

ENROLLED SENATE
BILL NO. 397

By: Taylor and Crutchfield of
the Senate

and

Morgan, Adair, Benge,
Calvey, Cargill, Friskup,
Maddux, Nance, Newport,
Pettigrew, Piatt, Pope
(Tim), Roan, Roggow,
Steele, Tibbs, Vaughn,
Walker, Young, Sullivan
(John) and Dunegan of the
House

An Act relating to the criminal code and corrections; amending Section 4, Chapter 199, O.S.L. 1994, as amended by Section 119, Chapter 133, O.S.L. 1997 (3A O.S. Supp. 2000, Section 504), which relates to punishments for violation of Amusement and Carnival Games Act; raising felony limit; amending Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter 291, O.S.L. 2000 (21 O.S. Supp. 2000, Section 13.1), which relate to minimum percentage of sentence to be served for certain offenses; adding certain violent offenses for mandatory minimum percentage requirement; amending Section 434, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 51.1), which relates to enhanced punishment for habitual offenders; allowing enhanced punishment for offense within certain time period; modifying range of enhanced punishment for habitual offenders; authorizing enhanced punishment under certain condition; amending 21 O.S. 1991, Section 797, which relates to robbery; defining robbery in the first degree; amending 21 O.S. 1991, Section 1462, as last amended by Section 252, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1462), which relates to embezzlement; raising felony limit; amending 21 O.S. 1991, Section 1503, as last amended by Section 256, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1503), which relates to obtaining food or lodging by fraud; raising felony limit; amending 21 O.S. 1991, Section 1541.2, as last amended by Section 262, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1541.2), which relates to penalty for obtaining property by trick or deception; raising felony limit; amending 21 O.S. 1991, Section 1541.3, as last amended by Section 263, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1541.3), which relates to false or

bogus checks; raising felony limits; amending 21 O.S. 1991, Section 1550.2, which relates to obtaining property by false credit card; raising felony limit; amending 21 O.S. 1991, Section 1704, which relates to grand larceny; raising felony limit; amending 21 O.S. 1991, Section 1719.1, as last amended by Section 288, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1719.1), which relate to theft of domesticated fish; raising felony limit; increasing penalty; amending 21 O.S. 1991, Section 1722, as last amended by Section 292, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1722), which relates to theft of crude oil; raising felony limit; increasing penalty; amending 21 O.S. 1991, Section 1731, as last amended by Section 297, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1731), which relates to larceny of merchandise; raising felony limit; increasing penalty; prohibiting conspiring to plan an act of violence; setting penalty; amending 22 O.S. 1991, Section 114, as amended by Section 1 of Enrolled Senate Bill No. 451 of the 1st Session of the 48th Oklahoma Legislature, which relates to the Bogus Check Restitution Program; modifying language; increasing certain fee; requiring payment of fee to victim in certain amount; amending 22 O.S. 1991, Section 196, as last amended by Section 12, Chapter 370, O.S.L. 2000 (22 O.S. Supp. 2000, Section 196), which relates to warrantless arrest; allowing arrest for certain violation; 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 349, O.S.L. 2000 (22 O.S. Supp. 2000, Section 991a), which relates to the powers of the court; providing reference; amending 22 O.S. 1991, Section 991c, as last amended by Section 6, Chapter 349, O.S.L. 2000 (22 O.S. Supp. 2000, Section 991c), which relates to deferred judgment; modifying language; amending 22 O.S. 1991, Section 991d, as last amended by Section 3, Chapter 304, O.S.L. 1996 (22 O.S. Supp. 2000, Section 991d), which relates to supervision fee; prohibiting collection of certain fee under certain condition; amending 22 O.S. 1991, Section 991f, as last amended by Section 1, Chapter 410, O.S.L. 1998 (22 O.S. Supp. 2000, Section 991f), which relates to restitution; modifying language and definitions; limiting the excess amount of restitution allowed; authorizing interest of certain amount on pecuniary amounts; allowing interest amount to be proportioned to certain entities or paid to victims at courts discretion; authorizing the district attorney to act as clearing house for restitution payments; authorizing certain fee for collection of certain payments; providing exception to certain fee; creating the Restitution and Diversion Program; providing short title; directing the district attorneys to establish certain program and assign staff; stating purpose of certain program; allowing

administration by the Bogus Check Restitution Program; authorizing referral to certain program at discretion of district attorney; construing authority of certain referral; stating factors to consider for referral to certain program; requiring certain notice be sent; stating contents of certain notice; authorizing written agreement for certain period of time upon certain conditions; requiring certain fee for certain program; directing deposit of certain fees; directing use of certain monies for any lawful purpose; allowing inclusion of certain expenses in restitution; allowing restitution up to certain amount; prohibiting excess amount for bogus checks; authorizing establishment of certain account for certain monies; requiring records and audit; authorizing filing of information for prosecution upon certain condition; directing certain staff to perform certain duties; requiring annual report and distribution of certain report to certain persons; stating contents of annual report; defining terms for certain program; requiring victims to provide certain documentation and evidence; amending 47 O.S. 1991, Section 11-902, as last amended by Section 20, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (47 O.S. Supp. 2000, Section 11-902), which relates to driving under the influence; lowering blood and breath alcohol levels; amending 47 O.S. 1991, Section 754, as last amended by Section 8, Chapter 106, O.S.L. 1999 (47 O.S. Supp. 2000, Section 754), which relates to tests; lowering blood and breath alcohol levels; amending 47 O.S. 1991, Section 756, as last amended by Section 21, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (47 O.S. Supp. 2000, Section 756), which relates to admission of evidence; amending 57 O.S. 1991, Section 138, as last amended by Section 11, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (57 O.S. Supp. 2000, Section 138), which relates to earned credits; providing certain prohibitions to receiving certain credits; changing amount of credit for certain offenders; stating requirements to consider in reviewing certain prior behavior and offenses; listing certain offenses as prohibitions to certain credits; removing prohibition to certain achievement credits; amending 57 O.S. 1991, Section 332.7, as last amended by Section 12, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (57 O.S. Supp. 2000, Section 332.7), which relate to calculation for parole eligibility; deleting certain provision for nonviolent offenses; amending 57 O.S. 1991, Section 332.8, as last amended by Section 13, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (57 O.S. Supp. 2000, Section 332,8), which relates to parole process; directing the Pardon and Parole Board to consider availability of certain programs; authorizing program conditions to be met after parole; allowing a facsimile signature on parole papers; allowing revocation of parole for certain

failure to complete programs; amending 57 O.S. 1991, Section 332.18, as amended by Section 1, Chapter 341, O.S.L. 1998 (57 O.S. Supp. 2000, Section 332.18), which relates to medical parole; allowing placement of inmates on medical parole docket under certain condition; prohibiting parole consideration for life without parole sentences; amending 57 O.S. 1991, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 2000, Section 571), which relate to definitions; deleting language; amending 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 265, O.S.L. 2000 (63 O.S. Supp. 2000, Section 2-401), which relates to controlled dangerous substances; changing certain penalties; lowering certain mandatory sentence before earned credits and parole eligibility; defining certain crimes by quantity; setting certain penalty; requiring mandatory percentage of offense to be served before earned credits or parole eligibility; allowing certain assessment notwithstanding certain provision of law; amending 68 O.S. 1991, Section 218.1, as last amended by Section 401, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (68 O.S. Supp. 2000, Section 218.1), which relates to false or bogus check for taxes; raising felony limits; repealing 57 O.S. 1991, Section 570, as last amended by Section 433, Chapter 5, 1st Extraordinary Session, O.S.L. 1999, 572, 574, 575 and 576 (57 O.S. Supp. 2000, Section 570), which relates to the Oklahoma Prison Overcrowding Emergency Powers Act; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 4, Chapter 199, O.S.L. 1994, as amended by Section 119, Chapter 133, O.S.L. 1997 (3A O.S. Supp. 2000, Section 504), is amended to read as follows:

Section 504. A. Multiple count violations of subsection A or B of Section 502 of this title, or violations resulting in a loss of money or other valuable consideration, in which said loss exceeds ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), shall constitute a felony, and shall be punishable pursuant to subsection B of Section 505 of this title.

B. Any person serving in a managerial or supervisory capacity for any fair, exposition, or any other event open to the public, paid admission or free, who knowingly or intentionally promotes or allows the operation of any amusement or carnival game in violation of this act, upon conviction, shall be guilty of a misdemeanor.

C. Any person who manufactures or distributes amusement or carnival games of the type described in Section 502 of this title, upon conviction, shall be guilty of a misdemeanor punishable pursuant to subsection A of Section 505 of this title, with said games to be confiscated as contraband.

D. Any person charged with law enforcement responsibilities or legal compliance inspections of amusement or carnival games, and who knowingly and intentionally allows or who knowingly and intentionally fails to prevent the operation of any amusement or carnival game violating the Amusement and Carnival Games Act, upon conviction, shall be guilty of omission of duty and/or guilty of a misdemeanor punishable pursuant to subsection A of Section 505 of this title.

SECTION 2. AMENDATORY Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter 291, O.S.L. 2000 (21 O.S. Supp. 2000, Section 13.1), is amended to read as follows:

Section 13.1 Persons convicted of ~~first~~:

1. First degree murder as defined in Section 701.9 of this title, ~~robbery;~~

2. Second degree murder as defined by Section 701.8 of this title;

3. Manslaughter in the first degree as defined by Section 711 of this title;

4. Poisoning with intent to kill as defined by Section 651 of this title;

5. Shooting with intent to kill, use of a vehicle to facilitate use of a firearm, crossbow or other weapon, assault, battery, or assault and battery with a deadly weapon or by other means likely to produce death or great bodily harm, as defined by Section 652 of this title;

6. Assault with intent to kill as defined by Section 653 of this title;

7. Conjoint robbery as defined by Section 800 of this title;

8. Robbery with a dangerous weapon as defined in Section 801 of this title, ~~first;~~

9. First degree robbery as defined in Section 797 of this title;

10. First degree rape as defined in Section 1115 of this title, ~~first;~~

11. First degree arson as defined in Section 1401 of this title, ~~first;~~

12. First degree burglary as defined in Section 1436 of this title, ~~bombing;~~

13. Bombing as defined in Section 1767.1 of this title, ~~any;~~

14. Any crime against a child provided for in Section 7115 of Title 10 of the Oklahoma Statutes, ~~forcible;~~

15. Forcible sodomy as defined in Section 888 of this title, ~~child;~~

16. Child pornography as defined in Section 1021.2 ~~or~~, 1021.3 or 1024.1 of this title, ~~child;~~

17. Child prostitution as defined in Section 1030 of this title, ~~lewd;~~ and

18. Lewd molestation of a child as defined in Section 1123 of this title,

shall be required to serve not less than eighty-five percent (85%) of any sentence of imprisonment imposed by the judicial system prior to becoming eligible for consideration for parole. Persons convicted of these offenses shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of the sentence to less than eighty-five percent (85%) of the sentence imposed.

SECTION 3. AMENDATORY Section 434, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 51.1), is amended to read as follows:

Section 51.1 A. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program, every person who, having been convicted of any offense punishable by imprisonment in the State Penitentiary, commits any crime after such conviction, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable therefor as follows:

1. If the offense for which the person is subsequently convicted is an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes and the offense is punishable by imprisonment in the State Penitentiary for a term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term in the range of ten (10) years to life imprisonment.

2. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the State Penitentiary for any term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term ~~not less than ten (10) years~~ in the range of twice the minimum term for a first time offender to life imprisonment. If the subsequent felony offense does not carry a minimum sentence as a first time offender, such person is

punishable by imprisonment in the State Penitentiary for a term in the range of two (2) years to life imprisonment.

~~2.~~ 3. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the State Penitentiary for five (5) years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

~~3.~~ 4. If such subsequent conviction is for petit larceny, the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years.

B. Every person who, having been twice convicted of felony offenses, commits a subsequent felony offense which is an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable by imprisonment in the State Penitentiary for a term in the range of twenty (20) years to life imprisonment. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

C. Every person who, having been twice convicted of felony offenses, commits a ~~third, or thereafter,~~ subsequent felony ~~offenses~~ offense within ten (10) years of the date following the completion of the execution of the sentence, ~~shall be punished and against whom the District Attorney seeks to enhance punishment pursuant to this section of law,~~ is punishable by imprisonment in the State Penitentiary for a term ~~of not less than twenty (20) years in the range of three times the minimum term for a first time offender to life imprisonment.~~ If the subsequent felony offense does not carry a minimum sentence as a first time offender, the person is punishable by imprisonment in the State Penitentiary for a term in the range of four (4) years to life imprisonment. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 797, is amended to read as follows:

Section 797. ~~Robbery, when accomplished by the use of force, or of putting the person robbed in fear of some immediate injury to his person, is robbery in the first degree in the first degree is when,~~ in the course of committing the theft, the defendant:

1. inflicts serious bodily injury upon the person;
2. threatens a person with immediate serious bodily injury;

3. intentionally puts a person in fear of immediate serious bodily injury; or

4. commits or threatens to commit a felony upon the person.

When accomplished in any other manner, it is robbery in the second degree.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1462, as last amended by Section 252, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1462), is amended to read as follows:

Section 1462. Every person guilty of embezzlement shall be guilty of a felony punishable in the manner prescribed for feloniously stealing property of the value of that embezzled, except that every person convicted of felonious embezzlement of any item valued at ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more but less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) shall be punished by incarceration in the county jail for not to exceed one (1) year or incarceration in the county jail one or more nights per week or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes, and every person convicted of embezzlement of any item valued at less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) shall be guilty of a misdemeanor. And where the property embezzled is an evidence of debt or right in action, the sum due upon it, or secured to be paid by it, shall be taken as its value.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 1503, as last amended by Section 256, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1503), is amended to read as follows:

Section 1503. Any person who shall obtain food, lodging, services or other accommodations at any hotel, inn, restaurant, boarding house, rooming house, motel or auto camp, with intent to defraud the owner or keeper thereof, if the value of such food, lodging, services or other accommodations is ~~Twenty Dollars (\$20.00)~~ Five Hundred Dollars (\$500.00) or less, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00), or be imprisoned in the county jail not exceeding three (3) months, or punished by both such fine and imprisonment, and if the value of such food, lodging, services or other accommodations is more than ~~Twenty Dollars (\$20.00)~~ Five Hundred Dollars (\$500.00) but less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), any person convicted pursuant to this section shall be guilty of a felony and shall be punished by incarceration in the county jail for not to exceed one (1) year or incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00)

and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes, and if the value of such food, lodging, services or accommodations is valued at ~~more than Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not exceeding five (5) years. Any person who shall obtain shelter, lodging, or any other services at any apartment house, apartment, rental unit, rental house, or trailer camp, with intent to defraud the owner or keeper thereof, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not exceeding One Hundred Dollars (\$100.00), or be imprisoned in the county jail not exceeding three (3) months, or be punished by both fine and imprisonment. Proof that such lodging, food, services or other accommodations were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that he gave a check on which payment was refused, or that he left the hotel, inn, restaurant, boarding house, rooming house, motel, apartment house, apartment, rental unit or rental house, trailer camp or auto camp, without payment or offering to pay for such food, lodging, services or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, or that he registered under a fictitious name, shall be prima facie proof of the intent to defraud mentioned in this section; but this section shall not apply where there has been an agreement in writing for delay in payment.

SECTION 7. AMENDATORY 21 O.S. 1991, Section 1541.2, as last amended by Section 262, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1541.2), is amended to read as follows:

Section 1541.2 If the value of the money, property or valuable thing referred to in Section 1541.1 of this title is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more but less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), any person convicted pursuant to this section shall be guilty of a felony and shall be punished by incarceration in the county jail for not to exceed one (1) year or incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes, and if the value is ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not more than ten (10) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 8. AMENDATORY 21 O.S. 1991, Section 1541.3, as last amended by Section 263, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1541.3), is amended to read as follows:

Section 1541.3 Any person making, drawing, uttering or delivering two or more false or bogus checks, drafts or orders, as

defined by Section 1541.4 of this title, the total sum of which is ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more, even though each separate instrument is written for less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), all in pursuance of a common scheme or plan to cheat and defraud, shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not more than ten (10) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. If the total sum of two or more false or bogus checks, drafts or orders is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more, but less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), the person shall be guilty of a felony and shall be punished by incarceration in the county jail for not more than one (1) year or by incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes.

SECTION 9. AMENDATORY 21 O.S. 1991, Section 1550.2, is amended to read as follows:

Section 1550.2 Any person who knowingly uses or attempts to use in person or by telephone, for the purpose of obtaining credit, or for the purchase of goods, property or services, or for the purpose of obtaining cash advances in lieu of these items, or to deposit, obtain or transfer funds, either a credit card or a debit card which has not been issued to such person or which is not used with the consent of the person to whom issued or a credit card or a debit card which has been revoked or cancelled by the issuer of such card and actual notice thereof has been given to such person, or a credit card or a debit card which is false, counterfeit or nonexistent is guilty of a misdemeanor and punishable by a fine of not more than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) or imprisonment for not more than thirty (30) days or both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use does not exceed ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00); or, by a fine of not less than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00) nor more than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or imprisonment for not more than one (1) year or both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use exceeds ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00).

SECTION 10. AMENDATORY 21 O.S. 1991, Section 1704, is amended to read as follows:

Section 1704. Grand larceny is larceny committed in either of the following cases:

1. When the property taken is of value exceeding ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00).

2. When such property, although not of value exceeding ~~Fifty Dollars (\$50.00)~~ in value Five Hundred Dollars (\$500.00), is taken from the person of another.

Larceny in other cases is petit larceny.

SECTION 11. AMENDATORY 21 O.S. 1991, Section 1719.1, as last amended by Section 288, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1719.1), is amended to read as follows:

Section 1719.1 A. For the purpose of this section:

1. "Domesticated fish or game" means all birds, mammals, fish and other aquatic forms and all other animals, regardless of classifications, whether resident, migratory or imported, protected or unprotected, dead or alive, and shall extend to and include every part of any individual species when such domesticated fish or game are not in the wild and are in the possession of a person currently licensed to possess such fish or game; and

2. "Taking" means the pursuing, killing, capturing, trapping, snaring and netting of domesticated fish or game or placing, setting, drawing or using any net, trap or other device for taking domesticated fish or game and includes specifically every attempt to take such domesticated fish or game.

B. Any domesticated fish or game shall be considered the personal property of the owner.

C. Any person who shall take any domesticated fish or game, with the intent to deprive the owner of said fish or game, and any person purchasing or receiving such domesticated fish or game knowing them to have been stolen, shall:

1. Upon conviction, if the current market value of said domesticated fish or game is less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), be guilty of a misdemeanor and shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for a period term not to exceed sixty (60) days, or by both such fine and imprisonment; or

2. Upon conviction, if the current market value of said domesticated fish or game is ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more, be guilty of a felony and shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the State Penitentiary for a term of not more than five (5) years, or by both such fine and imprisonment. If the current market value is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more but less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), the person shall be guilty of a felony and shall be punished by incarceration in the county jail for not more than one (1) year or by incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00)

and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes.

SECTION 12. AMENDATORY 21 O.S. 1991, Section 1722, as last amended by Section 292, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1722), is amended to read as follows:

Section 1722. Any person who shall unlawfully take any crude oil or gasoline, or any product thereof, from any pipe, pipeline, tank, tank car, or other receptacle or container and any person who shall unlawfully take or cause to be taken any machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells, with intent to deprive the owner or lessee thereof of said crude oil, gas, gasoline, or any product thereof, machinery, drilling mud, equipment or other materials necessary for the drilling or production of oil or gas wells shall:

1. Be guilty of a misdemeanor if the value of said product so taken is less than ~~the sum of Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), and upon conviction thereof, shall be punished by a fine of not more than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for a term not to exceed sixty (60) days, or by both such fine and imprisonment;

2. Be guilty of a felony if the value of such product so taken is ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more and upon conviction thereof, shall be punished by forfeiture of the instrumentality of the crime and by a fine of not less than One Hundred Dollars (\$100.00), and not more than Fifty Thousand Dollars (\$50,000.00), or ~~confinement~~ by imprisonment in the State Penitentiary for a term in the range of ~~not less than one (1) year,~~ and not more than ~~to~~ ten (10) years, or by both such fine and imprisonment. If the value exceeds ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) but is less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), the person shall be guilty of a felony and shall be punished by incarceration in the county jail for a term of not more than one (1) year or by incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes.

SECTION 13. AMENDATORY 21 O.S. 1991, Section 1731, as last amended by Section 297, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 1731), is amended to read as follows:

Section 1731. Larceny of merchandise held for sale in retail or wholesale establishments shall be punishable as follows:

1. For the first conviction, in the event the value of the goods, edible meat or other corporeal property which has been taken is less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00),

~~punishment~~ the violator shall be punishable by imprisonment in the county jail for a term not exceeding thirty (30) days, and by a fine not less than Ten Dollars (\$10.00) nor more than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00); provided for the first conviction, in the event more than one item of goods, edible meat or other corporeal property has been taken, punishment shall be by imprisonment in the county jail for a term not to exceed thirty (30) days, and by a fine not less than Fifty Dollars (\$50.00) nor more than ~~One Hundred Dollars (\$100.00)~~ Five Hundred Dollars (\$500.00).

2. If it be shown, in the trial of a case in which the value of the goods, edible meat or other corporeal property is less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), that the defendant has been once before convicted of the same offense, ~~he~~ the defendant shall, on ~~his~~ a second conviction, be punished by confinement in the county jail for a term of not less than thirty (30) days nor more than one (1) year, and by a fine not exceeding One Thousand Dollars (\$1,000.00).

3. If it be shown, upon the trial of a case where the value of the goods, edible meat or other corporeal personal property is less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), that the defendant has two or more times before been convicted of the same offense, regardless of the value of the goods, edible meat or other corporeal personal property involved in the first two convictions, upon the third or any subsequent conviction, the punishment shall be ~~by confinement~~ imprisonment in the State Penitentiary for a term of not less than two (2) nor more than five (5) years.

4. In the event the value of the goods, edible meat or other corporeal property is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more, but is less than ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00), the defendant shall be guilty of a felony and shall be punished by ~~incarceration~~ imprisonment in the county jail for a term of not more than one (1) year or by ~~incarceration~~ imprisonment in the county jail for one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes.

5. In the event the value of the goods, edible meat or other corporeal property is ~~Five Hundred Dollars (\$500.00)~~ One Thousand Dollars (\$1,000.00) or more, punishment shall be ~~by confinement~~ imprisonment in the State Penitentiary for a term of not less than one (1) year nor more than five (5) years.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1378 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any person who shall plan, attempt, conspire or endeavor to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a felony, punishable upon conviction thereof by imprisonment for a period of not more than ten (10) years.

B. Any person who shall threaten to perform an act of violence involving or intended to involve serious bodily harm or death of another person shall be guilty of a misdemeanor, punishable upon conviction thereof by imprisonment in the county jail for a period of not more than six (6) months.

SECTION 15. AMENDATORY 22 O.S. 1991, Section 114, as amended by Section 1 of Enrolled Senate Bill No. 451 of the 1st Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 114. A. The district attorney may enter into a written restitution agreement with the defendant to defer prosecution on a false or bogus check for a period to be determined by the district attorney, not to exceed two (2) years, pending ~~full~~ restitution being made to the victim of the bogus check as provided in this section.

B. Each restitution agreement shall include a provision requiring the defendant to pay to the victim a Twenty-five Dollar (\$25.00) fee and to the district attorney a fee equal to the amount which would have been assessed as court costs upon filing of the case in district court to the district attorney plus Twenty-five Dollars (\$25.00) for each check covered by the restitution agreement; provided, every check in an amount of Fifty Dollars (\$50.00) or more shall require a separate fee to be paid to the district attorney in an amount equal to the amount which would be assessed as court costs for the filing of a felony case in district court plus Twenty-five Dollars (\$25.00). This money shall be deposited in a special fund with the county treasurer to be known as the "Bogus Check Restitution Program Fund". This fund shall be used by the district attorney to defray ~~the expense of the Bogus Check Restitution Program~~ any lawful expense of the district attorney's office. The district attorney shall keep records of all monies deposited to and disbursed from this fund. The records of the fund shall be audited at the same time the records of county funds are audited.

C. Restitution paid by the defendant to the victim shall include the face amount of the check plus any charges the victim may have been required to pay to a bank as the result of having received the bogus check. If, instead of paying restitution directly to the victim, the defendant delivers restitution funds to the office of the district attorney, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the victim by a warrant signed by the district attorney or a member of the staff assigned to the Bogus Check Restitution Program. The district attorney shall keep full records of all restitution monies received and disbursed. These records shall be audited at the same time the county funds are audited.

D. Restitution paid by the defendant to the Oklahoma Tax Commission shall include the face amount of the check plus the administrative service fee authorized pursuant to Section 218 of Title 68 of the Oklahoma Statutes. If the defendant delivers such restitution funds to the office of the district attorney instead of paying restitution directly to the Oklahoma Tax Commission, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the Oklahoma Tax Commission by warrant signed by the district attorney or a member of

the staff assigned to the Bogus Check Restitution Program or shall transmit the restitution funds directly to the Oklahoma Tax Commission.

E. If the defendant fails to comply with the restitution agreement, the district attorney may file an information and proceed with the prosecution of the defendant as provided by law.

SECTION 16. AMENDATORY 22 O.S. 1991, Section 196, as last amended by Section 12, Chapter 370, O.S.L. 2000 (22 O.S. Supp. 2000, Section 196), is amended to read as follows:

Section 196. A peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in the officer's presence;

2. When the person arrested has committed a felony, although not in the officer's presence;

3. When a felony has in fact been committed, and the officer has reasonable cause to believe the person arrested to have committed it;

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested;

5. When the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, Sections 2-101 et seq. of Title 63 of the Oklahoma Statutes;

6. Anywhere, including a place of residence of the person, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim; ~~or~~

7. When a peace officer, in accordance with the provisions of Section 60.9 of this title, is acting on a violation of a protective order offense; or

8. When the officer has probable cause to believe that the person has threatened another person as defined in subsection B of Section 14 of this act.

SECTION 17. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 349, O.S.L. 2000 (22 O.S. Supp. 2000, Section 991a), is amended to read as follows:

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

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

- a. to provide restitution to the victim as provided by Section 991f et seq of this title or according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if the defendant is able to pay such restitution without imposing manifest hardship on the defendant or the immediate family and if the extent of the damage to the victim is determinable with reasonable certainty,
- b. to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum,
- c. to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,
- d. to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within this state wherein such victim has incurred a financial loss,
- e. to confinement in the county jail for a period not to exceed six (6) months,
- f. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he or she is being sentenced,
- g. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the

importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes,

- h. to reimburse the Oklahoma State Bureau of Investigation for costs incurred by that agency during its investigation of the crime for which the defendant pleaded guilty, nolo contendere or was convicted, including compensation for laboratory, technical, or investigation services performed by the Bureau if, in the opinion of the court, the defendant is able to pay without imposing manifest hardship on the defendant, and if the costs incurred by the Bureau during the investigation of the defendant's case may be determined with reasonable certainty,
- i. to pay a reasonable sum to the Crime Victims Compensation Board, created by Section 142.2 et seq. of Title 21 of the Oklahoma Statutes, for the benefit of crime victims,
- j. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which the person is being sentenced,
- k. to participate in substance abuse education or treatment, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes, or as ordered by the court,
- l. to be placed in a victims impact panel program or victim/offender reconciliation program and payment of a fee to the program of not less than Five Dollars (\$5.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program to offset the cost of participation by the defendant. Provided, each victim/offender reconciliation program shall be required to obtain a written consent form voluntarily signed by the victim and defendant that specifies the methods to be used to resolve the issues, the obligations and rights of each person, and the confidentiality of the proceedings. Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes,

- m. to install an ignition interlock device approved by the Department of Public Safety at the defendant's own expense. The device shall be installed upon every motor vehicle operated by the defendant, and the court shall require that a notation of this restriction be affixed to the defendant's driver license. The restriction shall remain on the driver license not exceeding two (2) years to be determined by the court. The restriction may be modified or removed only by order of the court and notice of any modification order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without a device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater,
- n. to be confined by electronic monitoring administered and supervised by the Department of Corrections or a community sentence provider, and payment of a monitoring fee to the supervising authority, not to exceed Seventy-five Dollars (\$75.00) per month. Any fees collected pursuant to this paragraph shall be deposited with the appropriate supervising authority. Any willful violation of an order of the court for the payment of the monitoring fee shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "electronic monitoring" means confinement of the defendant within a specified location or locations with supervision by means of an electronic device approved by the Department of Corrections which is designed to detect if the defendant is in the court-ordered location at the required times and which records violations for investigation by a qualified supervisory agency or person,
- o. to perform one or more courses of treatment, education or rehabilitation for any conditions, behaviors, deficiencies or disorders which may contribute to criminal conduct, including but not limited to alcohol and substance abuse, mental health, emotional health, physical health, propensity for violence, antisocial behavior, personality or attitudes, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education, or any other identifiable deficiency which may be treated

appropriately in the community and for which a certified provider or a program recognized by the court as having significant positive impact exists in the community. Any treatment, education or rehabilitation provider required to be certified pursuant to law or rule shall be certified by the appropriate state agency or a national organization,

- p. to submit to periodic testing for alcohol, intoxicating substance, or controlled dangerous substances by a qualified laboratory,
- q. to pay a fee, costs for treatment, education, supervision, participation in a program, or any combination thereof as determined by the court, based upon the defendant's ability to pay the fees or costs,
- r. to be supervised by a Department of Corrections employee, a private supervision provider, or other person designated by the court,
- s. to obtain positive behavior modeling by a trained mentor,
- t. to serve a term of confinement in a restrictive housing facility available in the community,
- u. to serve a term of confinement in the county jail at night or during weekends pursuant to Section 991a-2 of this title or for work release,
- v. to obtain employment or participate in employment-related activities,
- w. to participate in mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court,
- x. to pay day fines not to exceed fifty percent (50%) of the net wages earned. For purposes of this paragraph, "day fine" means the offender is ordered to pay an amount calculated as a percentage of net daily wages earned. The day fine shall be paid to the local community sentencing system as reparation to the community. Day fines shall be used to support the local system,
- y. to submit to blood testing as required by Section 588 of Title 57 of the Oklahoma Statutes,
- z. to repair or restore property damaged by the defendant's conduct, if the court determines the defendant possesses sufficient skill to repair or restore the property and the victim consents to the repairing or restoring of the property,

- aa. to restore damaged property in kind or payment of out-of-pocket expenses to the victim, if the court is able to determine the actual out-of-pocket expenses suffered by the victim,
- bb. to attend a victim-offender reconciliation program if the victim agrees to participate and the offender is deemed appropriate for participation,
- cc. in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems,
- dd. in the case of a sex offender sentenced after November 1, 1989, and required by law to register pursuant to the Sex Offender Registration Act, require the person to participate in a treatment program, if available. The treatment program may include polygraphs specifically designed for use with sex offenders for purposes of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. The treatment program must be approved by the Department of Corrections or the Department of Mental Health and Substance Abuse Services. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay,
- ee. in addition to other sentencing powers of the court, the court in the case of a defendant being sentenced for a felony conviction for a violation of Section 2-402 of Title 63 of the Oklahoma Statutes which involves marijuana may require the person to participate in a drug court program, if available. If a drug court program is not available, the defendant may be required to participate in a community sanctions program, if available, and
- ff. any other provision specifically ordered by the court.

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

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

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

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

5. In the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program;

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

- a. to participate in an alcohol and drug substance abuse course or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than 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,
- c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,
- d. to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver license at the time of reinstatement of the license. The restriction shall remain on the driver license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of the order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without

further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or

- e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

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

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

9. In addition to the other sentencing powers of the court, the court, in the case of a sex offender sentenced after November 1, 1989, and required by law to register pursuant to the Sex Offenders Registration Act, shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program may include polygraphs specifically designed for use with sex offenders for the purpose of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. The treatment program must be approved by the Department of Corrections or the Department of Mental Health and Substance Abuse Services. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay; or

10. In addition to the other sentencing powers of the court, the court, in the case of a person convicted of child abuse or neglect, as defined in Section 7102 of Title 10 of the Oklahoma Statutes, may require the person to undergo treatment or to participate in counseling services. The defendant may be required

to pay all or part of the cost of the treatment or counseling services.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility or qualified practitioner for the evaluation. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection.

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

experience and certification requirements stated herein are met within two (2) years from the effective date of this act.

C. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 6 of subsection A of this section. Provided, the court may waive these prohibitions upon written application of the district attorney. Both the application and the waiver shall be made part of the record of the case.

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

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

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

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

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

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

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

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

H. As used in this section:

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

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

I. A person convicted of an offense as provided in Section 650, 650.2, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888, 1114, subsection B of Section 1021, 1021.2, 1021.3, 1087, 1088, 1123, 1173 or 1192.1 of Title 21 of the Oklahoma Statutes or a person convicted of any felony who has a prior conviction for an offense listed in this subsection shall submit to deoxyribonucleic acid testing for law enforcement identification purposes in accordance with Section 150.27 of Title 74 of the Oklahoma Statutes and the rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI DNA Offender Database. Submission to testing shall be required within thirty (30) days of sentencing for those defendants who do not become subject to the custody of the Department of Corrections, and submission to testing shall be done in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who enter the custody of the

Department of Corrections as a result of sentencing. Convicted individuals who have previously submitted to DNA testing under this section and for whom a valid sample is on file in the OSBI DNA Offender Database at the time of their sentencing shall not be required to submit to additional testing.

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

J. Samples of blood for DNA testing required by subsection I of this section shall be taken by employees or contractors of the Department of Corrections. Said individuals shall be properly trained to collect blood samples. Persons collecting blood for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. The Department of Corrections shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation within ten (10) days of the time the subject appears for testing or within ten (10) days of the date the subject comes into the custody of the Department of Corrections. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing who are not received at the Lexington Assessment and Reception Center shall be required to pay to the Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant to this subsection shall be deposited in the Department of Corrections revolving account.

SECTION 18. AMENDATORY 22 O.S. 1991, Section 991c, as last amended by Section 6, Chapter 349, O.S.L. 2000 (22 O.S. Supp. 2000, 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 ~~only~~ not apply to defendants ~~not having~~ 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 plead guilty or nolo contendere to a sex offense required by law to register pursuant to the Sex Offenders Registration Act.

SECTION 19. AMENDATORY 22 O.S. 1991, Section 991d, as last amended by Section 3, Chapter 304, O.S.L. 1996 (22 O.S. Supp. 2000, Section 991d), is amended to read as follows:

Section 991d. A. 1. When the court orders supervision by the Department of Corrections, or the district attorney requires the Department to supervise any person pursuant to a deferred prosecution agreement, the person shall be required to pay a supervision fee of Forty Dollars (\$40.00) per month during the supervision period, unless the fee would impose an unnecessary hardship on the person. In hardship cases, the Department shall expressly waive all or part of the fee. The court shall make payment of the fee a condition of the sentence which shall be imposed whether the supervision is incident to the suspending of execution of a sentence, incident to the suspending of imposition of a sentence, or incident to the deferral of proceedings after a verdict or plea of guilty. The Department shall determine methods for payment of the supervision fee, and may charge a reasonable user fee for collection of supervision fees electronically. The Department is required to report to the sentencing court any failure

of the person to pay supervision fees and to report immediately if the person violates any condition of the sentence.

2. If restitution is ordered by the court in conjunction with supervision, the supervision fee will be paid in addition to the restitution ordered. In addition to the restitution payment and supervision fee, a reasonable user fee may be charged by the Department of Corrections to cover the expenses of administration of the restitution, except no user fee shall be collected by the Department when restitution payment is collected and disbursed to the victim by the office of the district attorney as provided in Section 991f of this title or Section 22 of this act.

B. The Pardon and Parole Board shall require a supervision fee to be paid by the parolee as a condition of parole which shall be paid to the Department of Corrections. The Department shall determine the amount of the fee as provided for other persons under supervision by the Department.

C. Upon acceptance of an offender by the Department of Corrections whose probation or parole supervision was transferred to Oklahoma through the Interstate Compact Agreement, or upon the assignment of an inmate to any community placement, a fee shall be required to be paid by the offender to the Department of Corrections as provided for other persons under supervision of the Department.

D. Except as provided in this subsection, all fees collected pursuant to this section shall be deposited in the Department of Corrections Revolving Fund created pursuant to Section 557 of Title 57 of the Oklahoma Statutes. For the fiscal year ending June 30, 1996, fifty percent (50%) of all collections received from offenders placed on supervision after July 1, 1995, shall be transferred to the credit of the General Revenue Fund of the State Treasury until such time as total transfers equal Three Million Three Hundred Thousand Dollars (\$3,300,000.00).

SECTION 20. AMENDATORY 22 O.S. 1991, Section 991f as last amended by Section 1, Chapter 410, O.S.L. 1998 (22 O.S. Supp. 2000, Section 991f), is amended to read as follows:

Section 991f. A. For the purposes of any provision of Title 22 of the Oklahoma Statutes relating to criminal sentencing and restitution orders and for the Restitution and Diversion Program:

1. "Restitution" ~~shall mean~~ means the sum to be paid by the defendant to the victim of the criminal act to compensate that victim for up to three times the amount of the economic loss suffered as a direct result of the criminal act of the defendant;

2. "Victim" means any person, partnership, ~~or~~ corporation or legal entity that suffers an economic loss as a direct result of the criminal act of another person; ~~and~~

3. "Economic loss" means actual ~~economic~~ financial detriment suffered by the victim consisting of medical expenses actually incurred, damage to or loss of real and personal property and any other out-of-pocket expenses, including loss of earnings, reasonably

incurred as the direct result of the criminal act of the defendant. No other elements of damage shall be included as an economic loss for purposes of this section.

B. In all criminal prosecutions and juvenile proceedings in this state, when the court enters an order directing the offender to pay restitution to any victim for economic loss or to pay to the state any fines, fees or assessments, the order, for purposes of validity and collection, shall not be limited to the maximum term of imprisonment for which the offender could have been sentenced, nor limited to any term of probation, parole, or extension thereof, nor expire until fully satisfied. The court order for restitution, fines, fees or assessments shall remain a continuing obligation of the offender until fully satisfied, and the obligation shall not be considered a debt, nor shall the obligation be dischargeable in any bankruptcy proceeding. The court order shall continue in full force and effect with the supervision of the state until fully satisfied, and the state shall use all methods of collection authorized by law.

C. 1. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the crime victim suffered injury, loss of income, or out-of-pocket loss, the individuals criminally responsible shall be sentenced to make restitution. Restitution may be ordered in addition to the punishments prescribed by law.

2. The court shall order full restitution based upon the following considerations:

- a. the nature and amount of restitution shall be sufficient to restore the crime victim to the equivalent economic status existing prior to the losses sustained as a direct result of the crime, ~~but shall not~~ and may allow the crime victim to receive payment in excess of the losses sustained; provided, the excess amount of restitution shall not be more than treble the actual economic loss incurred, and
- b. the amount of restitution shall be established regardless of the financial resources of the offender.

3. The court:

- a. may direct the return of property to be made as soon as practicable and make an award of restitution in the amount of the loss of value to the property itself as a direct result of the crime, including out-of-pocket expenses and loss of earnings incurred ~~for~~ as a result of damage to or loss of use of the property, the cost to return the property to the victim or to restore the property to its pre-crime condition whichever may be appropriate under the circumstances,
- b. may order restitution in a lump sum or by such schedules as may be established and thereafter

adjusted by ~~the court clerk~~ agreement consistent with the order of the court,

- c. shall have the authority to amend or alter any order of restitution made pursuant to this section providing that the court ~~of minor judiciary~~ shall state its reasons and conclusions as a matter of record for any change or amendment to any previous order, ~~and~~
- d. may order interest upon any ordered restitution sum to accrue at the rate of twelve percent (12%) per annum until the restitution is paid in full. The court may further order such interest to be paid to the victims of the crime or proportion the interest payment between the victims and the court fund, and/or the Restitution and Diversion Program, in the discretion of the court, and
- e. shall consider any pre-existing orders imposed on the defendant, including, but not limited to, orders imposed under civil and criminal proceedings.

D. If restitution to more than one person, agency or entity is set at the same time, the court shall establish the following priorities of payment:

1. The crime victim or victims; and
2. Any other government agency which has provided reimbursement to the victim as a result of the offender's criminal conduct.

E. 1. The district attorney's office shall present the crime victim's restitution claim to the court ~~following~~ at the time of the conviction of the offender or the restitution provisions shall be included in the written plea agreement presented to the court, in which case, the restitution claim shall be reviewed by the judge prior to acceptance of the plea agreement.

2. At the initiation of the prosecution of the defendant, the district attorney's office shall provide all identifiable crime victims with written and oral information explaining their rights and responsibilities to receive restitution established under this section.

3. The district attorney's office shall provide all crime victims, regardless of whether the crime victim makes a specific request, with an official request for restitution form to be completed and signed by the crime victim, and to include all invoices, bills, receipts, and other evidence of injury, loss of earnings and out-of-pocket loss. This form shall be filed with any victim impact statement to be included in the judgment and sentence. Every crime victim receiving the restitution claim form shall be provided assistance and direction to properly complete the form.

4. The official restitution request form shall be presented in all cases regardless of whether the case is brought to trial. In a plea bargain, the district attorney in every case where the victim

has suffered economic loss, shall, as a part of the plea bargain, require that the offender pay restitution to the crime victim. The district attorney shall be authorized to act as a clearing house for collection and disbursement of restitution payments made pursuant to this section, and shall assess a fee of One Dollar (\$1.00) per payment received from the defendant, except when the defendant is sentenced to incarceration in the Department of Corrections.

F. The crime victim shall provide all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

G. The court shall, upon motion by the crime victim, redact from the submitted documentation all personal information relating to the crime victim that does not directly and necessarily establish the authenticity of any document or substantiate the asserted amount of the restitution claim.

H. The unexcused failure or refusal of the crime victim to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed available information. The court shall order the offender to submit either as part of the pre-sentence investigation or assessment and evaluation required for a community sentence or, if no pre-sentence investigation is conducted, in advance of the sentencing proceeding such information as the court may direct and finds necessary to be disclosed for the purpose of ascertaining the type and manner of restitution to be ordered.

I. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court shall not deprive the court of the authority to set restitution or set the schedule of payment. The willful failure or refusal of the offender to provide all or part of the requisite information prior to the sentencing, unless disclosure is deferred by the court, shall constitute a waiver of any grounds to appeal or seek future amendment or alteration of the restitution order predicated on the undisclosed information. The willful failure or refusal of the offender to provide all or part of the requisite information prior to sentencing, unless disclosure is deferred by the court, shall constitute an act of contempt.

J. The court shall conduct such hearings or proceedings as it deems necessary to set restitution and payment schedules at the time of sentencing or may bifurcate the sentencing and defer the hearing or proceedings relating to the imposition of restitution as justice may require. Amendments or alterations to the restitution order may be made upon the court's own motion, petition by the crime victim or petition by the offender.

K. An offender who files a meritless or frivolous petition for amendment or alteration to the restitution order shall pay the costs

of the proceeding on the petition and shall have added to the existing restitution order the additional loss of earnings and out-of-pocket loss incurred by the crime victim in responding to the petition.

L. The restitution request form shall be promulgated by the District Attorneys Council and provided to all district attorney offices.

M. If a defendant who is financially able refuses or neglects to pay restitution as ordered by this section, payment may be enforced:

1. By contempt of court as provided in subsection A of Section 566 of Title 21 of the Oklahoma Statutes with imprisonment or fine or both;

2. In the same manner as prescribed in subsection N of this section for a defendant who is without means to make such restitution payment; or

3. Revocation of the criminal sentence if the sentence imposed was a suspended or deferred sentence or a community sentence.

N. If the defendant is without means to pay the restitution, the judge may direct the total amount due, or any portion thereof, to be entered upon the court minutes and to be certified in the district court of the county where it shall then be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment in a civil case. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to enforce other judgments; provided, however, the judgment herein prescribed shall not be considered a debt nor dischargeable in any bankruptcy proceeding.

O. Whenever a person has been ordered to pay restitution as provided in this section or any section of the Oklahoma Statutes for a criminal penalty, the judge may order the defendant to a term of community service, with or without compensation, to be credited at a rate of Five Dollars (\$5.00) per day against the total amount due for restitution. If the defendant fails to perform the required community service authorized by this subsection or if the conditions of community service are violated, the judge may impose a term of imprisonment not to exceed five (5) days in the county jail for each failure to comply.

P. Nothing in subsections M through O of this section shall be construed to be additions to the original criminal penalty, but shall be used by the court as sanctions and means of collection for criminal restitution orders and restitution orders that have been reduced to judgment.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991f-1.0 of Title 22, unless there is created a duplication in numbering, reads as follows:

This section and Section 22 of this act shall be known and may be cited as the "Restitution and Diversion Program".

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991f-1.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Each district attorney shall create within the district attorney's office a Restitution and Diversion Program and assign sufficient staff and resources for the efficient operation of such program. The purpose of the Restitution and Diversion Program is to allow the district attorney the discretion to divert criminal complaints involving property crimes from criminal court and to monitor restitution payments. At the discretion of the district attorney, the program may be administered by the Bogus Check Restitution Program operated by the county.

B. 1. Referral of a criminal complaint to the Restitution and Diversion Program shall be at the discretion of the district attorney. This act shall not limit the power of the district attorney to prosecute criminal complaints.

2. Upon receipt of a criminal complaint involving property, the district attorney shall determine if the complaint is one which is appropriate for deferred prosecution.

3. In determining whether to defer prosecution and refer a case to the Restitution and Diversion Program, the district attorney shall consider the following factors:

- a. whether the criminal complaint alleges an offense involving property,
- b. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,
- c. the prospects for adequate protection of the public if the accused person is processed through deferred prosecution in the Restitution and Diversion Program,
- d. the number of criminal complaints against the defendant previously received by the district attorney,
- e. whether or not there are other criminal complaints currently pending against the defendant,
- f. the strength of the evidence of the particular criminal complaint, and
- g. the wishes of the victim.

C. Upon referral of a complaint to the Restitution and Diversion Program, a notice of the complaint shall be forwarded by mail to the accused person. The notice shall contain:

1. The date the act which is the subject of the complaint occurred;

2. The name of the victim;

3. The date before which the accused person must contact the office of the district attorney concerning the complaint; and

4. A statement of the penalty for the crime which is the subject of the complaint.

D. The district attorney may enter into a written agreement with the accused person to defer prosecution on the criminal complaint for a period to be determined by the district attorney, not to exceed two (2) years pending restitution being made to the victim of the complaint and payment of necessary fees.

E. Each restitution agreement shall include a provision requiring the accused person to pay to the district attorneys office a fee equal to the amount which would have been assessed as court costs upon the filing of the case in district court plus Twenty-five Dollars (\$25.00) for each criminal complaint covered by the agreement. This fee may be deposited in a special fund with the county treasurer to be known as the "Restitution and Diversion Program Fund" or in the Bogus Check Restitution Fund. The monies deposited in the Restitution and Diversion Program Fund shall be used by the district attorney to make any lawful expenditure associated with the district attorney's office. The district attorney shall keep records of all monies deposited to and disbursed from these funds. The records of these funds shall be audited at the same time the records of county funds are audited.

F. 1. Restitution to be paid by the accused person to the victim shall include out-of-pocket expenses the victim incurred as a direct result of the crime having been committed. A restitution agreement may include provisions for restitution in an amount up to treble the amount of property involved except such restitution shall not apply to false or bogus checks. If, instead of paying restitution directly to the victim, the accused person delivers restitution funds to the office of the district attorney, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the victim by a warrant signed by the district attorney or a member of the district attorney's staff assigned to the Restitution and Diversion Program. The district attorney shall keep full records of all restitution monies received and disbursed. These records shall be audited at the same time the county funds are audited;

2. If the accused person fails to comply with the provisions of the Restitution and Diversion Program agreement, the district attorney may file an information and proceed with the prosecution of the accused person as provided by law.

G. Members of the district attorney's staff shall perform duties in connection with the Restitution and Diversion Program in addition to any other duties which may be assigned by the district attorney.

H. 1. District attorneys shall prepare and submit an annual report to the District Attorneys Council showing total deposits and total expenditures in the Restitution and Diversion Program.

2. By September 15 of each year, the District Attorneys Council shall publish an annual report for the previous fiscal year of the Restitution and Diversion Program. A copy of the report shall be distributed to the President Pro Tempore of the Senate and the Speaker of the House of Representatives and the chairs of the House and Senate Appropriations Committees. Each district attorney shall submit information requested by the District Attorneys Council regarding the Restitution and Diversion Program. This report shall include the number of cases processed, the total dollar amount for which restitution was made, the total amount of the restitution collected, the total amount of fees collected, the total cost of the program, and such other information as required by the District Attorneys Council.

I. For the purposes of the Restitution and Diversion Program, the following definitions shall apply:

1. "Property Crime" shall include, but not be limited to the following:

- a. embezzlement offenses,
- b. larceny offenses,
- c. theft offenses,
- d. malicious injury to property, and
- e. any offense which results in economic loss, but does not result in physical injury to another human being, and which is not enumerated in Section 571 of Title 57 of the Oklahoma Statutes;

2. "Victim" is defined by Section 991f of Title 22 of the Oklahoma Statutes;

3. "Restitution" is defined by Section 991f of Title 22 of the Oklahoma Statutes; and

4. "Economic loss" is defined by Section 991f of Title 22 of the Oklahoma Statutes.

J. The victim shall promptly provide to the Restitution and Diversion Program all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

SECTION 23. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 20, Chapter 8, 1st Extraordinary Session,

O.S.L. 2000 (47 O.S. Supp. 2000, Section 11-902), 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 ~~ten-hundredths (0.10)~~ 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).

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 ~~ten-hundredths (0.10)~~ 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 24. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 8, Chapter 106, O.S.L. 1999 (47 O.S. Supp. 2000, Section 754), is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older whose alcohol concentration is ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test, shall immediately surrender his or her driver license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any driver license, permit, or other evidence of driving privilege surrendered by or found on the arrested person during a search.

B. If the evidence of driving privilege surrendered to or seized by the officer has not expired and otherwise appears valid, the officer shall issue to the arrested person a dated receipt for that driver license, permit, or other evidence of driving privilege on a form prescribed by the Department of Public Safety. This receipt shall be recognized as a driver license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department effective in thirty (30) days. The evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the officer and shall be submitted by mail or in person to the Department within seventy-two (72) hours of the issuance of the receipt. The failure of the officer to timely file this report shall not affect the authority of the Department to revoke the driving privilege of the arrested person.

C. Upon receipt of a written blood or breath test report reflecting that the arrested person, if under twenty-one (21) years of age, had any measurable quantity of alcohol in the person's blood or breath, or, if the arrested person is twenty-one (21) years of age or older, a blood or breath alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more, accompanied by a sworn report from a law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while under the influence of alcohol as prohibited by law, the Department shall revoke or deny the driving privilege of the arrested person for a period as provided by Section 6-205.1 of this title. Revocation or denial of the driving privilege of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer as provided in this section or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose driving privilege has been revoked or denied, the Department shall grant the person an opportunity to be heard if the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. The sworn report of the officer, together with the results of any test or tests, shall be deemed true, absent any facial deficiency, should the requesting person fail to appear at the scheduled hearing. A timely request shall stay the order of the Department until the disposition of the hearing unless the person is under cancellation, denial, suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing, if the person is otherwise eligible. If the hearing request is not timely filed, the revocation or denial shall be sustained.

E. 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 person by the Commissioner or an authorized representative 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 either party, 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 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.

F. The hearing before the Commissioner of Public Safety or a designated hearing officer shall be conducted in the county of arrest or may be conducted by telephone conference call. The hearing may be recorded and its scope shall cover the issues of whether the officer had reasonable grounds to believe the person had been operating or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance as prohibited by law, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. the testing procedures used were in accordance with the rules of the Board of Tests for Alcohol and Drug Influence,
- b. the person was not denied a timely requested breath or blood test,
- c. the specimen was obtained from the person within two (2) hours of the arrest of the person,
- d. the person, if under twenty-one (21) years of age, was advised that driving privileges would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,
- e. the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,
- f. the person, if twenty-one (21) years of age or older, was advised that driving privileges would be revoked or denied if the test result reflected an alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or more, and
- g. the test result in fact reflects such alcohol concentration.

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and

- b. the person was informed that driving privileges would be revoked or denied if the person refused to submit to the test or tests.

G. After the hearing, the Commissioner of Public Safety or a designated hearing officer shall order the revocation or denial either rescinded or sustained.

SECTION 25. AMENDATORY 47 O.S. 1991, Section 756, as last amended by Section 21, Chapter 8, 1st Extraordinary Session, O.S.L. 2000 (47 O.S. Supp. 2000, Section 756), is amended to read as follows:

Section 756. A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 752 and 759 of this title or evidence of the presence and concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Sections 752 and 759 of this title is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this title, when the person is under the age of twenty-one (21) years, evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person is under the influence of alcohol in violation of Section ~~16~~ 11-906.4 of this ~~act~~ title. For persons twenty-one years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of five-hundredths (0.05) or less is prima facie evidence that the person was not under the influence of alcohol;

2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol. However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and

3. Evidence that there was, at the time of the test, an alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths (0.08) or

more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

B. For purposes of this title, "alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence must first be qualified by establishing that the test was administered to the person within two (2) hours after the arrest of the person.

SECTION 26. AMENDATORY 57 O.S. 1991, Section 138, as last amended by Section 11, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (57 O.S. Supp. 2000, Section 138), is amended to read as follows:

Section 138. A. Except as otherwise provided by law, every inmate of a state correctional institution shall have their term of imprisonment reduced monthly, based upon the class level to which they are assigned. Earned credits may be subtracted from the total credits accumulated by an inmate, upon recommendation of the institution's disciplinary committee, following due process, and upon approval of the warden or superintendent. Each earned credit is equivalent to one (1) day of incarceration. Lost credits may be restored by the warden or superintendent upon approval of the classification committee. If a maximum and minimum term of imprisonment is imposed, the provisions of this subsection shall apply only to the maximum term. No deductions shall be credited to any inmate serving a sentence of life imprisonment; however, a complete record of the inmate's participation in work, school, vocational training, or other approved program shall be maintained by the Department for consideration by the paroling authority.

B. The Department of Corrections is directed to develop a written policy and procedure whereby inmates shall be assigned to one (1) of four (4) class levels determined by an adjustment review committee of the facility to which the inmate is assigned. The policies and procedures developed by the Department shall include, but not be limited to, written guidelines pertaining to awarding credits for rehabilitation, obtaining job skills and educational enhancement, participation in and completion of alcohol/chemical abuse programs, incentives for inmates to accept work assignments and jobs, work attendance and productivity, conduct record, participation in programs, cooperative general behavior, and appearance. When assigning inmates to a class level the adjustment review committee shall consider all aspects of the policy and procedure developed by the Department, including but not limited to, the criteria for awarding credits required by this subsection.

C. If an inmate who has been assessed to be capable of benefiting from education programs refuses assignment to an education program, the inmate shall remain in class level 1 until such time as the inmate accepts an educational assignment.

D. 1. Class levels shall be as follows:

- a. Class level 1 shall include inmates not eligible to participate in class levels 2 through 4, and shall include, but not be limited to, inmates on escape status, inmates refusing job, education, or program assignments, inmates removed from job, education, or program assignments due to misconduct or nonperformance, or inmates subject to disciplinary action.
 - b. Class level 2 shall include an inmate who has been given a work, education, or program assignment, has received a good evaluation for participation in the work, education, or program assignment, and has received a good evaluation for personal hygiene and maintenance of living area.
 - c. Class level 3 shall include an inmate who has been incarcerated at least ~~four (4)~~ three (3) months, has received an excellent work, education, or program evaluation, and has received an excellent evaluation for personal hygiene and maintenance of living area.
 - d. Class level 4 shall include an inmate who has been incarcerated at least ~~ten (10)~~ eight (8) months, has received an outstanding work, education, or program evaluation, and has received an outstanding evaluation for personal hygiene and maintenance of living area.
2. a. ~~Class~~ Until November 1, 2001, class level corresponding credits are as follows:
- Class 1 - 0 Credits per month;
 - Class 2 - 22 Credits per month;
 - Class 3 - 33 Credits per month;
 - Class 4 - 44 Credits per month.
- b. Class level corresponding credits beginning November 1, 2001, for inmates who have ever been convicted as an adult or a youthful offender or adjudicated delinquent as a juvenile for an offense enumerated in subsection E of this section are as follows:
- Class 1 - 0 Credits per month;
 - Class 2 - 22 Credits per month;
 - Class 3 - 33 Credits per month;
 - Class 4 - 44 Credits per month.
- c. Class level corresponding credits beginning November 1, 2001, for inmates who have never been convicted as an adult or a youthful offender or adjudicated delinquent

as a juvenile for an offense enumerated in subsection E of this section are as follows:

Class 1 - 0 Credits per month;

Class 2 - 22 Credits per month;

Class 3 - 45 Credits per month;

Class 4 - 60 Credits per month.

Each inmate shall receive the above specified monthly credits for the class to which he is assigned. In determining the prior criminal history of the inmate, the Department of Corrections shall research criminal history records available through the Oklahoma State Bureau of Investigation, Federal Bureau of Investigation, and National Crime Information Center to determine the reported felony convictions of all inmates. The Department of Corrections shall also research the Office of Juvenile Affairs Juvenile On-Line Tracking System for inmates who were adjudicated delinquent or convicted as a youthful offender for a crime that would be an offense enumerated in subsection E of this section.

3. In addition to the criteria established for each class in paragraph 1 of this subsection, the following requirements shall apply to each of levels 2 through 4:

- a. satisfactory participation in the work, education, or program assignment at the standard required for the particular class level;
- b. maintenance of a clean and orderly living area and personal hygiene at the standard required for the particular class level;
- c. cooperative behavior toward facility staff and other inmates;
- d. satisfactory participation in the requirements of the previous class level.

4. The evaluation scale for assessing performance shall be as follows:

- a. Outstanding - For inmates who display consistently exceptional initiative, motivation, and work habits.
- b. Excellent - For inmates who display above-average work habits with only minor errors and rarely perform below expectations.
- c. Good - For inmates who perform in a satisfactory manner and complete tasks as required, doing what is expected, with only occasional performance above or below expectations.

- d. Fair - For inmates who may perform satisfactorily for some periods of time, but whose performance is marked by obviously deficient and weak areas and could be improved.
- e. Poor - For inmates whose performance is unsatisfactory and falls below expected and acceptable standards.

E. No person ever convicted as an adult or a youthful offender or adjudicated delinquent as a juvenile for any of the following crimes shall be eligible for the credits provided by the provisions of subparagraph b of paragraph 2 of subsection D of this section.

1. Assault, battery, or assault and battery with a dangerous weapon as defined by Section 645, or 652 of Title 21 or Section 2-219 of Title 43A of the Oklahoma Statutes;

2. Aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law as defined by Section 650, subsection C of Section 650.2, 650.5, subsection B of Section 650.6, or subsection C of Section 650.7 of Title 21 of the Oklahoma Statutes;

3. Poisoning with intent to kill as defined by Section 651 of Title 21 of the Oklahoma Statutes;

4. Shooting with intent to kill as defined by Section 652 of Title 21 of the Oklahoma Statutes;

5. Assault with intent to kill as defined by Section 653 of Title 21 of the Oklahoma Statutes;

6. Assault with intent to commit a felony as defined by Section 681 of Title 21 of the Oklahoma Statutes;

7. Assaults while masked or disguised as defined by Section 1303 of Title 21 of the Oklahoma Statutes;

8. Entering premises of another while masked as defined by Section 1302 of Title 21 of the Oklahoma Statutes;

9. Murder in the first degree as defined by Section 701.7 of Title 21 of the Oklahoma Statutes;

10. Solicitation for Murder in the first degree as defined by Section 701.16 of Title 21 of the Oklahoma Statutes;

11. Murder in the second degree as defined by Section 701.8 of Title 21 of the Oklahoma Statutes;

12. Manslaughter in the first degree as defined by Section 711, 712, 713 or 714 of Title 21 of the Oklahoma Statutes;

13. Manslaughter in the second degree as defined by Section 716 or 717 of Title 21 of the Oklahoma Statutes;

14. Kidnapping as defined by Section 741 of Title 21 of the Oklahoma Statutes;

15. Burglary in the first degree as defined by Section 1431 of Title 21 of the Oklahoma Statutes;

16. Burglary with explosives as defined by Section 1441 of Title 21 of the Oklahoma Statutes;

17. Kidnapping for extortion as defined by Section 745 of Title 21 of the Oklahoma Statutes;

18. Maiming as defined by Section 751 of Title 21 of the Oklahoma Statutes;

19. Robbery as defined by Section 791 of Title 21 of the Oklahoma Statutes;

20. Robbery in the first degree as defined by Section 797 of Title 21 of the Oklahoma Statutes;

21. Robbery in the second degree as defined by Section 797 of Title 21 of the Oklahoma Statutes;

22. Armed robbery as defined by Section 801 of Title 21 of the Oklahoma Statutes;

23. Robbery by two (2) or more persons as defined by Section 800 of Title 21 of the Oklahoma Statutes;

24. Robbery with dangerous weapon or imitation firearm as defined by Section 801 of Title 21 of the Oklahoma Statutes;

25. Any crime against a child provided for in Section 7115 of Title 10 of the Oklahoma Statutes;

26. Wiring any equipment, vehicle or structure with explosives as defined by Section 849 of Title 21 of the Oklahoma Statutes;

27. Forcible sodomy as defined by Section 888 of Title 21 of the Oklahoma Statutes;

28. Rape in the first degree as defined by Sections 1111 and 1114 of Title 21 of the Oklahoma Statutes;

29. Rape in the second degree as defined by Sections 1111 and 1114 of Title 21 of the Oklahoma Statutes;

30. Rape by instrumentation as defined by Section 1111.1 of Title 21 of the Oklahoma Statutes;

31. Lewd or indecent proposition or lewd or indecent act with a child as defined by Section 1123 of Title 21 of the Oklahoma Statutes;

32. Sexual battery of a person over 16 as defined by Section 1123 of Title 21 of the Oklahoma Statutes;

33. Use of a firearm or offensive weapon to commit or attempt to commit a felony as defined by Section 1287 of Title 21 of the Oklahoma Statutes;

34. Pointing firearms as defined by Section 1289.16 of Title 21 of the Oklahoma Statutes;

35. Rioting as defined by Section 1311 or 1321.8 of Title 21 of the Oklahoma Statutes;

36. Inciting to riot as defined by Section 1320.2 of Title 21 of the Oklahoma Statutes;

37. Arson in the first degree as defined by Section 1401 of Title 21 of the Oklahoma Statutes;

38. Endangering human life during arson as defined by Section 1405 of Title 21 of the Oklahoma Statutes;

39. Injuring or burning public buildings as defined by Section 349 of Title 21 of the Oklahoma Statutes;

40. Sabotage as defined by Sections 1262, 1265.4 or 1265.5 of Title 21 of the Oklahoma Statutes;

41. Extortion as defined by Section 1481 or 1486 of Title 21 of the Oklahoma Statutes;

42. Obtaining signature by extortion as defined by Section 1485 of Title 21 of the Oklahoma Statutes;

43. Seizure of a bus, discharging firearm or hurling missile at bus as defined by Section 1903 of Title 21 of the Oklahoma Statutes;

44. Mistreatment of a vulnerable adult as defined by Section 843.1 of Title 21 of the Oklahoma Statutes;

45. Sex offender providing services to a child as defined by Section 404.1 of Title 10 of the Oklahoma Statutes;

46. A felony offense of domestic abuse as defined by subsection C of Section 644 of Title 21 of the Oklahoma Statutes;

47. Prisoner placing body fluid on government employee as defined by Section 650.9 of Title 21 of the Oklahoma Statutes;

48. Poisoning food or water supply as defined by Section 832 of Title 21 of the Oklahoma Statutes;

49. Trafficking in children as defined by Section 866 of Title 21 of the Oklahoma Statutes;

50. Incest as defined by Section 885 of Title 21 of the Oklahoma Statutes;

51. Procure, produce, distribute, or possess juvenile pornography as defined by Section 1021.2 of Title 21 of the Oklahoma Statutes;

52. Parental consent to juvenile pornography as defined by Section 1021.3 of Title 21 of the Oklahoma Statutes;

53. Soliciting minor for indecent exposure as defined by Section 1021 of Title 21 of the Oklahoma Statutes;

54. Distributing obscene material or child pornography as defined by Section 1040.13 of Title 21 of the Oklahoma Statutes;

55. Child prostitution as defined by Section 1030 of Title 21 of the Oklahoma Statutes;

56. Procuring a minor for prostitution or other lewd acts as defined by Section 1087 of Title 21 of the Oklahoma Statutes;

57. Transporting a child under 18 for purposes of prostitution as defined by Section 1087 of Title 21 of the Oklahoma Statutes;

58. Inducing a minor to engage in prostitution as defined by Section 1088 of Title 21 of the Oklahoma Statutes;

59. A felony offense of stalking as defined by subsection D of Section 1173 of Title 21 of the Oklahoma Statutes;

60. Spread of infectious diseases as defined by Section 1192 of Title 21 of the Oklahoma Statutes;

61. Advocate overthrow of government by force, commit or attempt to commit acts to overthrow the government, organize or provide assistance to groups to overthrow the government as defined by Section 1266, 1266.4 or 1267.1 of Title 21 of the Oklahoma Statutes;

62. Feloniously discharging a firearm as defined by Section 1289.17A of Title 21 of the Oklahoma Statutes;

63. Discharging firearm into building as defined by Section 1289.17A of Title 21 of the Oklahoma Statutes;

64. Possession, use, manufacture, or telephone threat of incendiary device as defined by Section 1767.1 of Title 21 of the Oklahoma Statutes;

65. Causing a personal injury accident while driving under the influence as defined by Section 11-904 of Title 47 of the Oklahoma Statutes; or

66. Using a motor vehicle to facilitate the discharge of a firearm as defined by Section 652 of Title 21 of the Oklahoma Statutes.

F. The policy and procedure developed by the Department of Corrections shall include provisions for adjustment review

committees of not less than three (3) members for each such committee. Each committee shall consist of a classification team supervisor who shall act as chairman, the case manager for the inmate being reviewed or classified, a correctional officer or inmate counselor, and not more than two other members, if deemed necessary, determined pursuant to policy and procedure to be appropriate for the specific adjustment review committee or committees to which they are assigned. At least once every four (4) months the adjustment review committee for each inmate shall evaluate the class level status and performance of the inmate and determine whether or not the class level for the inmate should be changed.

Any inmate who feels aggrieved by a decision made by an adjustment review committee may utilize normal grievance procedures in effect with the Department of Corrections and in effect at the facility in which the inmate is incarcerated.

~~F.~~ G. Inmates granted medical leaves for treatment that cannot be furnished at the penal institution where incarcerated shall be allowed the time spent on medical leave as time served. Any inmate ~~classified by the Department of Corrections as being physically or mentally disabled for work or~~ placed into administrative segregation for nondisciplinary reasons by the institution's administration may be placed in Class 2. The length of any jail term served by an inmate before being transported to a state correctional institution pursuant to a judgment and sentence of incarceration shall be deducted from his term of imprisonment at the state correctional institution. Inmates sentenced to the Department of Corrections and detained in a county jail as a result of the Department's reception scheduling procedure shall be awarded earned credits as provided for in subparagraph b of paragraph 1 of subsection D of this section, beginning on the date of the judgment and sentence, unless the inmate is convicted of a misdemeanor or felony committed in the jail while the inmate is awaiting transport to the Lexington Assessment and Reception Center or other assessment and reception location determined by the Director of the Department of Corrections.

~~G.~~ H. Additional achievement earned credits for successful completion of departmentally approved programs or for attaining goals or standards set by the Department shall be awarded as follows:

- High School Diploma or Equivalent
General Education Diploma 90 credits;
- Certification of Completion of
Vocational Training 80 credits;
- Successful completion of Alcohol/Chemical
Abuse Treatment Program of
not less than four (4) months
continuous participation 70 credits;
- Successful completion of other
Educational Accomplishments or other
programs not specified in this

subsection..... 10-30 credits;

Achievement earned credits are subject to loss and restoration in the same manner as earned credits. ~~No inmate shall receive more than ninety (90) achievement credits per calendar year.~~

~~H. I.~~ I. The accumulated time of every inmate shall be tallied monthly and maintained by the institution where the term of imprisonment is being served. A record of said accumulated time shall be:

1. Sent to the administrative office of the Department of Corrections on a quarterly basis; and
2. Provided to the inmate.

~~I. As of November 1, 1988, all inmates currently under the custody of the Department of Corrections shall receive their assignments and all credits from that date forward shall be calculated as provided in this section.~~

SECTION 27. AMENDATORY 57 O.S. 1991, Section 332.7, as last amended by Section 12, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (57 O.S. Supp. 2000, Section 332.7), is amended to read as follows:

Section 332.7 A. For a crime committed prior to July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole at the earliest of the following dates:

1. Has completed serving one-third (1/3) of the sentence;
2. Has reached at least sixty (60) years of age and also has served at least fifty percent (50%) of the time of imprisonment that would have been imposed for that offense pursuant to the applicable Truth in Sentencing matrix, provided in Sections 598 through 601, Chapter 133, O.S.L. 1997; provided, however, no inmate serving a sentence for crimes listed in Schedules A, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, or serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph;
3. Has reached eighty-five percent (85%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable matrix; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph; or
4. Has reached seventy-five percent (75%) of the midpoint of the time of imprisonment that would have been imposed for an offense that is listed in any other schedule, pursuant to the applicable matrix; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this paragraph.

B. For a crime committed on or after July 1, 1998, any person in the custody of the Department of Corrections shall be eligible for consideration for parole who has completed serving one-third (1/3) of the sentence; provided, however, no inmate serving a sentence of life imprisonment without parole shall be eligible to be considered for parole pursuant to this subsection.

C. The parole hearings conducted for persons pursuant to paragraph 3 of subsection A of this section or for any person who was convicted of a violent crime as set forth in Section 571 of this title and who is eligible for parole consideration pursuant to either paragraph 1 of subsection A of this section or subsection B of this section shall be conducted in two stages, as follows:

1. At the initial hearing, the Pardon and Parole Board shall review the completed report submitted by the staff of the Board and shall conduct a vote regarding whether, based upon that report, the Board decides to consider the person for parole at a subsequent meeting of the Board; and

2. At the subsequent meeting, the Board shall hear from any victim or victim's representative that wants to contest the granting of parole to that person and shall conduct a vote regarding whether parole should be recommended for that person.

D. Any inmate who has parole consideration dates calculated pursuant to subsection A, B or C of this section shall be considered at the earliest such date. Except as otherwise directed by the Pardon and Parole Board, any person who has been considered for parole and was denied parole or who has waived consideration shall not be reconsidered for parole:

1. Within three (3) years of the denial or waiver, if the person was convicted of a violent crime, as set forth in Section 571 of this title, and was eligible for consideration pursuant to paragraph 1 of subsection A of this section or subsection B of this section, unless the person is within one (1) year of discharge; or

2. Until the person has served at least one-third (1/3) of the sentence imposed, if the person was eligible for consideration pursuant to paragraph 3 of subsection A of this section. Thereafter the person shall not be considered more frequently than once every three (3) years, unless the person is within one (1) year of discharge;

~~3. Within one (1) year, if the person was convicted of a nonviolent crime and was eligible for consideration pursuant to paragraph 1 of subsection A of this section or subsection B of this section; and~~

~~4. Within one (1) year, if the person was eligible for consideration pursuant to paragraph 2 or 4 of subsection A of this section.~~

E. Any person in the custody of the Department of Corrections for a crime committed prior to July 1, 1998, who has been considered

for parole on a docket created for a type of parole consideration that has been abolished by the Legislature shall not be considered for parole except in accordance with this section.

F. The Department of Corrections and the Pardon and Parole Board shall promulgate rules for the implementation of subsections A, B and C of this section. The rules shall include, but not be limited to, procedures for reconsideration of persons denied parole under this section and procedure for determining what sentence a person eligible for parole consideration pursuant to subsection A of this section would have received under the applicable matrix.

G. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of three or more felonies arising out of separate and distinct transactions, with three or more incarcerations for such felonies, unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date.

H. It shall be the duty of the Pardon and Parole Board to cause an examination to be made at the penal institution where the person is assigned, and to make inquiry into the conduct and the record of the said person during his custody in the Department of Corrections, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed the time period provided for in this subsection if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

I. Any person in the custody of the Department of Corrections who is convicted of an offense not designated as a violent offense by Section 571 of Title 57 of the Oklahoma Statutes and who is not a citizen of the United States and is or becomes subject of a final order of deportation issued by the United States Department of Justice shall be considered for parole to the custody of the United States Immigration and Naturalization Service for continuation of deportation proceedings at any time subsequent to reception and processing through the Department of Corrections.

J. Upon application of any person convicted and sentenced by a court of this state and relinquished to the custody of another state or federal authorities pursuant to Section 61.2 of Title 21 of the Oklahoma Statutes, the Pardon and Parole Board may determine a parole consideration date consistent with the provisions of this section and criteria established by the Pardon and Parole Board.

K. No person who is appearing out of the normal processing procedure shall be eligible for consideration for parole without the concurrence of at least three (3) members of the Pardon and Parole Board.

L. All references in this section to matrices or schedules shall be construed with reference to the provisions of Sections 6, 598, 599, 600 and 601, Chapter 133, O.S.L. 1997.

SECTION 28. AMENDATORY 57 O.S. 1991, Section 332.8, as last amended by Section 13, Chapter 5, 1st Extraordinary Session O.S.L. 1999 (57 O.S. Supp. 2000, Section 332.8), is amended to read as follows:

Section 332.8 No recommendations to the Governor for parole shall be made in relation to any inmate in a penal institution in the State of Oklahoma unless the Pardon and Parole Board considers the victim impact statements if presented to the jury, or the judge in the event a jury was waived, at the time of sentencing and, in every appropriate case, as a condition of parole, monetary restitution of economic loss as defined by Section 991f of Title 22 of the Oklahoma Statutes, incurred by a victim of the crime for which the inmate was imprisoned. In every case, the Pardon and Parole Board shall first consider the number of previous felony convictions and the type of criminal violations leading to any such felony convictions, then shall consider either suitable employment or a suitable residence, and finally shall mandate participation in education programs to achieve the proficiency level established in Section 510.7 of this title or, at the discretion of the Board require the attainment of a general education diploma, as a condition for release on parole. The Board shall consider the availability of programs and the waiting period for such programs in setting conditions of parole release. The Board may require any program to be completed after the inmate is released on parole as a condition of parole. A facsimile signature of the inmate on parole papers that is transmitted to the Board shall be an accepted means of acknowledgement of parole conditions. The probation and parole officer shall render every reasonable assistance to any person making application for parole, in helping to obtain suitable employment or enrollment in an education program or a suitable residence. Any inmate who fails to satisfactorily attend and make satisfactory progress in the educational program in which the inmate has been required to participate as a condition of ~~eligibility for~~ parole, ~~shall~~ may have his or her ~~eligibility for~~ parole revoked. Any If an inmate's parole is revoked, such inmate shall be returned to confinement in the custody of the Department of Corrections.

SECTION 29. AMENDATORY 57 O.S. 1991, Section 332.18, as amended by Section 1, Chapter 341, O.S.L. 1998 (57 O.S. Supp. 2000, Section 332.18), is amended to read as follows:

Section 332.18 A. The Director of the Department of Corrections shall have the authority to request the Executive Director of the Pardon and Parole Board to place an inmate on the Pardon and Parole Board docket for a medical reason, out of the normal processing procedures. Documentation of the medical condition of such inmate shall be certified by the medical director

of the Department of Corrections. The Pardon and Parole Board shall have the authority to bring any such inmate before the Board at any time, except as otherwise provided in subsection B of this section.

B. When a request is made for a medical parole review of an inmate who is dying or is near death as certified by the medical director of the Department of Corrections or whose medical condition has rendered the inmate no longer a threat to public safety, the Executive Director shall place such inmate on the first available parole review docket for a compassionate parole ~~recommendation~~ consideration.

The provisions of this section shall not apply to inmates serving a sentence of life without possibility of parole.

SECTION 30. AMENDATORY 57 O.S. 1991, Section 571, as amended by Section 10, Chapter 276, O.S.L. 1993 (57 O.S. Supp. 2000, Section 571), is amended to read as follows:

Section 571. As used in ~~this act~~ the Oklahoma Statutes, unless another definition is specified:

1. "Capacity" means the actual available bedspace as certified by the State Board of Corrections subject to applicable federal and state laws and the rules and regulations promulgated under such laws;

~~2. "Department" means the Department of Corrections of the State of Oklahoma;~~

~~3. "Director" means the Director of the Department of Corrections;~~

~~4. "Emergency time credit" means time reduction of sentence allowed when ninety-five percent (95%) of capacity is exceeded pursuant to this act; and~~

~~5. "Nonviolent offense" means any felony offense except the following, or any attempts to commit or conspiracy or solicitation to commit the following crimes:~~

- a. assault, battery, or assault and battery with a dangerous weapon;
- b. aggravated assault and battery on a police officer, sheriff, highway patrolman, or any other officer of the law;
- c. poisoning with intent to kill;
- d. shooting with intent to kill;
- e. assault with intent to kill;
- f. assault with intent to commit a felony;
- g. assaults while masked or disguised;

- h. murder in the first degree;
- i. murder in the second degree;
- j. manslaughter in the first degree;
- k. manslaughter in the second degree;
- l. kidnapping;
- m. burglary in the first degree;
- n. burglary with explosives;
- o. kidnapping for extortion;
- p. maiming;
- q. robbery;
- r. robbery in the first degree;
- s. robbery in the second degree;
- t. armed robbery;
- u. robbery by two (2) or more persons;
- v. robbery with dangerous weapon or imitation firearm;
- w. child beating;
- x. wiring any equipment, vehicle or structure with explosives;
- y. forcible sodomy;
- z. rape in the first degree;
- aa. rape in the second degree;
- bb. rape by instrumentation;
- cc. lewd or indecent proposition or lewd or indecent act with a child;
- dd. use of a firearm or offensive weapon to commit or attempt to commit a felony;
- ee. pointing firearms;
- ff. rioting;
- gg. inciting to riot;
- hh. arson in the first degree;

- ii. injuring or burning public buildings;
- jj. sabotage;
- kk. criminal syndicalism;
- ll. extortion;
- mm. obtaining signature by extortion;
- nn. seizure of a bus, discharging firearm or hurling missile at bus; or
- oo. mistreatment of a mental patient.

SECTION 31. AMENDATORY 63 O.S. 1991, Section 2-401, as last amended by Section 1, Chapter 265, O.S.L. 2000 (63 O.S. Supp. 2000, Section 2-401), is amended to read as follows:

Section 2-401. A. Except as authorized by the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of this title, it shall be unlawful for any person:

1. To distribute, dispense, transport with intent to distribute or dispense, possess with intent to manufacture, distribute, or dispense, a controlled dangerous substance or to solicit the use of or use the services of a person less than eighteen (18) years of age to cultivate, distribute or dispense a controlled dangerous substance;

2. To create, distribute, transport with intent to distribute or dispense, or possess with intent to distribute, a counterfeit controlled dangerous substance; or

3. To distribute any imitation controlled substance as defined by Section 2-101 of this title, except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services.

B. Any person who violates the provisions of this section with respect to:

1. A substance classified in Schedule I or II which is a narcotic drug or lysergic acid diethylamide (LSD), upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less than five (5) years nor more than life and a fine of not more than One Hundred Thousand Dollars (\$100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

2. Any other controlled dangerous substance classified in Schedule I, II, III, or IV, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not less

than two (2) years nor more than life and a fine of not more than Twenty Thousand Dollars (\$20,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any sentence to the custody of the Department of Corrections shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation except when the conviction is for a first offense;

3. A substance classified in Schedule V, upon conviction, shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than One Thousand Dollars (\$1,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment; or

4. An imitation controlled substance as defined by Section 2-101 of this title, upon conviction, shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment in the county jail for a period of not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). A person convicted of a second violation of the provisions of this paragraph shall be guilty of a felony and shall be sentenced to a term of imprisonment for not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

C. Except when authorized by the Food and Drug Administration of the United States Department of Health and Human Services, it shall be unlawful for any person to manufacture, distribute, or possess with intent to distribute a synthetic controlled substance. Any person convicted of violating the provisions of this paragraph is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not to exceed life and a fine of not more than Twenty-five Thousand Dollars (\$25,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. A second or subsequent conviction for the violation of the provisions of this paragraph is a felony punishable ~~by imprisonment in the State Penitentiary for a term of not less than ten (10) years nor more than life and a fine of~~ as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall be fined an amount not more than One Hundred Thousand Dollars (\$100,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment.

D. Any person convicted of a second or subsequent felony violation of the provisions of this section, except for paragraph 4 of subsection B of this section ~~or subsections C, F or G of this section,~~ shall be punished ~~by a term of imprisonment twice that otherwise authorized and by~~ as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall be fined twice the fine otherwise authorized, which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Convictions for second or subsequent violations of the provisions of this section shall not

be subject to statutory provisions for suspended sentences, deferred sentences, or probation.

E. Any person who is at least eighteen (18) years of age and who violates the provisions of this section by using or soliciting the use of services of a person less than eighteen (18) years of age to distribute, dispense, transport with intent to distribute or dispense or cultivate a controlled dangerous substance or by distributing a controlled dangerous substance to a person under eighteen (18) years of age is punishable by twice the fine and by twice the imprisonment otherwise authorized.

F. Any person who violates any provision of this section by transporting with intent to distribute or dispense, distributing or possessing with intent to distribute a controlled dangerous substance to a person, in or on, or within two thousand (2,000) feet of the real property comprising a public or private elementary or secondary school, public vocational school, public or private college or university, or other institution of higher education, recreation center or public park, including state parks and recreation areas, or public housing project shall be punished by:

1. For a first offense, a term of imprisonment, or by the imposition of a fine or by both, not exceeding twice that authorized by the appropriate provision of this section and shall serve a minimum of fifty percent (50%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence; or

2. For a second or subsequent offense, a term of imprisonment ~~not exceeding three times that authorized by the appropriate provision of this section and~~ as provided for a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes. In addition the violator shall serve a minimum of ninety percent (90%) eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional institution earned credits toward the completion of said sentence or eligibility for parole.

G. 1. Except as authorized by the Uniform Controlled Dangerous Substances Act, it shall be unlawful for any person to manufacture or attempt to manufacture any controlled dangerous substance or possess any substance listed in Section 2-322 of this title or any substance containing any detectable amount of pseudoephedrine or its salts, optical isomers or salts of optical isomers, iodine or its salts, optical isomers or salts of optical isomers, hydriatic acid, sodium metal, lithium metal, anhydrous ammonia, or ether with the intent to use that substance to manufacture a controlled dangerous substance.

2. Any person violating the provisions of this ~~section~~ subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance, or possessing any substance listed in this subsection or Section 2-322 of this title, upon conviction, is guilty of a felony and shall be punished by imprisonment in the State Penitentiary for not less than ~~twenty (20)~~ seven (7) years nor more than life and by a fine of not less than Fifty Thousand Dollars (\$50,000.00), which shall be in

addition to other punishment provided by law and shall not be imposed in lieu of other punishment. The possession of any amount of anhydrous ammonia in an unauthorized container or the possession of three or more of the substances listed in this subsection shall be prima facie evidence of intent to use such substance to manufacture a controlled dangerous substance.

3. Any person violating the provisions of this subsection with respect to the unlawful manufacturing or attempting to unlawfully manufacture any controlled dangerous substance in the following amounts:

- a. 1 kilogram or more of a mixture or substance containing a detectable amount of heroin,
- b. 5 kilograms or more of a mixture or substance containing a detectable amount of:
 - (1) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed,
 - (2) cocaine, its salts, optical and geometric isomers, and salts of isomers,
 - (3) ecgonine, its derivatives, their salts, isomers, and salts of isomers, or
 - (4) any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (1) through (3) of this paragraph,
- c. 50 grams or more of a mixture or substance described in subparagraph (2) of paragraph b which contains cocaine base,
- d. 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP),
- e. 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD),
- f. 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide,
- g. 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana or 1000 or more marihuana plants regardless of weight, or

h. 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a dectable amount of methamphetamine, its salts, isomers, or salts of its isomers,

upon conviction, is guilty of aggravated manufacturing a controlled dangerous substance punishable by imprisonment in the State Penitentiary for not less than twenty (20) years nor more than life and by a fine of not less than Fifty Thousand Dollars (\$50,000.00), which shall be in addition to other punishment provided by law and shall not be imposed in lieu of other punishment. Any person convicted of a violation of the provisions of this paragraph shall be required to serve a minimum of eighty-five percent (85%) of the sentence received prior to becoming eligible for state correctional earned credits towards the completion of the sentence or eligible for parole.

4. Any sentence to the custody of the Department of Corrections for any violation of paragraph 3 of this subsection shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation. A person convicted of a second or subsequent violation of the provisions of paragraph 3 of this subsection shall be ~~required to serve at least ten (10) years of such person's~~ punished as a habitual offender pursuant to Section 51.1 of Title 21 of the Oklahoma Statutes and shall be required to serve a minimum of eighty-five percent (85%) of the sentence ~~before received prior to becoming eligible for state correctional earned credits or eligibility for parole or any early release from incarceration.~~

H. Any person convicted of any offense described in this section may, in addition to the fine imposed, be assessed an amount not to exceed ten percent (10%) of the fine imposed, notwithstanding any maximum assessment allowable in Section 2-506 of this title. Such assessment shall be paid into a revolving fund for enforcement of controlled dangerous substances created pursuant to Section 2-506 of this title.

~~H. I.~~ I. For purposes of this section, "public housing project" means any dwelling or accommodations operated as a state or federally subsidized multifamily housing project by any housing authority, nonprofit corporation or municipal developer or housing projects created pursuant to the Oklahoma Housing Authorities Act.

SECTION 32. AMENDATORY 68 O.S. 1991, Section 218.1, as last amended by Section 401, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (68 O.S. Supp. 2000, Section 218.1), is amended to read as follows:

Section 218.1 A. Any person who shall knowingly give a false or bogus check, as defined in this section, of a value less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) in payment or remittance of any taxes, fees, penalties, or interest levied pursuant to any state tax law shall be, upon conviction, guilty of a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the county jail for a term of not

more than one (1) year, or by both such fine and imprisonment. If the value of the false or bogus check referred to in this subsection is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more, such person shall be, upon conviction, guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment in the State Penitentiary for a term of not more than ten (10) years or by both such fine and imprisonment.

B. Any person who shall knowingly give two or more false or bogus checks, the total sum of which is ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00) or more, even though each separate instrument is written for less than ~~Fifty Dollars (\$50.00)~~ Five Hundred Dollars (\$500.00), in payment or remittance of any taxes, fees, penalties, or interest levied pursuant to any state tax law shall be, upon conviction, guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00) or by imprisonment in the State Penitentiary for a term of not more than ten (10) years, or by both such fine and imprisonment.

C. For purposes of this section, the term "false or bogus check or checks" shall include any check or order which is not honored on account of insufficient funds of the maker to pay same, or because the check or order was drawn on a closed account or on a nonexistent account. The making, drawing, uttering or delivering of a check or order, the payment of which is refused by the drawee, shall be prima facie evidence of the knowledge of insufficient funds, a closed account, or a nonexistent account with such bank or other depository drawee. Said term shall not include any check or order not honored on account of insufficient funds if the maker or drawer shall pay the drawee thereof the amount due within five (5) days from the date the same is presented for payment nor any check or order that is not presented for payment within thirty (30) days after same is delivered and accepted.

SECTION 33. REPEALER 57 O.S. 1991, Sections 570, as last amended by Section 433, Chapter 5, 1st Extraordinary Session, O.S.L. 1999, 572, 574, 575 and 576 (57 O.S. Supp. 2000, Section 570), are hereby repealed.

SECTION 34. This act shall become effective July 1, 2001.

SECTION 35. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 22nd day of May, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2001.

Presiding Officer of the House
of Representatives