.

SECTION 11. 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 time within two (2) years after the court has sentenced an offender to incarceration as provided in Section 991a-2 of Title

22 of the Oklahoma Statutes, or to any community corrections punishment as an alternative to incarceration as authorized by Section 21 of this act, the court imposing the sentence may modify the sentence as provided in subsection D of this section upon motion of the district attorney, the defense attorney or the offender. The provisions of this section shall not apply to any person who:

1. Is incarcerated in any state correctional facility;
2. Is subject to a suspended sentence or portion thereof;
3. Is subject to a suspended date for execution of the sentence; or
4. Is subject to the provisions of Section 996 et seq. of Title 22 of the Oklahoma Statutes.

B. Upon consideration of a motion to modify a sentence pursuant to the provisions of this section, the staff of the approved community corrections system in which the offender is ordered to participate, the sheriff, the district attorney, the service provider, or any agency or person providing supervision of the offender shall provide the court with any reports and other information available relating to the offender and the motion to modify the sentence. The court shall consider any reports and information submitted prior to modifying the sentence.

C. If the court considers a motion to modify the sentence, a hearing shall be made in open court. The clerk of the court having jurisdiction shall give notice of the hearing and provide a copy of any reports and information to the offender, the offender's legal counsel, and the district attorney of the county in which the offender was convicted. The notice shall be given not less than ten (10) days prior to the hearing.

D. Following the hearing, the court shall enter the appropriate order authorized by law. The court may modify any community corrections punishment or impose any other punishment allowed by law for the offense at the discretion of the court and appropriate for

the circumstances; provided, no punishment shall be imposed which is greater than the prescribed punishment allowed by law. The court may impose a term of imprisonment not to exceed five (5) days in the county jail or five (5) days in any residential facility, or halfway house contracting for services with an approved community corrections system as a disciplinary sanction for offenders violating conditions of their sentence or program requirements without the court modifying the original terms and conditions of the sentence. The offender shall be given credit for any period of incarceration served in the county jail when the sentence must be modified. The court may order any appropriate disciplinary sanction to gain compliance with the original terms and conditions of the sentence or may order any incentive deemed appropriate for the circumstances to reward the defendant for successful behavior or accomplishments.

E. The court shall not be limited on the number of modifications a sentence may have within the two-year period; provided, no punishment shall be imposed which is greater than the maximum prescribed punishment allowed by law.

SECTION 12. 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:

A. When any offender is disciplined by the court as authorized by Section 11 of this act and is to be imprisoned in the county jail or other residential facility, the sheriff or facility administrator shall receive compensation as provided by their contract with the local community corrections system, or the sheriff or facility administrator shall be paid directly for the services by the offender when ordered by the court. In no event shall any compensation for disciplinary confinement exceed the maximum amount provided in Section 38 of Title 57 of the Oklahoma Statutes.

B. The Department of Corrections is prohibited from accepting offenders into state correctional facilities for community corrections sanctions and is prohibited from contracting to pay for any offender imprisoned in the county jail for disciplinary sanctions or when sentenced to other restrictive confinement as a community corrections sanction, provided however, the Department shall pay for any parolee or inmate serving a community assignment pursuant to law when that person must be imprisoned in the county jail for a disciplinary sanction.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 627 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 pursuant to the provisions of the Oklahoma Community Corrections Act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 628 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Any offender ordered to participate in an approved community corrections system shall be advised of the conditions of the specific program or service.

B. Offenders shall not be ordered to participate in any service or program within any community corrections system established pursuant to the Oklahoma Community Corrections Act which requires the offender to use private transportation to reach the service location when the one-way trip driving distance is more than sixty (60) miles from the residence of the offender, except by written consent of the offender.

C. Prior to completing a community corrections sanction pursuant to the Oklahoma Community Corrections Act, the offender may, in special circumstances, request a reciprocal assignment in another jurisdiction to complete the terms and conditions of the sentence. Each approved community corrections system 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 from the court having jurisdiction of the offender before any transfer of the person, case, and services shall be made.

D. Upon completion of any court-ordered condition, program, or service pursuant to the authority of the Oklahoma Community Corrections Act, the administrator of the local system shall file a statement with the court defining the provision which has been successfully completed. When all court-ordered provisions have been successfully completed the defendant shall be deemed to have completed the sentence and shall be released.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 629 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 an approved community corrections system or contracting to provide services to the system pursuant to the provisions of the Oklahoma Community Corrections Act are hereby granted immunity from liability for any offender participating in the program pursuant to the provisions of 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 an approved community corrections system to the extent specified in Sections 227 and 228 of Title 57 of the Oklahoma Statutes.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 630 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 the Oklahoma Community Corrections Act as follows:

1. The authority and duty to promulgate rules, procedures and forms necessary to implement the provisions of the Oklahoma Community Corrections Act;

2. The duty to apply for and accept money and other assets to be utilized for support of community corrections systems;

3. The duty to review and analyze each local community corrections system's plan and budget as submitted annually or during a plan year;

4. The authority and duty to establish statewide correctional system goals, standards, and priorities;

5. The duty to evaluate, monitor and coordinate approved community corrections systems in the state;

6. The duty to provide technical assistance to approved community corrections systems established pursuant to the provisions of the Oklahoma Community Corrections Act. The technical assistance shall include, but not be limited to, information on:

- a. corrections system design,
- b. administration,
- c. development, monitoring, and evaluating of programs and services,
- d. program identification and specifications,
- e. offender risk management,
- f. supervision of offenders,
- g. planning and budgeting,
- h. grant applications, and

- i. preparation and submission of documents, data, budgets, and system plans;

7. The duty to provide assistance and oversight of offenders subject to supervisions;

8. The authority to establish temporary services where the local community has dissolved an approved community corrections system;

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

10. The authority to conduct or request the State Auditor and Inspector to conduct an audit of any approved community corrections system or a contracted program or service provider receiving state funds;

11. The authority to negotiate and enter into contracts for temporary services, to renegotiate or cancel any temporary 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 approved community corrections systems 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 offenders, and for the qualification of staff for administration of the local community corrections system; and

14. The duty to develop appropriate cost-effective and performance-based sentencing options and rehabilitation program models.

B. All rules promulgated by the Department of Corrections pursuant to the provisions of the Oklahoma Community Corrections Act shall be in accordance with the provisions of the Administrative Procedures Act.

C. The Department shall make a report to the Legislature annually by January 15, concerning all approved community corrections systems. The report shall provide an evaluation of the effectiveness of the Oklahoma Community Corrections Act in terms of safety of the public, appropriate range of community sanctions, cost-effectiveness, performance-based effectiveness in reducing recidivism, utilization by the judiciary, resource allocation, and reduced state and local institutional receptions, if any.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 631 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 other lawful 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 pursuant to the provisions of the Oklahoma Community Corrections 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 any other lawful money received for the benefit of the Oklahoma Community Corrections Act. All funds received shall be deposited to the fund. 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 funding to approved community corrections systems established pursuant to the provisions of the Oklahoma Community Corrections Act and for temporary contract services in jurisdictions withdrawing an approved community corrections system. 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.

C. Nothing in this section shall be construed to prohibit the Department of Corrections from transferring funds from other accounts or funds controlled by the Department to the Oklahoma Community Corrections Revolving Fund; provided, however, any funds transferred shall not thereafter be returned to the originating fund or account.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 479 of Title 32, unless there is created a duplication in numbering, reads as follows:

A. For purposes of the Oklahoma Community Corrections Act, the following state agencies shall jointly develop an assessment and evaluation instrument and scoring method for use by a community corrections system:

1. The Department of Corrections;
2. The Administrative Office of the Courts;
3. The Department of Mental Health and Substance Abuse

Services;

4. The State Department of Health;

5. The State Department of Education; and

6. The Oklahoma Department of Vocational and Technical Education.

B. The state agencies enumerated in subsection A of this section shall provide technical assistance necessary to implement and monitor the Oklahoma Community Corrections Act and may offer services to the community corrections system or the district court, subject to funding, when a community corrections system is established pursuant to the provisions of the Oklahoma Community Corrections Act.

C. All participating state agencies and local advisory councils are directed to promulgate rules necessary to implement the provisions of the Oklahoma Community Corrections Act. When promulgating the rules, participating state agencies and local advisory councils shall coordinate their rules to the extent possible to enhance the statewide goals of the criminal justice system.

SECTION 19. 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 through appropriate community corrections sanctions;
5. Removal from office; or
- ~~5.~~ 6. Disqualification to hold and enjoy any office of honor, trust, or profit, under this state.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 987 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When a person is convicted of a criminal offense and the prescribed penalty is not death, the judge shall at the time of sentencing consider the least restrictive punishment allowable by law to hold the person accountable for the offense and provide adequate protection to the public.

1. First shall be considered monetary sanctions such as:

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

2. Next shall be considered one or more treatment, educational or rehabilitation services, with or without supervision, which are designed to:

- a. reduce the occurrence of repeat criminal behavior,
- b. detect and deter substance abuse,
- c. correct or manage psychological or psychiatric behaviors, conditions or disorders, or
- d. develop or enhance the ability of the person to be a contributing member of society; and

3. Finally shall be considered the statutorily prescribed term of imprisonment for the offense. When a term of imprisonment is authorized by law for the offense, a determination shall be made whether or not to impose all or part of that imprisonment, subject to any statutory prohibition against a suspended term of imprisonment and subject to any mandatory imprisonment requirement.

B. The court shall not be required to enunciate its considerations for the record, nor shall any consideration be grounds for appeal of the sentence imposed.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 988 of Title 22, unless there is created a duplication in numbering, reads as follows:

ALTERNATIVE TO INCARCERATION

A. For those jurisdictions participating in the Oklahoma Community Corrections Act, in addition to the provisions of Section 991a-2 of Title 22 of the Oklahoma Statutes, the court may impose punishment against the defendant as an alternative to serving a term of incarceration in any jail or state prison facility as provided in this section. The court shall not be authorized to impose punishment in a community corrections system as an alternative sentence to incarceration when:

1. The defendant is to be confined in any residential or restrictive facility for more than one (1) year;

2. The alternative punishment, if taken in its entirety, imposes a greater punishment than otherwise prescribed by law for the offense;

3. The defendant is determined to be inappropriate for an alternative punishment, in the discretion of the judge;

4. The offense is ineligible for an alternative sentence as provided by law;

5. A program or service which is to be the alternative sentence, or a part thereof, is not available in the jurisdiction;
or

6. A program or service which is to be the alternative sentence, or a part thereof, is not willing to accept the defendant.

B. Any punishment imposed pursuant to the provisions of this section may be subsequently modified as provided in Section 11 of this act.

C. The provisions of the Oklahoma Community Corrections Act shall not confer any rights upon the defendant to avoid a term of imprisonment prescribed by law for the offense nor grant any additional rights to appeal for failure to be offered an alternative sentence or any community corrections sanction in lieu of imprisonment.

D. 1. At the time of sentencing after a determination of guilt by either verdict, guilty plea, or a plea of nolo contendere, when the court determines the offender to be eligible and appropriate for community corrections punishment as an alternative to serving a term of incarceration in a state prison facility or jail, the court shall proceed to impose the appropriate term of incarceration required by law for the offense, and shall then offer to the defendant the opportunity for a community corrections punishment as an alternative sentence to that incarceration term. The court shall have no authority to impose an alternative sentence pursuant to the provisions of this section without the defendant voluntarily entering into a written agreement with the court clearly defining:

- a. the stated term of incarceration for the offense, which must be imposed if the defendant fails to complete the alternative sentence,
- b. an explanation of the community corrections punishment and all conditions which the court will require to be completed as a condition of the alternative sentence,
- c. a clear explanation of the roles of the court, district attorney, defense attorney, supervising staff, sheriff, treatment providers, and the defendant during participation in the alternative sentence,
- d. a clear statement of the rules for the specific programs and services which the court will order as the alternative sentence,

- e. a clear explanation of the authority of the court to discipline the defendant for noncompliance with the alternative sentence by progressively increasing the punishment sanctions and the authority to grant incentives for outstanding performance in the selected programs,
- f. a clear statement that the defendant must not be arrested for another criminal offense during participation in an alternative sentence and the consequences for any such arrest,
- g. a clear statement that once the defendant voluntarily agrees to accept the alternative sentence and completes the requirements ordered by the court, the stated term of incarceration shall not be imposed and the sentence shall be considered completed and served in its entirety,
- h. a clear statement that the defendant is required to comply with the terms and conditions of the written agreement and applicable program rules, or disciplinary action may be taken after notice and hearing,
- i. a clear statement that the alternative sentence must be completed within two (2) years, and may only be extended for purposes of paying restitution to victims,
- j. that the defendant voluntarily agrees to waive his or her right to any other punishment as a condition of voluntarily accepting the opportunity for an alternative sentence to incarceration, and
- k. a clear statement that if the alternative sentence is not completed, the defendant may have the term of incarceration imposed after notice and hearing.

2. The court shall determine whether or not the defendant has voluntarily entered into the terms and conditions of the written agreement before ordering any community corrections punishment as an alternative sentence to incarceration. After the defendant signs the written agreement and any other necessary documents and the court having determined that the defendant has voluntarily agreed to participate in the alternative sentence, the court shall impose the sentence and the terms of the alternative sentence for the offense. For purposes of the alternative sentence, if a defendant has been convicted of two or more nonviolent offenses, the court shall require the sentences to run concurrently and without any enhancement authorized by Section 51 of Title 21 of the Oklahoma Statutes. The written agreement shall become part of the court file and the judgment and sentence. The alternative sentence may be subsequently modified only as provided in Section 11 of this act.

3. The district attorney may object to the community corrections punishment offered as the alternative sentence to incarceration, or any portion thereof; however, the decision of the judge shall be final.

E. An alternative sentence imposed pursuant to the authority of this section shall not be deemed to be in violation of any prohibition to a suspended sentence.

F. An alternative sentence shall be completed within two (2) years; provided, however, the court may consider an extension of the sentence only for purposes of completing court-ordered payments of restitution to victims or the state or for completing payment of fines or other costs. At the conclusion of two (2) years, if the defendant does not have any motion pending to revoke the alternative sentence for cause or to extend the sentence for purposes of completing restitution to victims or the state, the defendant shall be deemed to have completed the entire sentence and may not subsequently be revoked or compelled to serve any term of

incarceration or perform or complete any other condition of the original sentence imposed.

G. The terms and conditions of the alternative sentence shall be monitored by the administrator of the local community corrections system, and periodic reports shall be made to the court concerning the defendant's progress.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 989 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. On and after July 1, 1997, in lieu of a presentence investigation provided in Section 982 of Title 22 of the Oklahoma Statutes for those jurisdictions participating in the Oklahoma Community Corrections Act the judge shall, prior to making a determination of punishment and imposing any sentence authorized by Section 991a of Title 22 of the Oklahoma Statutes, or imposing any alternative sentence pursuant to Section 21 of this act or Section 991a-2 of Title 22 of the Oklahoma Statutes, order an assessment and evaluation of the defendant to assist the court in determining whether or not the defendant is more appropriate for:

1. Community corrections punishment, treatment, education or rehabilitation as an alternative to incarceration;

2. A suspended term of imprisonment with or without supervision or conditional requirements to be determined by the court;

3. Imprisonment as prescribed by law for the offense; or

4. An alternative setting for any statutorily prescribed term of incarceration as provided by Section 991a-2 of Title 22 of the Oklahoma Statutes.

B. The assessment and evaluation may be ordered completed at any time following arrest. The assessment and evaluation shall be utilized by the court, the district attorney, and the defense attorney prior to determining any punishment for the offense or negotiating any plea agreement. The purpose of the assessment shall

be to identify the extent of the defendant's deficiencies, the potential risk to the safety of local citizens, and the appropriateness of local community corrections options for sentencing. The defendant shall be required to complete a standardized assessment and evaluation test which shall be scored by an appropriately trained person designated by the court or an employee of the local community corrections system. The assessment and evaluation test and scoring method shall be developed jointly by the Department of Mental Health and Substance Abuse Services, the State Department of Education, the State Department of Health, the Oklahoma Department of Vocational and Technical Education, and the Department of Corrections. Any defendant lacking sufficient skills to read, comprehend or otherwise complete the assessment and evaluation test shall have appropriate assistance or may have an oral assessment and evaluation based upon the standardized test form. The failure or refusal of the defendant to be assessed and evaluated shall not prohibit the court from sentencing the defendant.

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

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 990 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. At the time of sentencing, when a defendant is convicted of a crime and no death sentence is imposed, the court shall have authority to suspend any portion of the punishment, except where the Legislature specifically prohibits a suspended sentence or portion thereof.

B. 1. The court may, after imposing a punishment for the offense, suspend that punishment, in whole or part, including imposition of any prescribed provision, fine, term of imprisonment,

or a combination of any prescribed provision, fine, and term of imprisonment. The suspension may be with or without supervision. The court, in addition, may order the convicted defendant at the time of sentencing, or at any time during the term of the suspended sentence, to complete any one or more conditional requirements as provided in subsection H of this section or as otherwise provided by law. Provided, however, no corporal punishment shall be allowed.

2. The court shall have the authority, unless the defendant objects, to suspend the date of the execution of the sentence not to exceed twelve (12) months. For purposes of this section, "suspend the execution of the sentence" means a delayed date to begin serving the incarceration term, which may hereinafter be referred to as a delayed sentence. The delayed sentence shall require one or more conditional requirements, and may be with or without supervision.

C. 1. When the court determines the defendant to be eligible and appropriate for a delayed sentence as provided by paragraph 2 of subsection B of this section, the court shall proceed to state on the record the term of incarceration appropriate for the offense and the date the sentence shall begin to be served. The district attorney shall have the right to state any objections to a delayed sentence on the record. After the term of incarceration has been pronounced and the date to begin serving the incarceration has been ordered, the court shall offer to the defendant the opportunity to complete certain specific conditions before the date to begin serving that sentence in exchange for not having to serve the term of incarceration. The court shall not have authority to commit the defendant to the custody of the Department of Corrections as a condition of the delayed sentence pursuant to the provisions of this section. The court shall have no authority to delay any sentence pursuant to the provisions of this section without the defendant voluntarily agreeing to enter into a written agreement with the court clearly defining:

- a. the term of incarceration which will have a delayed date for execution and which must be served beginning on the specified date if the defendant fails to complete the conditions ordered by the court,
- b. an explanation of all the terms and conditions which the court will require to be completed as consideration for a delayed sentence,
- c. a clear statement that once the defendant voluntarily agrees to accept the delayed date for execution of the sentence and successfully completes the conditions ordered by the court, the stated term of incarceration shall not be served,
- d. a clear statement that the defendant is required to comply with the terms and conditions of the written agreement, or the stated term of incarceration for the offense must begin to be served on the date specified by the court, and
- e. that the defendant voluntarily agrees to waive his or her right to immediate incarceration as a condition of voluntarily accepting the opportunity to complete the conditions as consideration for a delayed sentence.

2. The court shall determine whether or not the offender voluntarily agrees to the terms and conditions of the written agreement and, upon the offender signing the written agreement, the court shall order the execution of the sentence suspended to a day certain pursuant to specific conditions ordered by the court. The written agreement shall become part of the court file. On the date set for the execution of the sentence, the court shall either require the term of incarceration to begin to be served if the defendant has failed to complete the conditions required by the court, or the court shall modify the sentence as stated in the written agreement to remove the term of incarceration if the

offender has successfully completed the conditions required by the court.

D. 1. "Supervision or probation", for purposes 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 active monitoring by an agency or other person designated by the court or by an electronic device.

2. Supervision shall be initiated upon an order from the court and shall not exceed two (2) years, except as otherwise provided in this section. The order shall specify whether the supervision is to be monitored by:

- a. the Department of Corrections,
- b. the local community corrections system supervision office or a qualified provider, if any, pursuant to the Oklahoma Community Corrections Act, or
- c. a qualified person designated by the court.

In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years and shall not extend beyond the length of the sentence imposed. Provided further, any supervision authorized by this section may be extended for a period not to exceed the expiration of the maximum term of the sentence upon a finding by the court after notice and hearing that the best interests of the public and the defendant will be served by an extended period of supervision.

3. The type of supervision shall be initially specified by the court and may later be modified as the person demonstrates compliance. Types of supervision may include periodic supervision, general supervision, structured supervision, intensive supervision, reintegrative supervision following a term of imprisonment or residential confinement, or electronic monitoring. For purposes of this paragraph:

- a. "electronic monitoring" means supervision of the offender by means of an electronic device approved by the Department of Corrections, which is designed to detect if the offender is in the court-ordered location at the required times and which records violations for investigation by a qualified supervisory agency or person,
- b. "general supervision" means scheduled and unscheduled personal or other contacts by the monitoring persons with the offender,
- c. "intensive supervision" means multiple weekly personal contacts by the monitoring persons with the offender and unscheduled contacts by the monitoring persons with the offender at varying times and places,
- d. "periodic supervision" means personal or other contacts by the monitoring persons with the offender at varying times and places, and
- e. "reintegrative supervision" means personal contacts with the offender after he or she has been released from a jail or state correctional facility to assure appropriate assistance and adjustment to community and family life.

E. When the court orders supervision, the court shall make payment of the supervision fee a condition of the sentence. The supervising agency shall establish the fee in an amount not to exceed Forty Dollars (\$40.00) per month based upon the offender's ability to pay. In hardship cases, the supervising agency shall expressly waive all or part of the fee. No supervisory agency shall deny any offender services for the sole reason that the offender is indigent. When supervision services are not made available to an offender, no fee shall be charged.

F. During any period of supervision, the agency or person designated to monitor a defendant shall be responsible for seeing that the defendant pays the restitution, repayments, reimbursements, fees, fines, and costs ordered by the court and that the defendant performs the conditions and completes the programs required by the terms of the sentence. The designated monitoring agency or person shall ensure that all payments made by the defendant are forwarded to the appropriate person or entity in a timely manner.

G. 1. During any period of supervision, when the defendant is not benefiting from the prescribed conditions as ordered by the court, or when the defendant has violated any condition of the sentence not constituting a criminal offense, or when the defendant has successfully completed any condition of a sentence, the following persons may file a motion with the court for a modification of the conditions of the sentence:

- a. the defendant or defense attorney,
- b. the district attorney, or
- c. the supervisory agency or person with the consent of the defendant and the district attorney.

2. The person requesting the motion shall provide the court with any reports and other information relating to the defendant available from the sheriff, the supervisory agency or person, or the treatment provider. The court shall consider any reports and information when modifying any conditions of a suspended sentence.

3. If the court considers a modification of any conditions of a suspended sentence, a hearing shall be made in open court. The clerk of the court having jurisdiction shall give notice of the hearing and provide a copy of any reports and information to the defendant, the defense attorney, the district attorney, and to any other parties to the motion. The notice shall be given not less than three (3) days prior to the hearing of the motion.

4. Following the hearing, the court shall enter the appropriate modification to the conditions of the sentence, if any. The court may modify and impose any condition which is appropriate for the circumstances; provided, no corporeal punishment shall be imposed and no conditions shall be imposed which when taken in the entirety are greater than the original prescribed sentence which is subject to the suspension. The defendant may be ordered to serve a temporary period of incarceration in the county jail not to exceed five (5) days as a disciplinary sanction for failure to comply with the conditions of the sentence after proper notice and hearing. The defendant shall be given credit on the sentence for any period of incarceration served in the county jail as a disciplinary sanction. The cost of any county jail incarceration as a disciplinary sanction shall be not more than the maximum amount provided in Section 38 of Title 57 of the Oklahoma Statutes and shall be paid by:

- a. the defendant,
- b. the county, if the defendant is unable to pay the cost and the county does not participate in the Oklahoma Community Corrections Act, or
- c. the local community corrections system established pursuant to the Oklahoma Community Corrections Act when a contract with the county sheriff has been entered into for disciplinary sanctions and the defendant is unable to pay the cost.

5. The court shall not be limited in the number of modifications a suspended sentence may have; provided, the authority to modify the conditions of a suspended sentence pursuant to the provisions of this subsection shall not be construed to alter the authority of the district attorney to file for revocation of a suspended sentence either in whole or part as provided by Section 991b of Title 22 of the Oklahoma Statutes.

H. The following conditional requirements shall be made available to the court for suspended sentencing:

1. Pay 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;

2. 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 the person was convicted, with interest accruing thereon at the rate of twelve percent (12%) per annum;

3. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted; provided however, any person receiving community service for an offense prohibited by Section 7 of this act shall not have such service hours monitored through the local community corrections system and the supervisory agency or person shall have the responsibility to locate the job and monitor the service hours;

4. 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;

5. Reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which the defendant is being sentenced;

6. Repay the reward or part of the reward paid by a certified local crimestoppers program, the State Crime Stoppers Program, or the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider 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 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 Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes;

7. In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of Title 22 of the Oklahoma Statutes for special services;

8. 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 and 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:

- a. 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. attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) 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,
- c. 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. 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 require that a notation of this restriction be affixed to the person's driver license at the time of reinstatement of the license. The restriction shall remain on the driver license for a period as the court shall determine. The restriction may be modified or removed by order of the court and notice of the 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. "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, or
- e. submit to electronic monitoring as defined by subparagraph f of paragraph 3 of subsection D of this section, administered and monitored by a supervisory agency, and pay a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the supervisory agency. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

9. In the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require the person to receive counseling for the behavior which may have caused the person to engage in prostitution activities. The 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;

10. 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;

11. In the case of a sex offender, 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 court if the court retains supervisory authority over the defendant. The treatment shall be at the expense of the defendant based on the defendant's ability to pay. For the purposes of this paragraph, 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;

12. In the case of a person convicted of an offense as provided in Sections 650, 650.2, 650.5, 651, 652, 701.7, 701.8, 711, 888, 1114 or 1123 of Title 21 of the Oklahoma Statutes, submit to deoxyribonucleic acid testing for law enforcement identification purposes;

13. Participate in a literacy assessment and educational course; 14. Any combination of the preceding conditional options;
or

15. Any other condition, service or treatment deemed appropriate for the offense and offender except corporal punishment.

SECTION 24. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 4, Chapter 153, O.S.L. 1996 (22 O.S. Supp. 1996, 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~~ When a defendant is convicted of a crime and no death sentence is imposed, the court shall, following the considerations required by Section 20 of this act and the assessment and evaluation required by Section 22 of this act, 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;~~
~~or~~

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

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

~~B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes 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 c 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 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 shall submit to deoxyribonucleic acid testing for law enforcement identification purposes in accordance with Section 2 of this act and the rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI DNA Offender Database. Submission to testing shall be required within thirty (30) days of sentencing for those defendants who do not become subject to the custody of the Department of Corrections, and submission to testing shall be done in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who enter the custody of the Department of Corrections as a result of sentencing. Convicted individuals who have previously submitted to DNA testing under this section and for whom a valid sample is on file in the OSBI DNA Offender Database at the time of their sentencing shall not be required to submit to additional testing.~~

~~Any person convicted of an offense as provided in this section who is in custody after July 1, 1996, shall provide a blood sample prior to 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 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~~

1. Impose the fine prescribed by law for the offense;

2. Commit the person for imprisonment as prescribed by law for the offense; or

3. Impose the fine and commit the person for imprisonment as prescribed by law for the offense; and

4. In addition to paragraph 1, 2 or 3 of subsection A of this section, impose court costs and impose:

- a. restitution, reimbursement, repayment, or a combination of restitution, reimbursement, or repayment to be paid to the victims or other entities as reparations to the community and state, and
- b. other prescribed provisions for the offense.

B. Nothing in the provisions of this section shall be construed to limit the authority of the court pursuant to another provision of law to impose a suspended sentence, deferred judgment, alternative to incarceration, or delayed sentence or make any other disposition authorized by law.

SECTION 25. AMENDATORY 22 O.S. 1991, Section 991a-2, is amended to read as follows:

Section 991a-2. A. Any person who has been convicted of a nonviolent felony offense in the state as defined in this section may be sentenced, at the discretion of the judge, to incarceration in the county jail for a period of one or more nights or weekends with the remaining portion of each week being spent ~~under probation,~~ ~~in lieu of any other kind of imprisonment~~ pursuant to specified rules and conditions of supervision. County jail imprisonment for nonviolent felony offenders shall be an alternative sentence to serving a term of incarceration in a state prison facility or being placed in the custody of the Department of Corrections as prescribed by law for the particular felony offense.

B. For purposes of this section, "nonviolent felony offense" means any felony offense not prohibited by Section 7 of this act.

C. A person who has been convicted of a nonviolent felony offense may be sentenced, at the discretion of the judge, to incarceration in the county jail for a term not to exceed one (1) year as an alternative sentence to serving a term of incarceration in a state prison facility or being placed in the custody of the Department of Corrections as prescribed by law. In addition to incarceration, the court may impose any fine, cost, or other provisions allowed by law, or impose in addition to the term of incarceration any community corrections sanctions deemed appropriate by the court when available within the jurisdiction; provided, however, the community corrections sanctions when taken in their

entirety with the jail term shall not impose a greater punishment than otherwise prescribed by law for the offense.

D. Any person incarcerated in the county jail pursuant to the provisions of subsection A or C of this section may be assigned work duties as ~~may be~~ ordered or approved by the judge. The sentencing court may require a person incarcerated pursuant to the provisions of this act section to pay the county⁷ for food and maintenance for each day of incarceration⁷. The cost of incarceration shall be an amount equal to the maximum amount prescribed by law to be paid by the county Department of Corrections to the sheriff for such expenses. If the judge does not so order, the Department of Corrections shall reimburse the county for the cost of feeding and care of the person during such periods of incarceration.

E. The State of Oklahoma, through the Department of Corrections, shall reimburse the county for the actual ~~costs~~ cost paid for any emergency medical care for physical injury or illness of a person incarcerated ~~hereunder~~ for a nonviolent felony offense pursuant to the provisions of subsection A or C of this section; provided the injury or illness is directly related to the incarceration and the county is required by law to provide such care for county inmates in the jail.

F. Any person incarcerated pursuant to the provisions of this section shall not be considered to be in the custody of the Department of Corrections nor an inmate of the Department, and the person shall not be processed through the Lexington Reception and Assessment Center. The person shall be deemed to be in the custody of the county.

G. When the court sentences a person to incarceration pursuant to the provisions of this section in conjunction with a suspended sentence, or portion thereof, or in conjunction with a suspended date for the execution of the sentence, the court shall not have the authority to modify the sentence as provided in Section 11 of this

act. In all other cases where the jurisdiction participates in the Oklahoma Community Corrections Act and the court sentences a person pursuant to the provisions of subsection A or C of this section, the court shall have the authority, upon proper motion and hearing, to modify the sentence as authorized in Section 11 of this act.

H. For the purposes of subsection A of this section, weekend incarceration shall commence at 6 p.m. on Friday and continue until 7 a.m. on the following Monday, and incarceration overnight shall commence at 6 p.m. on one day and continue until 7 a.m. of the next day. Provided, that the sentencing judge may modify ~~said the~~ incarceration times if the circumstances of the particular case require such action. ~~Persons who have been sentenced to incarceration in the county jail under the provisions of this section will not have to be processed through the Lexington Assessment and Reception Center prior to incarceration.~~

I. When a jurisdiction participates in the Oklahoma Community Corrections Act, the daily costs for incarceration of nonviolent felony offenders pursuant to the provisions of this section shall be paid from the local community corrections budget to the sheriff, except when the court orders costs to be paid by the defendant. In all other jurisdictions, the cost shall be negotiated annually by contract with the Department of Corrections. The Department shall promulgate rules for payment of incarceration costs pursuant to the provisions of this section.

SECTION 26. AMENDATORY 22 O.S. 1991, Section 991a-4, as last amended by Section 1, Chapter 187, O.S.L. 1993 (22 O.S. Supp. 1996, 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~~ Counties may operate and administer community

programs that are either county funded and county operated, contracted through the Department of Corrections or incorporated into a community corrections system established pursuant to the Oklahoma Community Corrections Act.

B. The Department of Corrections shall promulgate rules pursuant to the Administrative Procedures Act for the program, including but not limited to provisions for contracting, filing reports, and conducting audits. The Department is hereby authorized to provide technical assistance to any county in establishing a program. Technical assistance shall include information on appropriate staffing, development of community resources, sponsorship, supervision, and any other requirements provided by this section.

C. Any eligible offender may be sentenced, at the discretion of the judge, to perform community service hours under the supervision of a Community Service Sentencing Program pursuant to the provisions of this section if the county has established such a program. 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~~ not prohibited by Section 7 of this act;

~~4.~~ 3. Has properly completed and executed all necessary documents; and

~~5.~~ 4. Is not otherwise ineligible by law or court rule.

~~C. 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.~~ D. Offenders sentenced to participation in the Program

shall be required to pay court costs incurred in the case. In addition, offenders shall be required to pay a user fee to the county program not to exceed Twenty Dollars (\$20.00) per month, based upon the offender's ability to pay such fee. In hardship cases, all or part of the fee shall be expressly waived by the program administrator. The user fee shall be applied by the county program to operational costs of the program and program expansion.

~~The Department shall recommend an assignment of~~ court may order the offender to any one or combination of the following ~~areas~~ services:

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~~ Behavioral 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.~~ 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~~
negotiate the reimbursement rate by contract with the county, except
when the program is part of a local program created pursuant to the
Oklahoma Community Corrections Act, which shall be budgeted as
required by Section 5 of this act; or

9. ~~Probation or conditional probation.~~

~~D. 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 Supervision with or without conditional requirements to be determined by the court; provided, a supervision fee shall be required to be paid to the supervisory agency as a condition of the sentence.~~

E. 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~~ deemed 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~~ The judge shall, when ordering community service to be performed by the defendant, set the total number of hours to be completed and shall not have authority to designate where those hours shall be served. The staff for the Program shall make all service assignments for defendants and shall keep records of the hours completed and the hours ordered by the court for each defendant.

F. 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. The ~~Division~~ staff for the Program 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 by the court. The ~~Division~~ staff 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~~ staff of the Program if an offender fails to fulfill any requirement of the Program. The ~~Division~~ staff or the sentencing judge may require additional documentation of the offender's work performance.

H. The ~~Division~~ staff 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. 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~~ pursuant to the provisions of 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. Any offender participating in the Program shall be advised of the provisions of this section and shall, in writing, acknowledge

that he or she has been advised of and understands the provisions of the Program.

SECTION 27. AMENDATORY 22 O.S. 1991, Section 976, is amended to read as follows:

Section 976. If the defendant has been convicted of two or more offenses, before judgment on either, the judgment may be that the imprisonment upon any one may commence at the expiration of the imprisonment upon any other of the offenses. Provided, that the sentencing judge shall, at all times, have the discretion to enter a sentence concurrent with any other sentence.

When imposing an alternative sentence to incarceration as authorized by Section 21 of this act, or when imposing a suspended sentence if the defendant has been convicted of two or more nonviolent offenses, as defined by the Oklahoma Community Corrections Act, the court shall enter a sentence concurrent with any other sentence.

SECTION 28. AMENDATORY 21 O.S. 1991, Section 51, is amended to read as follows:

Section 51. A. Except as ~~otherwise~~ provided in Section 21 of this act or Sections 4 991a-5 through 7 991a-11 of this act Title 22 of the Oklahoma Statutes, every person who, having been convicted of any offense punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections, commits any crime after such conviction is punishable therefor as follows:

1. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for any term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term not less than ten (10) years.

2. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the

~~State Penitentiary~~ custody of the Department of Corrections for five (5) years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

3. If such subsequent conviction is for petit larceny, the person convicted of such subsequent offense is punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not exceeding five (5) years.

B. Every person who, having been twice convicted of felony offenses, commits a third, or thereafter, felony ~~offenses~~ offense within ten (10) years of the date following the completion of the execution of the sentence, shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of not less than twenty (20) years. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 588 of Title 57, unless there is created a duplication in numbering, reads as follows:

On or after July 1, 1996, every person convicted of an offense as provided in Section 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, Section 1021.2, 1021.3, 1087, 1088, 1123, 1173 or 1192.1 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 section 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 pursuant to the provisions of 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 section who is not sentenced to a term of imprisonment in the custody of the Department shall provide a blood sample as a condition of a suspended sentence or when sentenced to a community corrections punishment as an alternative to incarceration.

Samples of blood for DNA testing required by this section shall be taken by employees or contractors 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 the provisions of 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. Persons subject to DNA testing who are not received at the Lexington Assessment and Reception Center shall be

required to pay a fee of Fifteen Dollars (\$15.00) to the Department of Corrections. Any fees collected pursuant to this section shall be deposited in the Department of Corrections Revolving Fund.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.2 of Title 74, unless there is created a duplication in numbering, reads as follows:

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall establish a joint legislative committee or designate an existing joint committee to provide appropriate planning, implementation, and oversight for the Oklahoma Community Corrections Act and the criminal justice system.

SECTION 31. REPEALER 22 O.S. 1991, Sections 991a, as last amended by Section 2, Chapter 188, O.S.L. 1994 and 991a, as last amended by Section 1, Chapter 40, O.S.L. 1994 (22 O.S. Supp. 1996, Section 991a), are hereby repealed.

SECTION 32. This act shall become effective July 1, 1997.

SECTION 33. 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 5th day of March, 1997.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1997.

Speaker of the House of Representatives