

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1484

By: Walker

COMMITTEE SUBSTITUTE

(Crimes and punishments - amending various sections
in Titles 10, 21, 22 and 57 - punishment for sex
offenses - codification -
effective date)

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2002, Section 7115), is amended to read as follows:

Section 7115. A. Any parent or other person who shall willfully or maliciously engage in child abuse shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child abuse" means the willful or malicious abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another, or the act of willfully or maliciously injuring, torturing or maiming a child under eighteen (18) years of age by another.

B. Any parent or other person who shall willfully or maliciously engage in enabling child abuse shall, upon conviction,

be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment. As used in this subsection, "enabling child abuse" means the causing, procuring or permitting of a willful or malicious act of child abuse, as defined by paragraph 1 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this subsection.

C. Any parent or other person who shall willfully or maliciously engage in child neglect shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child neglect" means the willful or malicious neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3

of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section ~~3~~ 51.1a of ~~this act~~ Title 21 of the Oklahoma Statutes. Except for persons sentenced to life or life without parole, any parent or other person sentenced to more than two (2) years' imprisonment for a violation of this subsection shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five

Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

G. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. Except for persons sentenced to life or life without parole, any parent or other person sentenced to more than two (2) years' imprisonment for a violation of this subsection shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

H. Any parent or other person who shall willfully or maliciously engage in enabling child sexual exploitation shall, upon conviction, be punished by imprisonment in the State Penitentiary not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual exploitation" means the causing, procuring or permitting of a willful or malicious act of child sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 741, is amended to read as follows:

Section 741. Any person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, with intent, either:

First. To cause such other person to be secretly confined or imprisoned in this state against his will; or

Second. To cause such other person to be sent out of this state against his will; or

Third. To cause such person to be sold as a slave, or in any way held to service against his will, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ten (10) years. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such

person was above the age of twelve (12) years, and that such consent was not extorted by threat, or by duress.

Except for persons sentenced to a term of life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2002, Section 843.1), is amended to read as follows:

Section 843.1 A. 1. No caretaker or other person shall abuse, neglect, commit sexual abuse, or exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting, or knowingly cause, secure, or permit any of these acts to be done.

2. For purposes of this section, the terms, "abuse", "neglect", "sexual abuse", and "exploit" shall have the same meaning as such terms are defined and clarified in Section 10-103 of Title 43A of the Oklahoma Statutes.

B. 1. Any person convicted of a violation of this section, except as provided in paragraph 2 of this subsection, shall be guilty of a felony. The violator, upon conviction, shall be punished by imprisonment in the State Penitentiary for a term not to exceed ten (10) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Such

person's term shall further be subject to the provisions of Section 13.1 of this title.

2. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony. The person convicted of sexual abuse shall be punished by imprisonment in the State Penitentiary for a term not to exceed fifteen (15) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

C. Consent shall not be a defense for any violation of this section.

D. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 867, is amended to read as follows:

Section 867. A. The first conviction of the crime of trafficking in children by any person shall be a felony and punishable by imprisonment in the State Penitentiary for not less than one (1) year nor for more than three (3) years.

B. Conviction of the crime of trafficking in children, subsequent to a prior conviction for such offense in any form, shall be a felony and punishable by imprisonment in the State Penitentiary for not less than three (3) years. No suspension of judgment or sentence shall be permitted.

C. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment, if the offense included sexual abuse or sexual exploitation, shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 885, is amended to read as follows:

Section 885. Persons who, being within the degrees of consanguinity within which marriages are by the laws of the state declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ten (10) years. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 886, as amended by Section 8, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2002, Section 886), is amended to read as follows:

Section 886. Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the penitentiary not exceeding ten (10) years. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2002, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the State Penitentiary for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. Any person convicted of a second violation of

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

B. The crime of forcible sodomy shall include:

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

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

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

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

SECTION 8. AMENDATORY 21 O.S. 2001, Section 891, is amended to read as follows:

Section 891. Whoever maliciously, forcibly or fraudulently takes or entices away any child under the age of sixteen (16) years, with intent to detain and conceal such child from its parent, guardian or other person having the lawful charge of such child or to transport such child from the jurisdiction of this state or the United States without the consent of the person having lawful charge of such child shall, upon conviction, be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ten (10) years.

Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1021, as amended by Section 1, Chapter 20, O.S.L. 2002 (21 O.S. Supp. 2002, Section 1021), is amended to read as follows:

Section 1021. A. Every person who willfully either:

1. Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, or exhibits any obscene material or child pornography; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,

shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment.

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty, upon conviction, of a felony and shall be punished by imprisonment in a state correctional institution for not less than ten (10) years nor more than thirty (30) years.

C. Persons convicted under this section shall not be eligible for a deferred sentence.

Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of

Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 10. AMENDATORY 21 O.S. 2001, Section 1021.2, is amended to read as follows:

Section 1021.2 Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 11. AMENDATORY 21 O.S. 2001, Section 1021.3, is amended to read as follows:

Section 1021.3 Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony and, upon conviction,

shall be imprisoned in the State Penitentiary for a period of not more than twenty (20) years or a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both such fine and imprisonment. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. The consent of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 12. AMENDATORY 21 O.S. 2001, Section 1087, is amended to read as follows:

Section 1087. A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;
2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or
3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other

structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation~~r~~.

B. 1. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by imprisonment of not less than one (1) year nor more than ten (10) years.

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under his control or of which he has possession shall, upon conviction for the first offense, be guilty of a misdemeanor and punishable by imprisonment in the county jail for a period of not less than six (6) months nor more than one (1) year, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to this subsection such person shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a period of not less than one (1) year nor more than ten (10) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) or by both such fine and imprisonment.

C. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of

Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 13. AMENDATORY 21 O.S. 2001, Section 1088, is amended to read as follows:

Section 1088. A. No person shall:

1. By promise, threats, violence, or by any device or scheme, including but not limited to the use of any controlled dangerous substance prohibited pursuant to the provisions of the Uniform Controlled Dangerous Substances Act, cause, induce, persuade, or encourage a child under eighteen (18) years of age to engage or continue to engage in prostitution or to become or remain an inmate of a house of prostitution or other place where prostitution is practiced;

2. Keep, hold, detain, restrain, or compel against his will, any child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or other place where prostitution is practiced or allowed;

3. Directly or indirectly keep, hold, detain, restrain, or compel or attempt to keep, hold, detain, restrain, or compel a child under eighteen (18) years of age to engage in the practice of prostitution or in a house of prostitution or any place where prostitution is practiced or allowed for the purpose of compelling such child to directly or indirectly pay, liquidate, or cancel any debt, dues, or obligations incurred, or said to have been incurred by such child.

B. 1. Any person violating the provisions of this section other than paragraph 2 of this subsection, upon conviction, shall be guilty of a felony punishable by imprisonment for not less than one (1) year nor more than twenty-five (25) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00).

2. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits a violation of this section in any house, building, room, tent, lot or premises under his control or of which he has possession, upon conviction for the first offense, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a period of not less than six (6) months nor more than one (1) year, and by a fine of not more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to the provisions of this subsection such person shall be guilty of a felony punishable by imprisonment for a period of not less than one (1) year nor more than ten (10) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00).

C. Except for persons sentenced to life, life without parole, or death, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 14. AMENDATORY 21 O.S. 2001, Section 1111.1, is amended to read as follows:

Section 1111.1 Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances specified

in Section 1111 of this title has been met. Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 15. AMENDATORY 21 O.S. 2001, Section 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2002, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, for a term of not less than five (5) years, life or life without parole. Except for persons sentenced to life, life without parole, or death, any person convicted of violating subsection A of Section 1114 of this title and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment. Any person convicted of a second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of

this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the State Penitentiary for life or life without parole.

SECTION 16. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 11, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2002, Section 1123), is amended to read as follows:

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

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

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

3. Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or

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

5. In a lewd and lascivious manner and for the purpose of sexual gratification, urinate or defecate upon a child under sixteen

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

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

employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

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

D. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

Except for persons sentenced to life or life without parole, any person convicted of violating this section and sentenced to more than two (2) years' imprisonment shall serve a split sentence as defined in Section 18 of this act. A minimum of two (2) years of the sentence that is not a term of imprisonment shall be under intensive supervision pursuant to subsection E of Section 991a of Title 22 of the Oklahoma Statutes and any other special conditions developed for sex offenders as determined by the Department of Corrections. The jury shall be advised of the mandatory two (2) years of supervision that is not part of imprisonment.

SECTION 17. AMENDATORY 57 O.S. 2001, Section 509.4, is amended to read as follows:

Section 509.4 The Department of Corrections shall develop and implement a special treatment program ~~at the Joseph Harp Correctional Center~~ for inmates with severe psychiatric problems, including inmates convicted of sex-related offenses and inmates that have prior convictions for sex-related offenses.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 991c-2 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Statutes, "split sentence" means a procedure by which the defendant is found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, and is sentenced to a term of imprisonment for which the court orders only a portion of the imprisonment term to be actually served with the balance suspended and subject to conditional requirements and supervision.

SECTION 19. AMENDATORY 22 O.S. 2001, Section 991a, as last amended by Section 1, Chapter 464, O.S.L. 2002 (22 O.S. Supp. 2002, 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 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 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,
- m. 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,
- 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 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,

- 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, and

gg. 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 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;

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; or

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.

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 begin immediately upon release from incarceration or if parole is granted and is 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 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, 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. 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 20. AMENDATORY 57 O.S. 2001, 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.

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.

M. Any person in the custody of the Department of Corrections who is convicted of a felony sex offense pursuant to Section 582 of

Title 57 of the Oklahoma Statutes who is paroled shall immediately
be placed on intensive supervision.

SECTION 21. This act shall become effective November 1, 2003.

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