STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2686 By: Ericson

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 19 O.S. 2001, Section 641, which relates to embezzlement by county treasurer or other officer; removing penalty language; defining terms "life imprisonment" and "life without parole"; amending 21 O.S. 2001, Sections 341 and 531, which relate to embezzlement by officers; removing circumstances which shall be violation of law; amending 21 O.S. 2001, Section 647, which relates to aggravated assault and battery; modifying punishment; amending 21 O.S. 2001, Sections 888, 1115 and 1123, which relate to sodomy, rape and lewd proposals to persons under sixteen years of age; modifying punishment for person with certain previous convictions; amending 21 O.S. 2001, Section 1451, which relates to embezzlement; expanding definition; amending 21 O.S. 2001, Section 1738, which relates to seizure and forfeiture of property used in commission of certain crimes; adding items which may be subject to forfeiture; amending 22 O.S. 2001, Section 204, which relates to arrest by private person; specifying that it is dwelling house of person to be arrested which may be broken into; amending 22 O.S. 2001, Section 258, which relates to preliminary examinations; specifying when and how law enforcement reports shall be made available to defense counsel; amending 22 O.S. 2001, Section 982, which relates to presentence investigations; authorizing waiver under certain circumstances; amending 22 O.S. 2001, Section 991b, which relates to revocation of suspended sentence; modifying time period during which hearing must be held; amending 22 O.S. 2001, Section 991c, which relates to deferred judgment procedure; prohibiting deferred judgment for person who receives verdict of guilt after trial for a sex offense; amending 22 O.S. 2001, Section 1053, which relates to appeal by state or municipality; expanding circumstances authorizing appeal; stating certain appeals shall be given priority; amending 22 O.S. 2001, Section 1089.2, which relates to notice of intent to appeal by state; requiring court to send notice to all parties; amending 22 O.S. 2001, Section 2002, which relates to disclosure of evidence; stating request shall be subject to discretion of district attorney; amending 28 O.S. 2001, Section 3, which relates to embezzlement by certain officers; removing conduct which shall constitute criminal behavior; amending 37 O.S. 2001, Sections 163.4 and

553, which relate to intoxicating liquors; removing conduct which shall constitute embezzlement; amending 42 O.S. 2001, Sections 144.2 and 153, which relate to liens; removing conduct which shall constitute embezzlement; amending 47 O.S. 2001, Section 11-902 (Section 23, Chapter 437, O.S.L. 2001), which relates to driving under the influence of alcohol or other intoxicating substances; authorizing sentence of treatment, imprisonment and fine under certain circumstances; amending 63 O.S. 2001, Section 2-506, which relates to seizure and forfeiture of property used in violation of the Uniform Controlled Dangerous Substances Act; modifying references; amending 64 O.S. 2001, Section 114, which relates to embezzlement by employees of the Commissioners of the Land Office; removing penalty; amending 68 O.S. 2001, Sections 500.58, 1361, 2385.3 and 2702, which relate to revenue and taxation; removing circumstances constituting embezzlement; modifying references; repealing 21 O.S. 2001, Sections 1452, 1453, 1454, 1455, 1456, 1457, 1463, 1464 and 1834.2, which relate to embezzlement; repealing 36 O.S. 2001, Section 6621, which relates to embezzlement by sales representative; repealing 41 O.S. 2001, Section 25, which relates to embezzlement of crops; repealing 59 O.S. 2001, Section 396.25, which relates to embezzlement of abstracts; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 19 O.S. 2001, Section 641, is amended to read as follows:

Section 641. If any county treasurer or other officer or person charged with the collection, receipt, safekeeping, transfer or disbursement of the public money, or any part thereof, belonging to the state or to any county, precinct, district, city, town or school district of the state shall convert to his own use or to the use of any other person, body corporate or other association, in any way whatever, any of such public money, or any other funds, property, bonds, securities, assets or effects of any kind received, controlled or held by such officer or person by virtue of such office or public trust for safekeeping, transfer or disbursement, or in any other way or manner, or for any other purpose; or shall use

the same by way of investment in any kind of security, stocks, loan property, land or merchandise, or in any other manner or form whatever; or shall loan the same, with or without interest, to any person, firm or corporation, except when authorized by law; or if any person shall advise, aid, or in any manner knowingly participate in such act, such county treasurer, or other officer or person shall be guilty of an embezzlement ~~of so much of said money or other property, as aforesaid, as shall be converted, used, invested, loaned or paid out as aforesaid~~. Upon conviction thereof, such county treasurer or other officer or person shall be ~~guilty of a felony and shall be sentenced to imprisonment in the State Penitentiary at hard labor for a term of not less than three (3) years nor more than twenty-one (21) years, and also~~ ordered to pay a fine equal to triple the amount in money or other property so embezzled as aforesaid; which fine shall operate as a judgment lien at law on all the estate of the party so convicted and sentenced, and shall be enforced by execution or other process for the use of the person whose money or other funds or property as aforesaid shall have been so embezzled; and in all cases such fines, so operating as a judgment, shall be released or entered as satisfied only by the person in interest, as aforesaid.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

Unless otherwise provided by law, a sentence of "life imprisonment" shall mean that the defendant will be incarcerated for the remainder of the natural life of the defendant but will be eligible for parole during the term of the sentence. Parole eligibility for a life sentence shall be based upon a sentence term of sixty (60) years. A sentence of "life without parole" means that the defendant shall be incarcerated for the remainder of the natural life of the defendant and shall not be eligible for parole or

release unless the sentence is commuted by the Governor of the State of Oklahoma.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 341, is amended to read as follows:

Section 341. Every public officer of the state or any county, city, town, or member or officer of the Legislature, and every deputy or clerk of any such officer and every other person receiving any money or other thing of value on behalf of or for account of this state or any department of the government of this state or any bureau or fund created by law and in which this state or the people thereof, are directly or indirectly interested, who either:

First: ~~Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money or anything of value received by him as such officer, clerk, or deputy, or otherwise, on behalf of this state, or any subdivision of this state, or the people thereof, or in which they are interested; or~~

~~Second:~~ Receives, directly or indirectly, any interest, profit or perquisites, arising from the use or loan of public funds in his hands or money to be raised through his agency for state, city, town, district, or county purposes; or

~~Third~~ Second: Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to any moneys so received by him, on behalf of the state, city, town, district or county, or the people thereof, or in which they are interested; or

~~Fourth~~ Third: Fraudulently alters, falsifies, cancels, destroys or obliterates any such account~~; or~~

~~Fifth: Willfully omits or refuses to pay over to the state, city, town, district or county, or their officers or agents authorized by law to receive the same, any money or interest, profit or perquisites arising therefrom, received by him under any duty imposed by law so to pay over the same~~,

shall, upon conviction thereof, be deemed guilty of a felony and shall be punished by a fine of not to exceed Five Hundred Dollars ($500.00), and by imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than twenty (20) years and, in addition thereto, the person shall be disqualified to hold office in this state, and the court shall issue an order of such forfeiture, and should appeal be taken from the judgment of the court, the defendant may, in the discretion of the court, stand suspended from such office until such cause is finally determined.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 531, is amended to read as follows:

Section 531. Any sheriff, coroner, clerk of a court, constable or other ministerial officer, and every deputy or subordinate of any ministerial officer who ~~either:~~

~~1. Mutilates~~ mutilates, destroys, conceals, erases, obliterates or falsifies any record or paper appertaining to his office~~; or~~

~~2. Fraudulently appropriates to his own use or to the use of another person, or secretes with intent to appropriate to such use, any money, evidence of debt or other property entrusted to him in virtue of his office,~~ shall be guilty of a felony.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 647, is amended to read as follows:

Section 647. Aggravated assault and battery shall be punished by imprisonment in the State Penitentiary not exceeding five (5) years, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not more than Five Hundred Dollars ($500.00), or both such fine and imprisonment.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 888, is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony

punishable by imprisonment in the State Penitentiary for a period of not more than twenty (20) years. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of said offenses, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or

2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or

3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime; or

4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision

or authority of a state agency, a county, a municipality or a political subdivision of this state.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1115, is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by ~~death or~~ imprisonment in the State Penitentiary, for not less than five (5) years~~, in the discretion of the jury, or in case the jury fails or refuses to fix the punishment then the same shall be pronounced by the court~~. Any person convicted of a second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the State Penitentiary for life or life without parole.

SECTION 8. AMENDATORY 21 O.S. 2001, Section 1123, is amended to read as follows:

Section 1123. A. Any person who shall knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age for the child to have unlawful sexual relations or sexual intercourse with any person; or

2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or

3. Ask, invite, entice, or persuade any child under sixteen (16) years of age to go alone with any person to a secluded, remote,

or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen (16) years of age or ejaculate upon or in the presence of a child, or force or require a child to look upon the body or private parts of another person or upon sexual acts performed in the presence of the child or force or require a child to touch or feel the body or private parts of said child or another person,

upon conviction, shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than one (1) year nor more than twenty (20) years. The provisions of this section shall not apply unless the accused is at least three (3) years older than the victim. Any person convicted of a second or subsequent violation of subsection A of this section shall be guilty of a felony and shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of subsection A of this section shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of

convictions pursuant to these sections shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner and without the consent of that person or when committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

C. Any person convicted of any violation of this subsection shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not more than five (5) years.

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1451, is amended to read as follows:

Section 1451. Embezzlement is the fraudulent appropriation of property ~~by a~~ of any person ~~to whom it has been entrusted~~ or legal entity, legally obtained, to any use or purpose not intended or authorized by its owner, or the secretion of the property with the fraudulent intent to appropriate it to such use or purpose, under any of the following circumstances:

1. Where the property was obtained by being entrusted to that person for a specific purpose, use, or disposition and shall include, but not be limited to, any funds "held in trust" for any purpose;

2. Where the property was obtained by virtue of a power of attorney being granted for the sale or transfer of the property;

3. Where the property is possessed or controlled for the use of another person;

4. Where the property is to be used for a public or benevolent purpose;

5. Where any person diverts any money appropriated by law from the purpose and object of the appropriation;

6. Where any person fails or refuses to pay over to the state, or appropriate authority, any tax or other monies collected in accordance with state law, and who appropriates the tax or monies to the use of that person, or to the use of any other person not entitled to the tax or monies;

7. Where the property is possessed for the purpose of transportation, without regard to whether packages containing the property have been broken;

8. Where any person removes crops from any leased or rented premises with the intent to deprive the owner or landlord interested in the land of any of the rent due from that land, or who fraudulently appropriates the rent to that person or any other person; or

9. Where the property is possessed or controlled by virtue of a lease or rental agreement, and the property is willfully or intentionally not returned within ten (10) days after the expiration of the agreement.

Embezzlement does not require a distinct act of taking, but only a fraudulent appropriation, conversion or use of property.

SECTION 10. AMENDATORY 21 O.S. 2001, Section 1738, is amended to read as follows:

Section 1738. A. Any commissioned peace officer of this state is authorized to seize any vehicle owned by or registered to the defendant used in the commission of any armed robbery offense defined in Section 801 of this title, or any vehicle owned by or registered to the defendant when such vehicle is used to facilitate

the intentional discharge of any kind of firearm in violation of Section 652 of this title, or any vehicle, airplane, vessel, vehicles or parts of vehicles whose numbers have been removed, altered or obliterated so as to prevent determination of the true identity or ownership of said property and parts of vehicles which probable cause indicates are stolen but whose true ownership cannot be determined, or any vehicle owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any equipment owned by or registered to the defendant which is used in the attempt or commission of any act of burglary in the first or second degree, motor vehicle theft, unauthorized use of a vehicle, obliteration of distinguishing numbers on vehicles or criminal possession of vehicles with altered, removed or obliterated numbers as defined by Sections 1431, 1435, 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of Title 47 of the Oklahoma Statutes, or any equipment owned by or registered to the defendant used in violation of the Trademark Anti-Counterfeiting Act, or any vehicle, airplane, vessel or equipment owned by or registered to the defendant used in the commission of any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405 of this title. Said property may be held as evidence until a forfeiture has been declared or a release ordered. Forfeiture actions under this section may be brought by the district attorney in the proper county of venue as petitioner; provided, in the event the district attorney elects not to file such action, or fails to file such action within ninety (90) days of the date of the seizure of such equipment, the property shall be returned to the owner.

B. In addition to the property described in subsection A of this section, the following property is also subject to forfeiture pursuant to this section:

1. Property used in the commission of theft of livestock or in any manner to facilitate the theft of livestock;

2. The proceeds gained from the commission of theft of livestock;

3. Personal property acquired with proceeds gained from the commission of theft of livestock;

4. All conveyances, including aircraft, vehicles or vessels, and horses or dogs which are used to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock; ~~and~~

5. Any items having a counterfeit mark and all property that is owned by or registered to the defendant that is employed or used in connection with any violation of the Trademark Anti-Counterfeiting Act;

6. Any weapon possessed, used or available for use in any manner during the commission of a felony within the State of Oklahoma, or any firearm that is possessed by a convicted felon;

7. Any police scanner used in violation of Section 1214 of this title; and

8. Any computer and its components and peripherals, including but not limited to the central processing unit, monitor, keyboard, printers, scanners, software, and hardware, when it is used in the commission of any crime in this state, including but not limited to obtaining money by false pretenses, counterfeiting or forgery.

C. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

D. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Oklahoma Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served

in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication in a newspaper of general circulation in the county where the seizure was made.

E. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

F. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the state, if such fact is proven.

G. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

H. At the hearing the petitioner shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section or is property described in subsection B of this section with knowledge by the owner of the property.

I. The claimant of any right, title, or interest in the property may prove the lien, mortgage, or conditional sales contract to be bona fide and that the right, title, or interest created by the document was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

J. In the event of such proof, the court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due such person is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser, except for items bearing a counterfeit mark or used exclusively to manufacture a counterfeit mark.

K. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property may be forfeited to the state and may be sold pursuant to judgment of the court, as on sale upon execution, and as provided in Section 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise provided for by law and for property bearing a counterfeit mark which shall be destroyed.

L. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the petitioner or in the custody of the law enforcement agency as provided in the Trademark Anti-Counterfeiting Act. Except for property required to be destroyed pursuant to the Trademark Anti-Counterfeiting Act, the petitioner shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the petitioner may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the petitioner shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

M. The petitioner, or the law enforcement agency holding property pursuant to the Trademark Anti-Counterfeiting Act, shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

N. Attorney fees shall not be assessed against the state or the petitioner for any actions or proceeding pursuant to Section 1701 et seq. of this title.

O. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of such person's interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. To the victim of the crime to compensate said victim for any loss incurred as a result of the act for which such property was forfeited; and

4. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, to be distributed as follows: one-third (1/3) to the investigating law enforcement agency; one-third (1/3) of said fund to be used and maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. If the petitioner is not the district attorney, then the one-third (1/3) which would have been designated to that office shall be distributed to the petitioner. Monies distributed to the jail maintenance fund shall be used to pay costs for the storage of such property if such property is ordered

released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

P. Monies distributed into the revolving fund in the office of the county treasurer from forfeitures initiated under this section by the district attorney shall be limited to One Hundred Thousand Dollars ($100,000.00) at any one time in counties with population in excess of three hundred thousand (300,000) and Twenty-five Thousand Dollars ($25,000.00) at any one time in counties with population less than three hundred thousand (300,000). Any amount in excess of these figures shall be placed in the general fund of the county.

Q. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section and was not property subject to forfeiture pursuant to subsection B of this section and is not property bearing a counterfeit mark, the court shall order the property released to the owner as the right, title, or interest appears on record in the Tax Commission as of the seizure.

R. No vehicle, airplane, or vessel used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A or B of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

S. Whenever any property is forfeited pursuant to this section, the district court having jurisdiction of the proceeding may order

that the forfeited property may be retained for its official use by the state, county, or municipal law enforcement agency which seized the property.

SECTION 11. AMENDATORY 22 O.S. 2001, Section 204, is amended to read as follows:

Section 204. If the person to be arrested ~~have~~ has committed a felony, and a private person, after notice of ~~his~~ the intention to make the arrest, be refused admittance, ~~he~~ the private person may break open an outer or inner door or window of ~~a~~ the dwelling house of the person to be arrested, for the purpose of making the arrest.

SECTION 12. AMENDATORY 22 O.S. 2001, Section 258, is amended to read as follows:

Section 258. First: The witnesses must be examined in the presence of the defendant, and may be cross-examined by him. On the request of the district attorney, or the defendant, all the testimony must be reduced to writing in the form of questions and answers and signed by the witnesses, or the same may be taken in shorthand and transcribed without signing, and in both cases filed with the clerk of the district court, by the examining magistrate, and may be used as provided in ~~22 O.S. 1951,~~ Section 333 of this title. In no case shall the county be liable for the expense in reducing such testimony to writing, unless ordered by the judge of a court of record.

Second: The district attorney may, on approval of the county judge or the district judge, issue subpoenas in felony cases and call witnesses before him and have them sworn and their testimony reduced to writing and signed by the witnesses at the cost of the county. Such examination must be confined to some felony committed against the statutes of the state and triable in that county, and the evidence so taken shall not be receivable in any civil proceeding. A refusal to obey such subpoena or to be sworn or to testify may be punished as a contempt on complaint and showing to

the county court, or district court, or the judges thereof that proper cause exists therefor.

Third: No preliminary information shall be filed without the consent or endorsement of the district attorney, unless the defendant be taken in the commission of a felony, or the offense be of such character that the accused is liable to escape before the district attorney can be consulted. If the defendant is discharged and the information is filed without authority from or endorsement of the district attorney, the costs must be taxed to the prosecuting witness, and the county shall not be liable therefor.

Fourth: The convening and session of a grand jury does not dispense with the right of the district attorney to file complaints and informations, conduct preliminary hearings and other routine matters, unless otherwise specifically ordered, by a written order of the court convening the grand jury; made on the court's own motion, or at the request of the grand jury.

Fifth: There shall be no preliminary examinations in misdemeanor cases.

Sixth: A preliminary magistrate shall have the authority to limit the evidence presented at the preliminary hearing to that which is relevant to the issues of: (1) whether the crime was committed, and (2) whether there is probable cause to believe the defendant committed the crime. Once a showing of probable cause is made the magistrate shall terminate the preliminary hearing and enter a bindover order; provided, however, that the preliminary hearing shall be terminated only if the state made available for inspection law enforcement reports within the prosecuting attorney's knowledge or possession at the time to the defendant five (5) working days prior to the date of the preliminary hearing. <u>The decision of whether or not to make law enforcement reports available prior to the preliminary hearing shall be within the sole discretion of the district attorney. If reports are made available, the</u>

district attorney shall be required to provide those law enforcement reports that the district attorney knows to exist at the time of providing the reports, but this does not include any physical evidence which may exist in the case. This provision does not require the district attorney to make copies for the defendant, but only to make them available for inspection by defense counsel. In the alternative, upon agreement of the state and the defendant, the court may terminate the preliminary hearing once a showing of probable cause is made.

Seventh: The purpose of the preliminary hearing is to establish probable cause that a crime was committed and probable cause that the defendant committed the crime.

SECTION 13. AMENDATORY 22 O.S. 2001, Section 982, is amended to read as follows:

Section 982. A. Whenever a person is convicted of a violent felony offense whether the conviction is for a single offense or part of any combination of offenses, except when the death sentence is available as punishment for the offense, the court shall, before imposing the sentence, require a presentence investigation be made of the offender by the Department of Corrections. The court may order a presentence investigation to be conducted by the Department on any convicted felony offender prior to the court imposing a term of incarceration in the custody of the Department. The court shall order the defendant to pay a fee to the Department of Corrections of not less than Five Dollars ($5.00), nor more than Two Hundred Fifty Dollars ($250.00) for the presentence investigation. In hardship cases, the court shall set the amount of the fee and establish a payment schedule.

B. The Department shall, when conducting a presentence investigation, inquire into the circumstances of the offense and the characteristics of the offender. The information obtained from the investigation shall include, but shall not be limited to, a

voluntary statement from each victim of the offense concerning the nature of the offense and the impact of the offense on the victim and the victim's immediate family, the amount of the loss suffered or incurred by the victim as a result of the criminal conduct of the offender, and the offender's age, marital status, living arrangements, financial obligations, income, family history, education, prior juvenile and criminal records, associations with other persons convicted of a felony offense, social history, indications of a predisposition to violence or substance abuse, remorse or guilt about the offense or the victim's harm, job skills, and employment history. The Department shall make a report of information from such investigation to the court, including a recommendation detailing the punishment which is deemed appropriate for both the offense and the offender, and specifically a recommendation for or against probation or suspended sentence. The report of the investigation shall be presented to the judge within a reasonable time, and upon failure to present the report, the judge may proceed with sentencing. Whenever, in the opinion of the court or the Department, it is desirable, the investigation shall include a physical and mental examination or either a physical or mental examination of the offender.

C. The district attorney shall have a presentence investigation made by the Department on each person charged with a violent felony offense and entering a plea of guilty or a plea of nolo contendere as part of or in exchange for a plea agreement for a felony offense. The presentence investigation shall be completed before the terms of the plea agreement are finalized. The court shall not approve the terms of any plea agreement without reviewing the presentence investigation report to determine whether or not the terms of the sentence are appropriate for both the offender and the offense. The fee provided in subsection A of this section shall apply to persons

subject to this subsection and shall be a condition of the plea agreement and sentence.

D. The presentence investigation reports specified in this section shall not be referred to, or be considered, in any appeal proceedings. Before imposing a sentence, the court shall advise the defendant, the defendant's counsel, and the district attorney of the factual contents and conclusions of the presentence investigation report. The court shall afford the offender a fair opportunity to controvert the findings and conclusions of the reports at the time of sentencing. If either the defendant or the district attorney desires, a hearing shall be set by the court to allow both parties an opportunity to offer evidence proving or disproving any finding contained in a report, which shall be a hearing in mitigation or aggravation of punishment.

E. ~~Neither the district attorney nor the defendant shall be allowed to waive the~~ The required presentence investigation and report may be waived upon written waiver by the district attorney and the defendant, and upon approval by the Court.

F. As used in this section, "violent felony offense" means:

1. Arson in the first degree;

2. Assault with a dangerous weapon, battery with a dangerous weapon or assault and battery with a dangerous weapon;

3. Aggravated assault and battery on a police officer, sheriff, highway patrol officer, or any other officer of the law;

4. Assault with intent to kill, or shooting with intent to kill;

5. Assault with intent to commit a felony, or use of a firearm to commit a felony;

6. Assault while masked or disguised;

7. Burglary in the first degree or burglary with explosives;

8. Child beating or maiming;

9. Forcible sodomy;

10. Kidnapping, or kidnapping for extortion;

11. Lewd or indecent proposition or lewd or indecent acts with a child;

12. Manslaughter in the first or second degrees;

13. Murder in the first or second degrees;

14. Rape in the first or second degrees, or rape by instrumentation;

15. Robbery in the first or second degrees, or robbery by two or more persons, or robbery with a dangerous weapon; or

16. Any attempt, solicitation or conspiracy to commit any of the above enumerated offenses.

SECTION 14. AMENDATORY 22 O.S. 2001, Section 991b, is amended to read as follows:

Section 991b. A. Whenever a sentence has been suspended by the court after conviction of a person for any crime, the suspended sentence of said person may not be revoked, in whole or part, for any cause unless a petition setting forth the grounds for such revocation is filed by the district attorney with the clerk of the sentencing court and competent evidence justifying the revocation of the suspended sentence is presented to the court at a hearing to be held for that purpose within ~~twenty (20) days~~ a reasonable time after the entry of the plea of not guilty to the petition~~, unless waived by both the state and the defendant~~.

B. 1. Where one of the grounds for revocation is the failure of the defendant to make restitution as ordered, the Department of Corrections shall forward to the district attorney all information pertaining to the defendant's failure to make timely restitution as ordered by the court, and said district attorney shall file a petition setting forth the grounds for revocation.

2. The defendant ordered to make restitution can petition the court at any time for remission or a change in the terms of the order of restitution if the defendant undergoes a change of

condition which materially affects the ability of the defendant to comply with the court's order.

3. At the hearing, if one of the grounds for the petition for revocation is the defendant's failure to make timely restitution as ordered by the court, the court will hear evidence and if it appears to the satisfaction of the court from such evidence that the terms of the order of restitution create a manifest hardship on the defendant or the immediate family of the defendant, the court may cancel all or any part of the amount still due, or modify the terms or method of payment.

C. The court may revoke a portion of the sentence and leave the remaining part not revoked, but suspended for the remainder of the term of the sentence, and under the provisions applying to it. The person whose suspended sentence is being considered for revocation at said hearing shall have the right to be represented by counsel, to present competent evidence in his or her own behalf and to be confronted by the witnesses against the defendant. Any order of the court revoking such suspended sentence, in whole or in part, shall be subject to review on appeal, as in other appeals of criminal cases. Provided, however, that if the crime for which the suspended sentence is given was a felony, the defendant may be allowed bail pending appeal. If the reason for revocation be that the defendant committed a felony, the defendant shall not be allowed bail pending appeal.

SECTION 15. AMENDATORY 22 O.S. 2001, Section 991c, is amended to read as follows:

Section 991c. A. Upon a verdict or plea of guilty or upon a plea of nolo contendere, but before a judgment of guilt, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the specific conditions prescribed by the court not to exceed a five-year period. The court shall first consider restitution among the various

conditions it may prescribe. The court may also consider ordering the defendant to:

1. Pay court costs;

2. Pay an assessment in lieu of any fine authorized by law for the offense;

3. Pay any other assessment or cost authorized by law;

4. Engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the defendant;

5. County jail confinement for a period not to exceed ninety (90) days or the maximum amount of jail time provided for the offense, if it is less than ninety (90) days;

6. Pay an amount as reimbursement for reasonable attorney fee, to be paid into the court fund, if a court-appointed attorney has been provided to defendant;

7. Be supervised in the community for a period not to exceed two (2) years. As a condition of any supervision, the defendant shall be required to pay a supervision fee of Forty Dollars ($40.00) per month. The supervision fee shall be waived in whole or part by the supervisory agency when the accused is indigent. No person shall be denied supervision based solely on the person's inability to pay a fee;

8. Pay into the court fund a monthly amount not exceeding Forty Dollars ($40.00) per month during any period during which the proceedings are deferred when the defendant is not to be supervised in the community. The total amount to be paid into the court fund shall be established by the court and shall not exceed the amount of the maximum fine authorized by law for the offense;

9. Make other reparations to the community or victim as required and deemed appropriate by the court;

10. Order any conditions which can be imposed for a suspended sentence pursuant to paragraph 1 of subsection A of Section 991a of this title; or

11. Any combination of the above provisions.

B. In addition to any conditions of supervision provided for in subsection A of this section, the court shall, in the case of a person before the court for the offense 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 who is before the court for the offense of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require the person to participate in 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 determination of conditions for deferred sentence. 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 the 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. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep the 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 abuse 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 by September 1, 1995. The court may also require the person to participate in one or both of the following:

1. An alcohol and drug substance abuse course, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

2. A victims impact panel program, if such a program is offered in the county where the judgment is rendered. The defendant shall be required 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 victims impact panel 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. Upon completion of the conditions of the deferred judgment, and upon a finding by the court that the conditions have been met and all fines, fees, and monetary assessments have been paid as ordered, the defendant shall be discharged without a court judgment of guilt, and the court shall order the verdict or plea of guilty or plea of nolo contendere to be expunged from the record and the charge shall be dismissed with prejudice to any further action. The procedure to expunge the defendant's record shall be as follows:

1. All references to the defendant's name shall be deleted from the docket sheet;

2. The public index of the filing of the charge shall be expunged by deletion, mark-out or obliteration;

3. Upon expungement, the court clerk shall keep a separate confidential index of case numbers and names of defendants which have been obliterated pursuant to the provisions of this section;

4. No information concerning the confidential file shall be revealed or released, except upon written order of a judge of the district court; and

5. Defendants qualifying under Section 18 of this title may petition the court to have the filing of the indictment and the dismissal expunged from the public index and docket sheet. This section shall not be mutually exclusive of Section 18 of this title.

D. Upon order of the court, the provisions of subsection C of this section shall be retroactive.

E. Upon violation of any condition of the deferred judgment, the court may enter a judgment of guilt and proceed as provided in Section 991a of this title or may modify any condition imposed.

Provided, however, if the deferred judgment is for a felony offense, and the defendant commits another felony offense, the defendant shall not be allowed bail pending appeal.

F. The deferred judgment procedure described in this section shall not apply to defendants who have been previously convicted of a felony offense.

Provided, the court may waive this prohibition upon written application of the district attorney. Both the application and the waiver shall be made a part of the record of the case.

G. The deferred judgment procedure described in this section shall not apply to defendants who receive a verdict of guilt after trial or who plead guilty or nolo contendere to a sex offense required by law to register pursuant to the Sex Offenders Registration Act.

SECTION 16. AMENDATORY 22 O.S. 2001, Section 1053, is amended to read as follows:

Section 1053. Appeals to the Court of Criminal Appeals may be taken by the state or a municipality in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;

2. Upon an order of the court arresting the judgment;

3. Upon a question reserved by the state or a municipality; ~~and~~

4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter; and

5. Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice. Priority shall be given to such an appeal and order staying the proceedings shall be entered pending the outcome of the appeal.

SECTION 17. AMENDATORY 22 O.S. 2001, Section 1089.2, is amended to read as follows:

Section 1089.2 A. If in open court at the time the adverse ruling or order is made by the magistrate, the state shall give notice of its intention to appeal the decision. The magistrate shall then enter the notice in the proper court docket, continue the preliminary hearing and retain the accused on his present bond or if he is in custody, return the accused to custody. The state shall file with the court clerk a written application to appeal from the adverse ruling or order of the magistrate within five (5) days from the date of the adverse ruling or order.

B. If not in open court at the time the adverse ruling or order is made by the magistrate, within five (5) days from the date of the adverse ruling or order, the state shall file with the court clerk a written application to appeal from the adverse ruling or order of the magistrate.

C. A copy of the application to appeal shall immediately be presented by the state to the Presiding Judge of the Judicial Administrative District. The Presiding Judge shall assign the application to another district judge or associate district judge within the same judicial administrative district, and shall order the assigned judge to set said matter for hearing and decision within twenty (20) days from the filing of the written application to appeal~~. At~~ and shall provide at least three (3) days ~~prior to the time set for hearing on the state's application to appeal, the state shall serve, either personally or by certified United States mail with return receipt requested, a written notice upon the accused or the accused's attorney of record of the time and place set for the hearing of the state's application to appeal~~ notice to all parties of the time and place of the hearing. In the absence of the Presiding Judge of the Judicial Administrative District, the Acting Presiding Judge shall perform the duties of the Presiding Judge as set forth above. The identity of the Acting Presiding

Judge, if not known locally, may be obtained from the Administrative Director of the Courts at his office in Oklahoma City.

SECTION 18. AMENDATORY 22 O.S. 2001, Section 2002, is amended to read as follows:

Section 2002. A. Disclosure of Evidence by the State.

1. Upon request of the defense, the state shall be required to disclose the following:

a. the names and addresses of witnesses which the state intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. law enforcement reports made in connection with the particular case,

c. any written or recorded statements and the substance of any oral statements made by the accused or made by a codefendant,

d. any reports or statements made by experts in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons,

e. any books, papers, documents, photographs, tangible objects, buildings or places which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused,

f. any record of prior criminal convictions of the defendant, or of any codefendant, and

g. Oklahoma State Bureau of Investigation (OSBI) rap sheet/records check on any witness listed by the state or the defense as a witness who will testify at trial, as well as any convictions of any witness revealed through additional record checks if the defense has furnished social security numbers or date of birth for

their witnesses, except OSBI rap sheet/record checks shall not provide date of birth, social security number, home phone number or address.

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment.

3. The prosecuting attorney's obligations under this standard extend to:

a. material and information in the possession or control of members of the prosecutor's staff,

b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and

c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

B. Disclosure of Evidence by the Defendant.

1. Upon request of the state, the defense shall be required to disclose the following:

a. the names and addresses of witnesses which the defense intends to call at trial, together with their relevant, written or recorded statement, if any, or if none, significant summaries of any oral statement,

b. the name and address of any witness, other than the defendant, who will be called to show that the defendant was not present at the time and place specified in the information or indictment, together with the witness' statement to that fact,

c. the names and addresses of any witness the defendant will call, other than himself, for testimony relating to any mental disease, mental defect, or other

condition bearing upon his mental state at the time the offense was allegedly committed, together with the witness' statement of that fact, if the statement is redacted by the court to preclude disclosure of privileged communication.

2. A statement filed under subparagraph a, b or c of paragraph 1 of subsection A or B of this section is not admissible in evidence at trial. Information obtained as a result of a statement filed under subsection A or B of this section is not admissible in evidence at trial except to refute the testimony of a witness whose identity subsection A of this section requires to be disclosed.

3. Upon the prosecuting attorney's request after the time set by the court, the defendant shall allow him access at any reasonable times and in any reasonable manner to inspect, photograph, copy, or have reasonable tests made upon any book, paper, document, photograph, or tangible object which is within the defendant's possession or control and which:

a. the defendant intends to offer in evidence, except to the extent that it contains any communication of the defendant, or

b. is a report or statement as to a physical or mental examination or scientific test or experiment made in connection with the particular case prepared by and relating to the anticipated testimony of a person whom the defendant intends to call as a witness, provided the report or statement is redacted by the court to preclude disclosure of privileged communication.

C. Continuing Duty to Disclose.

If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under the Oklahoma Criminal Discovery Code, such party shall promptly notify the other party,

the attorney of the other party, or the court of the existence of the additional evidence or material.

D. Time of Discovery.

Motions for discovery may be made at the time of the district court arraignment or thereafter; provided that requests for police reports may be made subject to the provisions of Section 258 of this title. However, a request pursuant to Section 258 of this title shall be subject to the discretion of the district attorney. All issues relating to discovery, except as otherwise provided, will be completed at least ten (10) days prior to trial. The court may specify the time, place and manner of making the discovery and may prescribe such terms and conditions as are just.

E. Regulation of Discovery.

1. Protective and Modifying Orders. Upon motion of the state or defendant, the court may at any time order that specified disclosures be restricted, or make any other protective order. If the court enters an order restricting specified disclosures, the entire text of the material restricted shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

2. Failure to Comply with a Request. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

3. The discovery order shall not include discovery of legal work product of either attorney which is deemed to include legal research or those portions of records, correspondence, reports, or memoranda which are only the opinions, theories, or conclusions of the attorney or the attorney's legal staff.

F. Reasonable cost of copying, duplicating, videotaping, developing or any other cost associated with this Code for items requested shall be paid by the party so requesting; however, any item which was obtained from the defendant by the state of which copies are requested by the defendant shall be paid by the state. Provided, if the court determines the defendant is indigent and without funds to pay the cost of reproduction of the required items, the cost shall be paid by the Indigent Defender System, unless otherwise provided by law.

SECTION 19. AMENDATORY 28 O.S. 2001, Section 3, is amended to read as follows:

Section 3. Any county, township and district officer who is required by law to make monthly or quarterly reports to the board of county commissioners who fails or refuses to make such reports, or who makes a false or fraudulent report, shall be deemed guilty of a misdemeanor and in addition to his punishment he shall forfeit his office; ~~and when any such officer shall fail or refuse to account for or to pay over any money in his official capacity, he shall be deemed guilty of embezzlement,~~ and in no case shall any county officer retain any perquisites of his office; and if any officer neglect or refuse to charge the fees provided by law, he shall forfeit double the amount thereof to be deducted from his salary, or to be collected by civil action against any such officer or his bondsmen.

SECTION 20. AMENDATORY 37 O.S. 2001, Section 163.4, is amended to read as follows:

Section 163.4 The excise tax levied on low-point beer under Section 163.3 of this title shall be paid by the following:

1. Manufacturers. When the sale is made by a manufacturer, located and doing business in this state, to a wholesaler, located and doing business in this state, the tax shall be paid by the wholesaler.

When the sale is made by a manufacturer located outside of the state and doing business in this state by virtue of and under permit issued as hereinafter provided to a wholesaler located and doing business in this state the tax shall be paid by the wholesaler.

When the sale is made by a manufacturer located and doing business in this state to a retail dealer located and doing business in this state, the tax shall be paid by the manufacturer, who must also be the holder of an effective wholesale beverage dealer's license. Before making any such sale to a retail dealer the manufacturer must apply for and procure a license as a wholesaler, provided for in Section 163.1 et seq. of this title;

2. Wholesalers. When the sale is made by a wholesaler, located and doing business in this state, to a retail dealer located and doing business in this state, the tax shall be paid by the wholesaler. Such wholesalers may sell only to licensed retail dealers low-point beer upon which the tax provided by Section 163.3 of this title has first been paid by such wholesaler.

When the sale is made by a wholesaler, located and doing business outside this state, and who has obtained an Oklahoma wholesale beverage dealer's license, to a retail dealer located and doing business in this state, the wholesaler shall be liable for and must pay to the Tax Commission the beverage tax due on such sales. In the event of a retail dealer, doing business in this state, purchases beverage from a wholesaler doing business outside this state, and who does not have an Oklahoma wholesale beverage dealer's license, the retailer shall be liable for and must pay to the Oklahoma Tax Commission the tax due on such sales. Both the wholesalers and retailers liable for the payment of such tax shall, on forms prescribed by the Tax Commission, report to the Tax Commission such sales and deliveries~~.~~

~~For the purpose of collecting and remitting the tax imposed under Section 163.1 et seq. of this title, the wholesaler collecting~~

~~such tax is hereby declared to be the agent of the state for such purposes, and his or her failure to remit or pay such tax to the state, when due, shall constitute embezzlement, and any such wholesaler, upon conviction, shall be punished as provided by law for the embezzlement of public funds~~; and

3. Retail Dealers. Retail dealers, where the out-of-state manufacturer or wholesaler has paid the tax under the provisions of Section 163.1 et seq. of this title, shall not be required to pay the tax. However, nothing in Section 163.1 et seq. of this title shall operate to relieve any retail dealer from payment of the tax where such retail dealer has at any time in his or her possession or exhibits for sale low-point beer upon which the tax has not been paid. In such case all the provisions of Section 163.1 et seq. of this title relating to reports, returns, and payment of the tax shall apply to such retail dealer, and any refusal to comply with the requirements regarding reports, returns, and payment of the tax, or any violation of any of the penal sections of Section 163.1 et seq. of this title, shall likewise subject such retail dealer to the penalties and punishments prescribed for other taxpayers. In addition, any retail dealer that manufactures low-point beer for consumption on the licensed premises shall be required to pay the tax.

No retail dealer may sell any low-point beer except at retail, for consumption or use; and no retail dealer may have in his or her possession, or offer for sale, any such beverage upon which the tax shall not have been paid.

SECTION 21. AMENDATORY 37 O.S. 2001, Section 553, is amended to read as follows:

Section 553. A. An excise tax is hereby levied and imposed upon all alcoholic beverages imported or manufactured, for sale, use or distribution, or used or possessed in this state, or imported or manufactured for export out of this state at the following rates:

1. One Dollar and forty-seven cents ($1.47) per liter, and a proportionate rate on fractions thereof, on each liter of spirits;

2. Nineteen cents ($0.19) per liter, and a proportionate rate on fractions thereof, on each liter of light wine;

3. Thirty-seven cents ($0.37) per liter, and a proportionate rate on fractions thereof, on each liter of wine containing more than fourteen percent (14%) of alcohol by volume;

4. Fifty-five cents ($0.55) per liter, and a proportionate rate on fractions thereof, on each liter of sparkling wine; and

5. Twelve Dollars and fifty cents ($12.50) per barrel (thirty-one (31) wine gallons) and a proportionate rate on portions thereof, on each barrel of beer.

B. The excise tax levied on alcoholic beverages except beer under subsection A of this section shall be paid as follows:

1. Payment of the excise tax levied by this section with respect to all alcoholic beverages, other than beer, shall be made by the person shipping the same into Oklahoma, or in the case of direct imports from foreign countries by the importer, or in the case of alcoholic beverages manufactured in Oklahoma by the first seller thereof;

2. On and after January 1, 1981, the due and payable excise tax levied by this section shall be made by tax returns filed with the Oklahoma Tax Commission. The tax returns shall be made under oath by the person liable for the tax on forms prescribed and provided by the Oklahoma Tax Commission and shall be accompanied by payment of the taxes due and any additional sums due as provided by this section. Invoices describing all alcoholic beverages as described in this section which are shipped into this state or which are first sold in this state shall be delivered to the Oklahoma Tax Commission and to the Alcoholic Beverage Laws Enforcement Commission immediately following shipment of liquors into the state or delivery to the first purchaser. Tax returns and payment of excise tax and

other sums due shall be delivered to the Oklahoma Tax Commission no later than the tenth day of the month immediately succeeding the month of shipment, importation or first sale of the alcoholic beverages as provided in paragraph 1 of this subsection;

3. All tax returns required to be filed during the twelve-month period beginning January 1, 1981, shall be accompanied by payment of the excise tax due plus an additional payment in the amount of twenty percent (20%) of said tax. Up to ten percent (10%) of the total payments made during said period may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title; and

4. On and after February 1, 1982, each person required to file a tax return pursuant to this section shall remit the excise tax due, less an amount not to exceed two percent (2%) of the total of the additional payments made by said taxpayer pursuant to paragraph 3 of this subsection. The total of said deductions shall not exceed the total of the additional payments made pursuant to paragraph 3 of this subsection. Up to ten percent (10%) of each tax payment made under this subsection may be made in the form of revenue stamps previously purchased pursuant to Section 540 of this title.

C. ~~For the purpose of collecting and remitting the excise tax imposed under this section, the person liable for such tax is hereby declared to be the agent of the state for such purposes, and his failure to remit or pay such tax to the state, when due, shall constitute embezzlement, and any such person, upon conviction, shall be punished as provided by law for the embezzlement of public funds.~~

~~D.~~ Nothing herein shall be construed to impose an additional excise tax on intoxicating beverages held in inventory by wholesalers and retailers upon which the excise tax was paid prior to the effective date of any excise tax increase.

SECTION 22. AMENDATORY 42 O.S. 2001, Section 144.2, is amended to read as follows:

Section 144.2 A. Except as provided by subsection ~~F~~ D of this section, the amount payable under any oil and gas well drilling contract, reworking contract, operating agreement, or monies payable as a condition of participation in the drilling of an oil and gas well under the terms of a pooling order issued by the Oklahoma Corporation Commission shall, upon receipt by any oil and gas well operator, contractor or subcontractor, be held by such operator as trust funds for the payment of all lienable claims due and owing by such operator, contractor or subcontractor by reason of such drilling contract, reworking contract, operating agreement, or force pooling order.

B. The trust funds created under subsection A of this section shall be applied to the payment of said valid lienable claims and no portion thereof shall be used for any other purpose until all lienable claims due and owing or to become due and owing shall have been paid.

C. ~~Any person willfully and knowingly appropriating such trust funds to a use not permitted by subsection A of this section, upon conviction, shall be guilty of the felony of embezzlement.~~

~~D. If the party receiving any money under subsection A of this section shall be a corporation, such corporation and its managing officers shall be liable for the proper application of such trust funds and subject to punishment under subsection C of this section.~~

~~E.~~ The existence of such trust funds shall not prohibit the filing or enforcement of any labor, mechanic or materialmen's lien against the affected real property by any lien claimant, nor shall the filing of such a lien release the holder of such funds from the obligations created under this section.

~~F.~~ D. The provisions of this section shall not be applicable or affect payments owed to royalty owners by the operator of an oil or gas well and shall not affect or alter the terms or provisions of Section 87.1 of Title 52 of the Oklahoma Statutes.

SECTION 23. AMENDATORY 42 O.S. 2001, Section 153, is amended to read as follows:

Section 153. (1) The trust funds created under Section 152 of this title shall be applied to the payment of said valid lienable claims and no portion thereof shall be used for any other purpose until all lienable claims due and owing or to become due and owing shall have been paid.

(2) ~~Any person willfully and knowingly appropriating such trust funds to a use not permitted by subsection (1) of this section, upon conviction, shall be guilty of the felony of embezzlement and shall be punished by imprisonment in the State Penitentiary for a period not to exceed five (5) years or by a fine not to exceed Ten Thousand Dollars ($10,000.00), or by both such imprisonment and fine.~~

~~(3)~~ If the party receiving any money under Section 152 of this title is an entity having the characteristics of limited liability pursuant to law, such entity and the natural persons having the legally enforceable duty for the management of the entity shall be liable for the proper application of such trust funds and subject to punishment under ~~subsection (2) of this section~~ Section 1451 of Title 21 of the Oklahoma Statutes. For purposes of this section, the natural persons subject to punishment shall be the managing officers of a corporation and the managers of a limited liability company.

~~(4)~~ (3) The existence of such trust funds shall not prohibit the filing or enforcement of a labor, mechanic or materialmen's lien against the affected real property by any lien claimant, nor shall the filing of such a lien release the holder of such funds from the obligations created under this section or Section 152 of this title.

SECTION 24. AMENDATORY 47 O.S. 2001, Section 11-902 (Section 23, Chapter 437, O.S.L. 2001), is amended to read as follows:

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

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

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

C. 1. Any person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not less than One Hundred Fifty Dollars ($150.00) nor more than One Thousand Dollars ($1,000.00).

2. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in

subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony and shall be sentenced to:

a. treatment for a minimum of twenty-eight (28) days followed by thirty (30) days of aftercare at the defendant's expense, or

b. the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not less than One Hundred Fifty Dollars ($150.00) nor more than Two Thousand Five Hundred Dollars ($2,500.00), or

c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph.

However, if the treatment in subparagraph a of this paragraph does not include inpatient treatment for a period of not less than five (5) days, the person shall serve a term of imprisonment of at least five (5) days.

3. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall be sentenced to:

a. treatment for a minimum of twenty-eight (28) days followed by ninety (90) days of aftercare at the defendant's expense, two hundred forty (240) hours of community service following the aftercare and use of an ignition interlock device, or

b. the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not less than One Hundred Fifty Dollars ($150.00) nor more than Five Thousand Dollars ($5,000.00).

However, if the treatment in subparagraph a of this paragraph does not include inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days.

4. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall be sentenced to:

a. inpatient treatment for a minimum of twenty-eight (28) days followed by not less than one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and use of an ignition interlock device for a minimum of thirty (30) days, or

b. the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not less than One Hundred Fifty Dollars ($150.00) nor more than Five Thousand Dollars ($5,000.00).

However, if the person does not undergo inpatient treatment pursuant to subparagraph a of this paragraph the person shall serve a term of imprisonment of at least ten (10) days.

5. Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section shall be deemed guilty of a felony.

6. Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than eight-hundredths (0.08).

7. In any case in which a defendant is charged with a second or subsequent driving under the influence of alcohol or other intoxicating substance offense within any municipality with a municipal court other than a court of record, the charge shall be presented to the county's district attorney and filed with the district court of the county within which the municipality is located.

8. One Hundred Fifty Dollars ($150.00) of any fine imposed under this subsection shall be remitted by the court to the State Treasurer to be deposited in the Department of Public Safety Patrol Vehicle Revolving Fund.

D. Any person who is convicted of a violation of driving under the influence with a blood or breath alcohol concentration of fifteen-hundredths (0.15) or more shall be deemed guilty of aggravated driving under the influence. Aggravated driving under the influence shall be punishable by mandatory inpatient treatment for a minimum of twenty-eight (28) days followed by not less than one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and an ignition interlock device for a minimum of thirty (30) days. Nothing in this subsection shall preclude the defendant from being charged or punished as provided in paragraphs 1, 2, 3, 4 or 5 of subsection C of this section.

E. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections with assignment to substance abuse treatment.

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

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

H. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and assessment program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating and assessing 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 and assessment. 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 and assessment shall not exceed Seventy-five Dollars ($75.00). The evaluation and assessment 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 evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit from a treatment program, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in an alcohol and drug substance abuse treatment program at an approved treatment facility as defined by Section 3-403 of Title 43A of the Oklahoma Statutes. No person, agency or facility operating an alcohol and drug substance abuse evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this section 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 imprisonment in the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation and assessment report submitted to the court pursuant to the provisions of 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 and assessment required by this subsection. If the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment, the Department of Public Safety shall not reinstate driving privileges until the defendant has complied in full with such order. 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. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

I. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than 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, if in the opinion of the court the defendant has the ability to pay such fee.

J. Any person who is found guilty of a second or subsequent violation of the provisions of this section, shall be ordered by the court to have installed, after the conclusion of the mandatory revocation period pursuant to Section 6-205.1 of this title, on

every motor vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person pursuant to Sections 754.1 and 755 of this title, an ignition interlock device approved by the Department of Public Safety at the person's own expense for a period of not less than six (6) months nor more than three (3) years. The person shall pay the monthly maintenance fee for each ignition interlock device installed pursuant to this subsection. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

K. Any person who is found guilty of a felony violation of the provisions of this section may be required to submit to electronic monitoring as authorized and defined by Section 991a of Title 22 of the Oklahoma Statutes.

L. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of law of another state prohibiting the offense provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection H of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

M. Any person who is found guilty of a violation of the provisions of this section who has been sentenced by the court to perform any type of community service shall not be permitted to pay a fine in lieu of performing the community service.

SECTION 25. AMENDATORY 63 O.S. 2001, Section 2-506, is amended to read as follows:

Section 2-506. A. Any peace officer of this state shall seize the following property:

1. Any property described in subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered, except for property described in paragraphs 1, 2 and 3 of subsection A of Section 2-503 of this title;

2. Any property described in subsection B of Section 2-503 of this title; or

3. Any property described in subsection C of Section 2-503 of this title.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the agency seeking forfeiture according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney in the office of the agency prosecuting the action to recover unpaid fines, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within forty-five (45) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of forty-five (45) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in paragraphs ~~4 and 6~~ 3 through 9 of subsection A or subsections B and C of Section 2-503 of this title, the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the state by a preponderance of the evidence.

H. The claimant of any right, title, or interest in the property may prove a lien, mortgage, or conditional sales contract to be a bona fide or innocent ownership interest and that such right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the state and sold under judgment of the

court, as on sale upon execution, and as provided for in Section 2-508 of this title, except as otherwise provided for in Section 2-503 of this title.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be subject to the provisions of subsections E and F of Section 2-503 of this title.

L. The proceeds of the sale of any property not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission, the Department of Corrections or the Office of the Attorney General shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property and legitimate costs related to the civil forfeiture proceedings; and

3. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education, and maintained by the district attorney in his or her discretion for those purposes with a yearly accounting to the board of county commissioners in whose county the fund is established and to the District Attorneys Council; provided, one hundred percent (100%) of the balance of the proceeds of such sale of property forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. The revolving fund shall be audited by the State Auditor and Inspector at least every two (2) years in the manner provided in Section 171 of Title 19 of the Oklahoma Statutes. Said audit shall include, but not be limited to, a compliance audit. A district attorney may enter into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section. The District Attorneys Council shall adopt guidelines which ensure that such agencies receive a reasonable percentage of such proceeds, considering the relative contribution of each agency to the drug enforcement and prosecution operations relating to the seizure. In formulating said guidelines, the District Attorneys Council shall examine federal guidelines on asset distribution and use said guidelines as a basis for establishing guidelines for this state. The Attorney General is hereby authorized to mediate disputes between district attorneys and such agencies concerning the application of said guidelines in particular instances. Any agency

that receives proceeds from an asset distribution shall maintain a true and accurate record of all such assets.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, Section 2-101 et seq. of this title, the district court of jurisdiction may order that the vehicle, airplane or vessel seized may be retained by the state, county or city law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the court finds that the state failed to satisfy the required showing provided for in subsection G of this section, the court shall order the property released to the owner or owners.

O. Except as provided for in subsection Q of this section, a bona fide or innocent owner, lien holder, mortgagee or vendor that recovers property pursuant to this section shall not be liable for storage fees.

P. Except as provided for in subsection Q of this section, storage fees shall be paid by the agency which is processing the seizure and forfeiture from funds generated by seizure and forfeiture actions.

Q. The bona fide or innocent owner, lien holder, mortgagee or vendor shall reclaim subject seized property within thirty (30) days of written notice from the seizing agency. If such person fails to reclaim the property within the thirty-day time period, then storage fees may be assessed against their secured interest.

R. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the accused by the office of the district attorney or other party to the forfeiture at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons

making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the forfeiture applicant or the respondent, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory except to the criminal justice agency originally submitting the substance to the OSBI for analysis, absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

SECTION 26. AMENDATORY 64 O.S. 2001, Section 114, is amended to read as follows:

Section 114. ~~Any employee of the~~ The Commissioners of the Land Office ~~who shall be convicted of embezzling any of the funds or monies of the Commissioners of the Land Office shall be guilty of a felony and shall be punished by confinement in the State Penitentiary not exceeding five (5) years and, in addition thereto it is hereby made the mandatory duty of the Commissioners of the Land Office to~~ shall immediately discharge any ~~such~~ employee ~~upon the discovery of the act or acts of embezzlement~~ who shall be convicted of embezzlement of any of the funds or monies of the Land Office.

SECTION 27. AMENDATORY 68 O.S. 2001, Section 500.58, is amended to read as follows:

Section 500.58 A. A supplier, permissive supplier, or importer who knowingly fails to precollect or timely remit tax otherwise required to be paid over to the Commission pursuant to Section ~~18~~ 500.18 or ~~20~~ 500.20 of this ~~act~~ title, or pursuant to a tax precollection agreement under Section ~~19~~ 500.19 of this ~~act~~ title shall be liable for the uncollected tax plus the appropriate penalties as set forth in Section 217 of ~~Title 68 of the Oklahoma Statutes~~ this title.

B. ~~A person who fails or refuses to pay over to the state the tax on motor fuel at the time required in this act or who fraudulently withholds or appropriates or otherwise uses the money or any portion thereof belonging to the state shall be guilty of the crime of embezzlement.~~

~~C.~~ If any person liable for the tax under this act files a false or fraudulent return with the intent to evade the tax, then fifty percent (50%) of the total amount of any deficiency, in addition to the deficiency, including interest as provided in

Section 217 of ~~Title 68 of the Oklahoma Statutes~~ this title, shall be added, collected and paid.

~~D.~~ C. Any person operating a motor vehicle in violation of Section ~~45~~ 500.45, ~~49~~ 500.49 or ~~50~~ 500.50 of this ~~act~~ title shall be guilty of a misdemeanor for the first offense and shall, upon conviction, be fined not more than Five Hundred Dollars ($500.00), or shall be sentenced to a term of not more than six (6) months in the county jail, or shall be punishable by both such fine and imprisonment. For the second and each subsequent offense, violators shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than One Thousand Dollars ($1,000.00), or shall be sentenced to a term of not more than one (1) year in the county jail, or shall be punishable by both such fine and imprisonment.

~~E.~~ D. The Commission shall impose a civil penalty of One Thousand Dollars ($1,000.00) for the first occurrence of transporting motor fuel without adequate shipping papers annotated as required under Section ~~45~~ 500.45, ~~49~~ 500.49 or ~~50~~ 500.50 of this ~~act~~ title. Each subsequent occurrence described in this subsection is subject to a civil penalty of Five Thousand Dollars ($5,000.00).

~~F.~~ E. The Commission may impose a civil penalty against every terminal operator that fails to meet shipping paper issuance requirements under Sections ~~21~~ 500.21, ~~44~~ 500.44 and ~~55~~ 500.55 of this ~~act~~ title. The civil penalty imposed on the terminal operator shall be the same as the civil penalty imposed under subsection ~~E~~ D of this section.

SECTION 28. AMENDATORY 68 O.S. 2001, Section 1361, is amended to read as follows:

Section 1361. Consumer to pay tax - Vendor to collect tax - Penalties for failure to collect.

A. Except as otherwise provided by subsection C of this section, the tax levied by Section 1350 et seq. of this title shall be paid by the consumer or user to the vendor as trustee for and on

account of this state. Except as otherwise provided by subsection C of this section, each and every vendor in this state shall collect from the consumer or user the full amount of the tax levied by Section 1350 et seq. of this title, or an amount equal as nearly as possible or practicable to the average equivalent thereof. Every person required to collect any tax imposed by Section 1350 et seq. of this title, and in the case of a corporation, each principal officer thereof, shall be personally liable for the tax. In the case of a limited liability company, all managers and members under a duty to collect and remit taxes for the limited liability company shall be liable for the tax. If no managers or members have been specified to be under the duty of withholding and remitting taxes, then all managers and members shall be liable for the tax.

However, if the Oklahoma Tax Commission finds that a consumer or user improperly presented a sales tax permit or other certification or used the property purchased exempt from tax in a manner that would not have qualified for exemption, the purchaser shall be liable for the remittance of the tax, interest and penalty due thereon and the Tax Commission shall pursue collection thereof from the purchaser in any manner in which sales tax may be collected from a vendor. Upon such determination, the vendor shall be relieved of any liability for any sales tax imposed by the provisions of this section upon such vendor with respect to such sale.

B. Except as otherwise provided by subsection C of this section, vendors shall add the tax imposed by Section 1350 et seq. of this title, or the average equivalent thereof, to the sales price, charge, consideration, gross receipts or gross proceeds of the sale of tangible personal property or services taxed by Section 1350 et seq. of this title, and when added such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to vendor until paid, and shall be recoverable at law in the same manner as other debts.

C. A person who has obtained a direct payment permit as provided in Section 1364.1 of ~~Title 68 of the Oklahoma Statutes~~ this title shall accrue all taxes imposed pursuant to Sections 1354 or 1402 of this title on all purchases made by the person pursuant to the permit at the time the purchased items are first used or consumed in a taxable manner and pay the accrued tax directly to the Oklahoma Tax Commission on reports as required by Section 1365 of this title.

D. Except as otherwise provided by subsection C of this section, a vendor who willfully or intentionally fails, neglects or refuses to collect the full amount of the tax levied by Section 1350 et seq. of this title, or willfully or intentionally fails, neglects or refuses to comply with the provisions of Section 1350 et seq. of this title, or remits or rebates to a consumer or user, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by Section 1350 et seq. of this title, or makes in any form of advertising, verbally or otherwise, any statement which implies that the vendor is absorbing the tax, or paying the tax for the consumer or user by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than Five Hundred Dollars ($500.00), and upon conviction for a second or other subsequent offense shall be fined not more than One Thousand Dollars ($1,000.00), or incarcerated for not more than sixty (60) days, or both. Provided, sales by vending machines may be made at a stated price which includes state and any municipal sales tax.

E. A consumer or user who willfully or intentionally fails, neglects or refuses to pay the full amount of tax levied by Section 1350 et seq. of this title or willfully or intentionally uses a sales tax permit or direct payment permit which is invalid, expired, revoked, canceled or otherwise limited to a specific line of

business or willfully or intentionally issues a resale certificate to a vendor to evade the tax levied by Section 1350 et seq. of this title shall be subject to a penalty in the amount of Five Hundred Dollars ($500.00) per reporting period upon determination thereof, which shall be apportioned as provided for the apportionment of the tax.

F. Any sum or sums collected or accrued or required to be collected or accrued in Section 1350 et seq. of this title shall be deemed to be held in trust for the State of Oklahoma, and, as trustee, the collecting vendor or holder of a direct payment permit as provided for in Section 1364.1 of ~~Title 68 of the Oklahoma Statutes~~ this title shall have a fiduciary duty to the State of Oklahoma in regards to such sums and shall be subject to the trust laws of this state. ~~Any vendor who willfully or intentionally fails to remit the tax, after the tax levied by Section 1350 et seq. of this title was collected from the consumer or user, and appropriates the tax held in trust to his or her own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of the felony of embezzlement. Any holder of a direct payment permit who willfully or intentionally fails to remit the tax levied by Section 1350 et seq. of this title and appropriates the tax held in trust to his or her own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of the felony of embezzlement.~~

SECTION 29. AMENDATORY 68 O.S. 2001, Section 2385.3, is amended to read as follows:

Section 2385.3 A. Every employer required to deduct and withhold taxes under Section 2385.2 of this title shall pay over the amount so withheld as taxes to the Oklahoma Tax Commission, and shall file a return in such form as the Tax Commission shall prescribe under the following schedule:

1. Effective January 1, 1999, every employer owing an average of One Hundred Thousand Dollars ($100,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the fifteenth day of the month following the close of each monthly period;

2. Effective July 1, 1999, every employer owing an average of Ten Thousand Dollars ($10,000.00) or more per month in taxes in the previous fiscal year shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes. For employers making payments other than by electronic funds transfer, a withholding return shall be filed with each payment. For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the fifteenth day of the month following the close of each monthly period;

3. Every employer owing an average of Five Hundred Dollars ($500.00) or more per quarter in taxes in the previous fiscal year who is not subject to the provisions of paragraph 1 or 2 of this subsection shall pay over the amount so withheld on or before the fifteenth day of each succeeding month and shall file a monthly return together with the payment; and

4. Every employer owing an average of less than Five Hundred Dollars ($500.00) per quarter in taxes in the previous fiscal year

shall pay over the amount so withheld on or before the fifteenth day of the month following the close of each succeeding quarterly period and shall file a quarterly return together with the payment.

B. Every employer required under Section 2385.2 of this title to deduct and withhold a tax from the wages paid an employee shall, as to the total wages paid to each employee during the calendar year, furnish to such employee, on or before January 31 of the succeeding year, a written statement showing the name of the employer, the name of the employee and the employee's social security account number, if any, the total amount of wages subject to taxation, and the total amount deducted and withheld as tax and such other information as the Tax Commission may require. If an employee's employment is terminated before the close of a calendar year, said written statement must be furnished within thirty (30) days of the date of which the last payment of wages is made.

C. If the Tax Commission, in any case, has justifiable reason to believe that the collection of the tax provided for in Section 2385.2 of this title is in jeopardy, the Tax Commission may require the employer to file a return and pay the tax at any time.

D. Every employer who fails to withhold or pay to the Tax Commission any sums herein required to be withheld or paid shall be personally and individually liable therefor to the State of Oklahoma. The term “employer” as used in this subsection and in Section 2385.6 of this title includes an officer or employee of a corporation, manager or member of a limited liability company or a member or employee of a partnership, who as an officer or employee of a corporation, or manager or member of a limited liability company or member or employee of a partnership is under a duty to act for a corporation, limited liability company or partnership to withhold and remit withholding taxes in accordance with this section and Section 2385.2 of this title. Any sum or sums withheld in accordance with the provisions of Section 2385.2 of this title shall

be deemed to be held in trust for the State of Oklahoma, and, as trustee, the employer shall have a fiduciary duty to the State of Oklahoma in regard to such sums and shall be subject to the trust laws of this state. ~~Any employer who fails to pay to the Tax Commission any sums required to be withheld by such employer, after such sums have been withheld from the wages of employees, and appropriates the tax held in trust to the employer's own use, or to the use of any person not entitled thereto, without authority of law shall be guilty of embezzlement.~~

E. If any employer fails to withhold the tax required to be withheld by Section 2385.2 of this title and thereafter the income tax is paid by the employee, the tax so required to be withheld shall not be collected from the employer but such employer shall not be relieved from the liability for penalties or interest otherwise applicable because of such failure to withhold the tax.

F. Every person making payments of winnings subject to withholding shall, for each monthly period, on or before the fifteenth day of the month following the payment of such winnings pay over to the Tax Commission the amounts so withheld, and shall file a return, in a form as prescribed by the Tax Commission.

G. Every person making payments of winnings subject to withholding shall furnish to each recipient on or before January 31 of the succeeding year a written statement in a form as prescribed by the Tax Commission. Every person making such reports shall also furnish a copy of such report to the Tax Commission in a manner and at a time as shall be prescribed by the Tax Commission.

SECTION 30. AMENDATORY 68 O.S. 2001, Section 2702, is amended to read as follows:

Section 2702. The governing body of any incorporated city or town and the Oklahoma Tax Commission are authorized and empowered to enter into contractual agreements whereby the Oklahoma Tax Commission shall have authority to assess, to collect and to enforce

any taxes or, penalties or interest thereon, levied by such incorporated city or town, and remit the same to such municipality. Said assessment, collection, and enforcement authority shall apply to any taxes, penalty or interest liability existing at the time of contracting. Upon contracting, the Oklahoma Tax Commission shall have all the powers of enforcement in regard to such taxes, penalties and interest as are granted to or vested in the contracting municipality. Such agreement shall provide for the assessment, collection, enforcement, and prosecution of such municipal tax, penalties and interest, in the same manner as and in accordance with the administration, collection, enforcement, and prosecution by the Oklahoma Tax Commission of any similar state tax except as provided by agreement. The municipality shall agree to refrain from any assessment, collection, or enforcement of the municipal tax except as specified in the agreement. Such agreement shall authorize the Oklahoma Tax Commission to retain an amount not to exceed one and three-fourths percent (1 3/4%) as a retention fee of municipal tax collected for services rendered in connection with such collections; provided, if a municipality files an action resulting in collection of delinquent state and municipal taxes, the Tax Commission shall remit one-half (1/2) of the retention fee applied to the amount of such taxes to the municipality to be apportioned as are other sales tax revenue. All funds retained by the Oklahoma Tax Commission for the collection services to municipalities shall be deposited in the Oklahoma Tax Commission Revolving Fund in the State Treasury.

The Oklahoma Tax Commission shall place all sales taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of this section and all use taxes, including penalties and interest, collected on behalf of a municipality pursuant to the provisions of Section 1411 of this

title in the Sales Tax Remitting Account as provided in Section 1373 of this title.

Provided that the Oklahoma Tax Commission and the governing body of any incorporated city or town may enter into contractual agreements whereby the municipality would be authorized to implement or augment the enforcement, collection and prosecution of the municipal tax in those contracting municipalities and to provide for the satisfaction of refunds or credits to taxpayers. Such agreements shall and are hereby authorized to provide that the municipality and the Oklahoma Tax Commission may exchange necessary information to effectively carry out the terms of such agreements. The municipality, its officers and employees shall preserve the confidentiality of such information in the same manner and be subject to the same penalties as provided by Section 205 of this title, provided that the municipal prosecutor and other municipal enforcement personnel may receive all information necessary to implement or augment the enforcement and prosecution of municipal sales tax ordinances. Any sum or sums collected or required to be collected pursuant to a municipal sales tax levy shall be deemed to be held in trust for the municipality, and, as trustee, the collecting vendor shall have a fiduciary duty to the municipality in regards to such sums and shall be subject to the trust laws of this state. ~~Any vendor who fails to remit the municipal sales tax after the tax has been collected from the consumer, and appropriates the tax held in trust to his own use, or to the use of any person not entitled thereto, without authority of law, shall be guilty of embezzlement.~~

SECTION 31. REPEALER 21 O.S. 2001, Sections 1452, 1453, 1454, 1455, 1456, 1457, 1463, 1464 and 1834.2, are hereby repealed.

SECTION 32. REPEALER 36 O.S. 2001, Section 6621, is hereby repealed.

SECTION 33. REPEALER 41 O.S. 2001, Section 25, is hereby repealed.

SECTION 34. REPEALER 59 O.S. 2001, Section 396.25, is hereby repealed.

SECTION 35. This act shall become effective November 1, 2002.

48-2-8653 LAC 6/12/15