ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1447 By: Helton of the Senate

and

Askins of the House

(criminal procedure - powers of the court - deleting language - mandatory DNA testing – codification - effective date –

emergency)

AUTHORS: Add the following House Coauthors: Nance, Peters, Balkman, Peterson (Ron) and Cargill

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

(criminal procedure - powers of the court - deleting language - mandatory DNA testing – codification - effective date –

emergency)

SECTION 1. AMENDATORY 22 O.S. 2001, Section 991a, as last amended by Section 11 of Enrolled House Bill No. 2725 of the 2nd Session of the 49th Oklahoma Legislature, 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 reimburse the Oklahoma State Bureau of Investigation and any authorized law enforcement agency for all costs incurred by that agency for cleaning up an illegal drug laboratory site for which the defendant pleaded guilty, nolo contendere or was convicted. The court clerk shall collect the amount and may retain five percent (5%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Oklahoma State Bureau of Investigation to be deposited in the OSBI Revolving Fund established by Section 150.19a of Title 74 of the Oklahoma Statutes or to the general fund wherein the other law enforcement agency is located,

j. 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,

k. 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,

l. to participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and, as determined by the assessment, participate in an alcohol and drug

substance abuse course or treatment program or both, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes, or as ordered by the court,

m. to be placed in a victims impact panel program or ~~victim/offender~~ 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~~ 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~~ 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,

n. 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,

o. 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 Three Hundred Dollars ($300.00) 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,

p. 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,

q. to submit to periodic testing for alcohol, intoxicating substance, or controlled dangerous substances by a qualified laboratory,

r. 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,

s. to be supervised by a Department of Corrections employee, a private supervision provider, or other person designated by the court,

t. to obtain positive behavior modeling by a trained mentor,

u. to serve a term of confinement in a restrictive housing facility available in the community,

v. 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,

w. to obtain employment or participate in employment-related activities,

x. to participate in mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court,

y. 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,

z. to submit to blood or saliva testing as required by subsection I of this section,

aa. 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,

bb. 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,

cc. to attend a victim-offender reconciliation program if the victim agrees to participate and the offender is deemed appropriate for participation,

dd. 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,

ee. 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,

ff. 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,

gg. in the case of a person convicted of any false or bogus check violation, as defined in Section 1541.4 of Title 21 of the Oklahoma Statutes, impose a bogus check fee to be paid to the district attorney. The fee shall be equal to the amount assessed as court costs plus Twenty-five Dollars ($25.00) for each check upon filing of the case in district court. This money shall be deposited in the Bogus Check Restitution Program Fund as established in subsection B of Section 114 of this title. Additionally, the court may require the offender to pay restitution and bogus check fees on any other bogus check or checks that have been submitted to the District Attorney Bogus Check Restitution Program, and

hh. 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-4.1 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. Order the defendant to reimburse the Oklahoma State Bureau of Investigation for all costs incurred by that agency for cleaning up an illegal drug laboratory site for which the defendant pleaded guilty, nolo contendere or was convicted. The court clerk shall collect the amount and may retain five percent (5%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Oklahoma State Bureau of Investigation to be deposited in the OSBI Revolving Fund established by Section 150.19a of Title 74 of the Oklahoma Statutes;

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

7. 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 assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and, as determined by the assessment, participate in an alcohol and drug substance abuse course or treatment program or both, 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;

8. 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;

9. 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;

10. 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;

11. 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; or

12. In addition to the other sentencing powers of the court, the court, in the case of a person convicted of cruelty to animals pursuant to Section 1685 of Title 21 of the Oklahoma Statutes, may require the person to pay restitution to animal facilities for medical care and any boarding costs of victimized animals.

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 assessment and evaluation by an assessment agency or assessment personnel 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 agency or assessor for the

evaluation. The fee shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor 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.

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 7 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 begin immediately upon release from incarceration and 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 of Representatives on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

H. As used in this section:

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

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

I. A person convicted of an offense ~~as~~ provided in Section ~~7115 of Title 10 of the Oklahoma Statutes or Section 645, subsection B of Section 649, Section 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832, 885, 888, 891, subsection B of Section 1021, Section 1021.2, 1021.3, 1087, 1088, 1114, 1115, 1116, 1123, 1173, 1192, 1192.1, 1431 or 1435~~ 150.27a of Title ~~21~~ 74 of the Oklahoma Statutes, or receiving any form of probation for an offense in which registration is required pursuant to the Sex Offenders Registration Act, or a person convicted of any felony who has a prior conviction for an offense listed in this subsection shall submit to deoxyribonucleic acid (DNA) 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~~ as provided in Section 2 of this act. Except as required by the Sex Offenders Registration Act, a deferred judgment does not require submission to deoxyribonucleic acid testing.

~~Any person convicted of an offense as provided in this section who is in custody after July 1, 1996, shall provide a blood or saliva 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 or saliva sample as a condition of the sentence.~~

~~J. Samples of blood or saliva for DNA testing required by subsection I of this section shall be taken by employees or contractors of the Department of Corrections. The individuals shall be properly trained to collect blood or saliva samples. Persons collecting blood or saliva 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 530.4 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Submission to deoxyribonucleic acid (DNA) testing required by Section 991a of Title 22 of the Oklahoma Statutes, Section 150.27a of Title 74 of the Oklahoma Statutes, or authorized by any other provision of law, shall be as follows:

1. Within thirty (30) days of sentencing, as provided by the rules of the Department of Corrections, for those defendants who do not become subject to the custody of the Department. Submission to testing and collection of a blood or saliva sample and payment of the fee for testing shall be a condition of the sentence;

2. At the time the Department of Corrections takes custody of the person in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those persons sentenced to incarceration; and

3. At the time of release from the custody of the Department, for any person who is incarcerated and who has not previously provided a DNA sample.

B. Convicted individuals who have previously submitted to DNA testing according to law 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.

C. Samples of blood or saliva for DNA testing required by law shall be taken by employees or contractors of the Department of Corrections. The individuals shall be properly trained to collect blood or saliva samples. Persons collecting blood or saliva 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 is mailed to the Oklahoma State Bureau of Investigation (OSBI) 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 3. AMENDATORY 57 O.S. 2001, Section 530.1, is amended to read as follows:

Section 530.1 A. The Department of Corrections, by the rules of that Department, shall have the following duties which shall be performed as part of the assessment and reception process of the Department of Corrections, upon reception of each inmate:

1. To administer, or cause to be administered, physical and psychological examination of all inmates<u>, including any requirement for DNA testing according to Section 991a of Title 22 of the Oklahoma Statutes, Section 150.27a of Title 74 of the Oklahoma Statutes, or other provision of law</u>;

2. To identify the vocational-technical skills of all inmates. The information shall be noted on and made a part of the record for each inmate;

3. To assess the educational and training needs of all inmates;

4. To determine from available records and interviews, the place of birth of new inmates. The Department of Corrections shall furnish a list of foreign-born nationals and suspected foreign-born nationals to the Immigration and Naturalization Service on a weekly basis;

5. To determine initial security and custody classifications;

6. To determine and recommend for placement in an alcohol or substance abuse treatment facility or program, as provided for in this section, any inmate convicted of alcohol-related offenses or otherwise in need of alcohol or substance abuse treatment;

7. To determine and recommend for placement in the Department of Corrections Special Care Unit at the State Penitentiary at McAlester, Oklahoma, any inmate who is in need of acute psychiatric care;

8. To plan for immediate assignments to institutions, community treatment centers, alcohol or substance abuse treatment centers or programs, alternatives to incarceration authorized by law, or other facilities, public or private, designated by the Department;

9. To recommend possible future assignments to institutions, community treatment centers, alcohol or substance abuse treatment centers or programs, alternatives to incarceration authorized by law, or other facilities designated by the Department;

10. To provide orientation and instruction with respect to rules and procedures for prisoners; and

11. To obtain all relevant juvenile court records and relevant Department of Juvenile Justice agency records, if any, pertaining to inmates and make said records a part of the permanent record maintained by the Department of Corrections regarding the inmate. The information contained in those records shall be used to determine security level and placement of inmates.

B. An alcohol or substance abuse treatment center in which an inmate is placed shall provide services and standards of treatment as provided by the Department of Mental Health and Substance Abuse Services under its rules for alcoholism or substance abuse treatment. Upon placement of a prisoner in a center for alcoholism or substance abuse treatment, the Department of Corrections shall enter into a third-party contract with such center for the custodial and professional services rendered to any prisoner. Such contract

may include requirements imposed by law on the Department of Corrections or reimbursement for such services, if necessary. The Department of Corrections is further authorized to enter into third-party contracts for substance abuse treatment programs which are certified by the Department of Mental Health and Substance Abuse Services to provide professional services on an outpatient basis to prisoners in need of substance abuse treatment and follow-up treatment while assigned to alternatives to incarceration.

C. The Department of Juvenile Justice shall allow reasonable access to its database for the purpose of obtaining the juvenile records required by subsection A of this section.

D. The Department of Corrections shall adopt rules governing the implementation of this section within sixty (60) days from the effective date of this act.

E. Any person requiring DNA testing according to law who is not sentenced to the custody of the Department shall submit to testing pursuant to the rules of the Department. The Department shall establish rules to implement the provisions of this subsection.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 150.27a, as amended by Section 4, Chapter 235, O.S.L. 2002 (74 O.S. Supp. 2003, Section 150.27a), is amended to read as follows:

Section 150.27a A. There is hereby established within the Oklahoma State Bureau of Investigation the OSBI DNA Offender Database for the purpose of collecting and storing blood or saliva samples, DNA profiles, analyzing and typing of the genetic markers contained in or derived from DNA, and maintaining the records and samples of DNA of individuals convicted of any violation ~~of~~ specified in paragraphs 1 through 3 of this subsection or as may otherwise be received by the Oklahoma State Bureau of Investigation. The following persons are required by law to be tested and included in the DNA database:

1. Any person convicted of any offense provided in Section 7115 of Title 10 of the Oklahoma Statutes or Section 645, subsection B of Section 649, Section 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832, 885, 888, 891, subsection B of Section 1021, Section 1021.2, 1021.3, 1087, 1088, 1114, 1115, 1116, 1123, 1173, 1192, 1192.1, 1431 or 1435 of Title 21 of the Oklahoma Statutes and of individuals required to register pursuant to the Sex Offenders Registration Act, including persons receiving a deferred judgment and sentence or a suspended sentence for such offense;

2. Any person convicted of any offense provided in paragraph 1 of this subsection who is in custody of the Department of Corrections after July 1, 1996, shall provide a blood or saliva sample prior to release; and

3. On the effective date of this act, any person convicted of a violent offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes.

Every person who is convicted of an offense provided in this subsection whose sentence does not include a term of confinement shall provide a blood or saliva sample as a condition of the sentence. Convicted individuals who have previously submitted to DNA testing as required by law and for whom a valid sample is on file in the OSBI DNA Offender Database at the time of sentencing shall not be required to submit to additional testing.

~~The purpose of this database is the detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes in which biological evidence is recovered, and such information shall be used for no other purpose.~~

B. Upon the request to OSBI by the federal or state authority having custody of the person, any individual who was convicted of violating laws of another state or the federal government, but is

currently incarcerated or residing in Oklahoma, shall submit to DNA profiling for entry of the data into the OSBI DNA Offender Database. This provision shall only apply when such federal or state conviction carries a requirement of sex offender registration and/or DNA profiling. The person to be profiled shall pay a fee of One Hundred Fifty Dollars ($150.00) to the OSBI.

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

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

<u>E. The information maintained in this database shall be used for the detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent</u>

crimes, or other crimes in which biological evidence is recovered, and such information shall be used for no other purpose.

SECTION 5. This act shall become effective July 1, 2004.

SECTION 6. 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 House of Representatives the 5th day of April, 2004.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2004.

_____
Presiding Officer of the Senate