

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 1349

By: Wilkerson

COMMITTEE SUBSTITUTE

[environmental crime - Environmental Crimes Act -
creating offense - allowing Attorney General or
district attorney to bring certain action - statute
of limitations for certain action - reimbursement -
Attorney General's Environmental Unit Revolving
Fund - codification - effective date]

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 1230.1, is
amended to read as follows:

Section 1230.1 Sections ~~339~~ 1230.2 through ~~347~~ 1230.11 of this
~~act~~ title shall be known and may be cited as the "Environmental
Crimes Act".

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1230.3, is
amended to read as follows:

Section 1230.3 Any person who knowingly ~~and willfully~~
transports or causes the transportation of hazardous waste within
the State of Oklahoma without a proper manifest, as prescribed in
the Oklahoma Hazardous Waste Management Act, or anyone who knowingly
transports or causes the transportation of hazardous waste to a
facility which is required to but does not possess a permit for the
treatment, storage or disposal of hazardous waste as required by
law, commits the offense of unlawful hazardous waste transportation.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 1230.4, is
amended to read as follows:

Section 1230.4 Any person required by law to have a permit or authorization from the Oklahoma Department of Environmental Quality, the Oklahoma Corporation Commission or the Oklahoma Department of Agriculture, Food, and Forestry to receive, store, treat, process, recycle or dispose of waste, who ~~without~~ violates the terms of such permit or without such permit or authorization knowingly ~~and willfully~~ receives, stores, treats, processes, recycles or disposes of waste, commits the offense of unlawful waste management.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 1230.6, is amended to read as follows:

Section 1230.6 Any person who ~~knowingly and willfully fails to secure a permit required by or pursuant to law, and who, without lawful permit or authorization, knowingly and willfully disposes, directs the disposal or aids and abets the disposal of hazardous waste into a sanitary sewer system without appropriate pretreatment, or at a solid waste landfill, transfer station or processing facility, or at any unpermitted disposal place~~ treats, stores, recycles or disposes of hazardous waste without a permit required by law or in knowing violation of any condition or requirement of a hazardous waste permit or in knowing violation of any regulations or standards commits the offense of unlawful treatment, storage, recycling or disposal of hazardous waste.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1230.7-1 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. "Used oil" means any material that is subject to regulation as used oil under the Oklahoma Hazardous Waste Management Act and the regulations promulgated thereunder. Provided, in addition to other exceptions set forth in state or federal law or regulations, "used oil" shall not include "household do-it-yourselfer used oil" and "farmer-generated used oil" defined as follows:

1. "Household do-it-yourselfer used oil" means oil that is derived from households, such as used oil generated by individuals who generate used oil through the maintenance of their personal vehicles; and

2. "Farmer-generated used oil" means oil generated by farmers in an average amount of twenty-five (25) gallons per month or less from vehicles or machinery used on the farm in a calendar year.

B. A person shall be guilty of unlawful handling of used oil if the person:

1. Stores, treats, transports or causes to be transported, disposes of or otherwise handles any used oil in knowing violation of any condition or requirement of a permit required by law, or in knowing violation of any state or federal used oil regulations; or

2. Generates, stores, treats, transports, disposes of or otherwise handles any used oil and who knowingly destroys, alters, conceals or fails to file any record, application, manifest, report or other document required to be maintained or filed for purposes of compliance with state or federal used oil regulations.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 1230.8, is amended to read as follows:

Section 1230.8 A. Any person convicted of the offense of:

1. Unlawful hazardous waste transportation shall be guilty of a felony punishable by imprisonment in the Department of Corrections for not more than five (5) years, or by a fine ~~of not more than~~ exceeding Twenty-five Thousand Dollars (\$25,000.00, or by both such fine and imprisonment;

2. Unlawful waste management with respect to:

a. waste other than hazardous waste shall be guilty of a misdemeanor punishable by a fine ~~of not more than~~ exceeding Ten Thousand Dollars (\$10,000.00), and

b. hazardous waste shall be guilty of a felony punishable by imprisonment in the Department of Corrections for

not more than five (5) years, or by a fine ~~of not more~~
~~than~~ exceeding Fifty Thousand Dollars (\$50,000.00), or
by both such fine and imprisonment;

3. Unlawful waste misrepresentation with respect to:

- a. waste other than hazardous waste shall be guilty of a misdemeanor punishable by a fine ~~of not more than~~ exceeding Five Thousand Dollars (\$5,000.00), and
- b. hazardous waste shall be guilty of a felony punishable by imprisonment in the Department of Corrections for not more than five (5) years, or by a fine ~~of not more~~ ~~than~~ exceeding Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment;

4. Unlawful treatment, storage, recycling or disposal of hazardous waste shall be guilty of a felony punishable by imprisonment in the Department of Corrections for not more than five (5) years, or by a fine ~~of not more than~~ exceeding Twenty-five Thousand Dollars (\$25,000.00), or by both such fine and imprisonment;
~~and~~

5. Unlawful concealment of hazardous waste shall be guilty of a felony punishable by imprisonment in the Department of Corrections for not less than two (2) years nor more than ten (10) years and a fine ~~of not more than~~ exceeding One Hundred Thousand Dollars (\$100,000.00); and

6. Unlawful handling of used oil shall be guilty of a felony punishable by imprisonment in the Department of Corrections for not more than two (2) years, or by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

B. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1230.11 of Title 21, unless there is created a duplication in numbering, reads as follows:

The Attorney General or the district attorney of the appropriate district court of this state may bring an action in district court for the adjudication of a violation by any person of a provision of the Environmental Crimes Act.

SECTION 8. AMENDATORY 22 O.S. 2001, Section 152, as amended by Section 3, Chapter 475, O.S.L. 2002 (22 O.S. Supp. 2003, Section 152), is amended to read as follows:

Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, or of any misappropriation of public money, bonds, securities, assets or property of the state or any county, school district, municipality or other subdivision thereof, falsification of public records of the state or any county, school district, municipality or other subdivision thereof, and conspiracy to defraud the State of Oklahoma or any county, school district, municipality or other subdivision thereof in any manner or for any purpose shall be commenced within seven (7) years after the discovery of the crime; provided, however, prosecutions for the crimes of embezzlement or misappropriation of public money, bonds, securities, assets or property of any school district, including those relating to student activity funds, or the crime of falsification of public records of any independent school district, the crime of criminal conspiracy, or the crime of embezzlement, pursuant to ~~Sections~~ Section 1451 through ~~1462~~ of Title 21 of the Oklahoma Statutes shall be commenced within five (5) years after the discovery of the crime.

B. Prosecutions for criminal violations of any state income tax laws shall be commenced within five (5) years after the commission of such violation.

C. 1. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or indecent proposals or acts against children,

involving minors in pornography pursuant to Section 886, 888, 1111, 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the Oklahoma Statutes, and child abuse pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, shall be commenced within seven (7) years after the discovery of the crime.

2. However, prosecutions for the crimes listed in paragraph 1 of this subsection may be commenced at any time after the commission of the offense if:

- a. the victim notified law enforcement within seven (7) years after the discovery of the crime,
- b. physical evidence is collected and preserved that is capable of being tested to obtain a profile from deoxyribonucleic acid (DNA), and
- c. the identity of the offender is subsequently established through the use of a DNA profile using evidence listed in subparagraph b of this paragraph.

A prosecution under this exception must be commenced within three (3) years from the date on which the identity of the suspect is established by DNA testing. This paragraph shall have retroactive application to crimes committed prior to the effective date of this act.

D. Prosecutions for criminal violations of any provision of the Oklahoma Wildlife Conservation Code shall be commenced within three (3) years after the commission of such offense.

E. Prosecutions for the crime of criminal fraud or workers' compensation fraud pursuant to Section 1541.1, 1541.2, 1662 or 1663 of Title 21 of the Oklahoma Statutes shall commence within three (3) years after the discovery of the crime, but in no event greater than seven (7) years after the commission of the crime.

F. Prosecution for the crime of false or bogus check, Section 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma

Statutes, shall be commenced within five (5) years after the commission of such offense.

G. In all other cases a prosecution for a public offense must be commenced within three (3) years after its commission.

H. As used in paragraph 1 of subsection C of this section, "discovery" means the date that a physical or sexually related crime involving a victim under the age of eighteen (18) years ~~of age~~ is reported to a law enforcement agency, up to and including one (1) year from the eighteenth birthday of the child.

I. Prosecution for criminal violations of any provision of the Environmental Quality Code or the Environmental Crimes Act shall commence within three (3) years after the discovery of the crime, but in no event more than seven (7) years after the commission of the crime. As used in this subsection, "discovery" means the date that an environmental crime is reported to the state environmental agency with jurisdiction, the federal Environmental Protection Agency or a law enforcement agency, or if not reported, the date evidence of such a crime is first discovered by any of said agencies.

SECTION 9. AMENDATORY 22 O.S. 2001, Section 991a, as last amended by Section 3, Chapter 474, O.S.L. 2003 (22 O.S. Supp. 2003, 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, the Attorney General's Environmental Unit, or any agency participating jointly with the Attorney General in the investigation of an environmental crime pursuant to the Environmental Crimes Act or the Environmental Quality Code, 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~~ agency 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~~
agency 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 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,

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, the Attorney General's Environmental Unit, or any agency participating jointly with the Attorney General in the investigation of an environmental crime pursuant to the Environmental Crimes Act or the Environmental Quality Code, 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~~ agency 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; 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 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 ~~6~~ 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 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 10. AMENDATORY 22 O.S. 2001, Section 1402, is amended to read as follows:

Section 1402. As used in the Oklahoma Corrupt Organizations Prevention Act:

1. "Beneficial interest" includes:

- a. the interest of a person as a beneficiary pursuant to a trust, in which the trustee holds legal title to personal or real property, or
- b. the interest of a person as a beneficiary pursuant to any other arrangement under which any other person holds legal title to personal or real property for the benefit of such person.

The term beneficial interest does not include the interest of a stockholder in a corporation or the interest of a partner in either a general or limited partnership;

2. "Enterprise" includes any individual, sole proprietorship, partnership, corporation, trust, governmental entity, or other legal entity, or any union, association, unincorporated association or group of persons, associated in fact although not a legal entity, involved in any lawful or unlawful project or undertaking;

3. "Innocent party" includes bona fide purchasers and victims;

4. "Lien notice" means the notice pursuant to the provisions of Section 1412 of this title;

5. "Pattern of racketeering activity" means two or more occasions of conduct:

- a. that include each of the following:
 - (1) constitute racketeering activity,
 - (2) are related to the affairs of the enterprise,
 - (3) are not isolated, and
 - (4) are not so closely related to each other and connected in point of time and place that they constitute a single event, and

b. where each of the following is present:

- (1) at least one of the occasions of conduct occurred after November 1, 1988,
- (2) the last of the occasions of conduct occurred within three (3) years, excluding any period of imprisonment served by any person engaging in the conduct, of a prior occasion of conduct, and
- (3) for the purposes of Section 1403 of this title each of the occasions of conduct constituted a felony pursuant to the laws of this state;

6. "Pecuniary value" means:

- a. anything of value in the form of money, a negotiable instrument, or a commercial interest, or anything else, the primary significance of which is economic advantage, or
- b. any other property or service that has a value in excess of One Hundred Dollars (\$100.00);

7. "Person" means any individual or entity holding or capable of holding a legal or beneficial interest in property;

8. "Personal property" includes any personal property, or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. Personal property and beneficial interest in personal property shall be deemed to be located where the trustee, the personal property, or the instrument evidencing the right is located;

9. "Principal" means a person who engages in conduct constituting a violation of the Oklahoma Corrupt Organizations Prevention Act or who is legally accountable for the conduct of another who engages in a violation of the Oklahoma Corrupt Organizations Prevention Act;

10. "Racketeering activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or

intimidating another person to engage in any conduct which is chargeable or indictable as constituting a felony violation of one or more of the following provisions of the Oklahoma Statutes, regardless of whether such act is in fact charged or indicted:

- a. relating to homicide pursuant to the provisions of Sections 651, 652, 653, 701.7, 701.8, 701.16, 711 or 716 of Title 21 of the Oklahoma Statutes or relating to concealment of homicidal death pursuant to the provisions of Section 543 of Title 21 of the Oklahoma Statutes,
- b. relating to kidnapping pursuant to the provisions of Sections 741, 745, 891 or 1119 of Title 21 of the Oklahoma Statutes,
- c. relating to sex offenses pursuant to the provisions of Sections 886, 888, 1021, 1021.2, 1021.4, 1024.2, 1040.51, 1111, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes,
- d. relating to bodily harm pursuant to the provisions of Sections 645, 650, 650.2, 1289.16, 1302, 1303 or 1767.1 of Title 21 of the Oklahoma Statutes,
- e. relating to theft, where the offense constitutes a felony, pursuant to the provisions of Sections 1704, 1707, 1708, 1709, 1710, 1711, 1713, 1716, 1719, 1720, 1721, 1722, 1723 or 1731 of Title 21 of the Oklahoma Statutes,
- f. relating to forgery pursuant to the provisions of Sections 1561, 1562, 1571, 1572, 1574, 1575, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591 or 1593 of Title 21 of the Oklahoma Statutes,

- g. relating to robbery pursuant to the provisions of Sections 797, 800 or 801 of Title 21 of the Oklahoma Statutes,
- h. relating to burglary pursuant to the provisions of Sections 1431, 1435 or 1437 of Title 21 of the Oklahoma Statutes,
- i. relating to arson pursuant to the provisions of Sections 1368, 1401, 1402, 1403 or 1404 of Title 21 of the Oklahoma Statutes,
- j. relating to use or possession of a firearm or other offensive weapon while committing or attempting to commit a felony pursuant to the provisions of Sections 1287, 1289.20 or 1289.21 of Title 21 of the Oklahoma Statutes,
- k. relating to gambling pursuant to the provisions of Sections 941, 942, 944, 945, 946, 948, 954, 956, 957, 962, 969, 970, 971, 981, 982, 983, 984, 985, 986, 987, 991, 992, 995.7, 995.8, 995.11 or 995.12 of Title 21 of the Oklahoma Statutes,
- l. relating to bribery in contests pursuant to the provisions of Sections 399 or 400 of Title 21 of the Oklahoma Statutes,
- m. relating to interference with public officers pursuant to the provisions of Sections 434, 436, 437, 438, 439, 440, 441, 443, 444, 521, 522, 532, 540, 543, 545 or 546 of Title 21 of the Oklahoma Statutes,
- n. relating to interference with judicial procedure pursuant to the provisions of Sections 388, 453, 455, 456, 491, 496 or 504 of Title 21 of the Oklahoma Statutes,
- o. relating to official misconduct pursuant to the provisions of Sections 380, 381, 382, 383, 384, 385,

386, 389, 390, 950 or 976 of Title 21 of the Oklahoma Statutes,

- p. relating to the Uniform Controlled Dangerous Substances Act, where the offense constitutes a felony, pursuant to the provisions of Section 2-101 et seq. of Title 63 of the Oklahoma Statutes,
- q. relating to automobile theft pursuant to the provisions of Sections 4-102, 4-103, 4-107, 4-108, 4-109 or 4-110 of Title 47 of the Oklahoma Statutes,
- r. relating to embezzlement pursuant to the provisions of Section 1412 of Title 6 of the Oklahoma Statutes, Section 641 of Title 19 of the Oklahoma Statutes, Sections 341, 531, 1451, 1452, 1453, 1454, 1455, 1456, 1463 or 1464 of Title 21 of the Oklahoma Statutes, Section 163.4 of Title 37 of the Oklahoma Statutes, Section 25 of Title 41 of the Oklahoma Statutes, Section 114 of Title 64 of the Oklahoma Statutes or Sections 506 or 1361 of Title 68 of the Oklahoma Statutes,
- s. relating to extortion, where the offense constitutes a felony, pursuant to the provisions of Sections 1304, 1481, 1482, 1485, 1486 or 1488 of Title 21 of the Oklahoma Statutes,
- t. relating to fraud, where the offense constitutes a felony, pursuant to the provisions of Sections 208.6, 208.7 or 208.8 of Title 3A of the Oklahoma Statutes, Section 552.18 of Title 18 of the Oklahoma Statutes, Sections 358, 1411, 1412, 1413, 1414, 1415, 1416, 1503, 1521, 1541.1, 1541.3, 1542, 1543, 1544, 1550.2, 1550.22, 1550.23, 1550.24, 1550.25, 1550.26, 1550.27, 1550.28, 1550.29, 1550.30, 1550.31, 1550.32, 1632, 1635 or 1662 of Title 21 of the Oklahoma Statutes,

- Section 243 of Title 56 of the Oklahoma Statutes, or
 Section 604 of Title 62 of the Oklahoma Statutes,
- u. relating to conspiracy, where the offense constitutes a felony, pursuant to the provisions of Sections 421, 422 or 424 of Title 21 of the Oklahoma Statutes,
 - v. relating to prostitution, pornography or obscenity pursuant to the provisions of Sections 1021, 1040.52, 1081, 1085, 1086, 1087 or 1088 of Title 21 of the Oklahoma Statutes,
 - w. relating to the Oklahoma Alcoholic Beverage Control Act, where the offense constitutes a felony, pursuant to the provisions of Section 506.1 et seq. of Title 37 of the Oklahoma Statutes,
 - x. relating to the Oklahoma Securities Act, where the offense constitutes a felony, pursuant to the provisions of Section 1 et seq. of Title 71 of the Oklahoma Statutes, ~~or~~
 - y. relating to trafficking in children pursuant to the provisions of Sections 866 and 867 of Title 21 of the Oklahoma Statutes~~;~~, or
 - z. relating to environmental crimes, where the offense constitutes a felony, pursuant to the provisions of Sections 1230.2 et seq. of Title 21 of the Oklahoma Statutes or Sections 2-5-116, 2-6-206, 2-7-109, 2-10-302 or 2-10-801 of Title 27A of the Oklahoma Statutes.

In addition, "racketeering activity" may be proven by proof of engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of the above described conduct within another state, regardless of whether said conduct is chargeable or indictable in that state~~;~~;

11. "Real property" means any real property or any interest in real property, including any lease of, or mortgage upon real

property. Real property and beneficial interest in real property shall be deemed to be located where the real property is located;

12. "Trustee" includes trustees, a corporate as well as a natural person and a successor or substitute trustee in accordance with the Oklahoma Trust Act, ~~Section 175.1 et seq. of Title 60 of the Oklahoma Statutes;~~ and

13. "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is unenforceable in the courts of Oklahoma, because the debt was incurred or contracted in violation of a law relating to the business of gambling activity or in violation of federal or state law but does not include any debt owed to a bank, savings and loan association, credit union or supervised lender licensed by the Oklahoma Administrator of Consumer Credit or to any debt referred or assigned to a debt collection agency, which referral or assignment is accepted in good faith by the debt collection agency as a debt collectible under the Uniform Commercial Code or other laws of this state and enforceable in the courts of this state.

SECTION 11. AMENDATORY 27A O.S. 2001, Section 2-6-206, as amended by Section 2, Chapter 227, O.S.L. 2002 (27A O.S. Supp. 2003, Section 2-6-206), is amended to read as follows:

Section 2-6-206. A. Whenever there are reasonable grounds to believe that there has been a violation of any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, any permit, any rule, or any order of the Executive Director, the Executive Director shall have the authority and powers to proceed as specified in the Administrative Procedures Act unless otherwise provided herein. Provided, however, that provisions of this section for written notice, enforcement hearing, and administrative orders shall not be conditions precedent for the Department to seek action in the district court as provided by the Oklahoma Pollutant Discharge Elimination System Act or other applicable provisions of law.

B. The Oklahoma Pollutant Discharge Elimination System Act shall not in any way impair or in any way affect a person's right to recover damages for pollution in a court of competent jurisdiction. Any person having any interest connected with the geographic area or waters or water system affected, including but not limited to any aesthetic, recreational, health, environmental, pecuniary or property interest, which interest is or may be adversely affected, shall have the right to intervene as a party in any administrative proceeding before the Department, or in any civil proceeding, relating to violations of the Oklahoma Pollutant Discharge Elimination System Act or rules, permits or orders issued hereunder.

C. Whenever on the basis of any information available, the Department finds that any person or entity regulated by the Department is in violation of any act, rule, order, permit, condition or limitation implementing the Oklahoma Pollutant Discharge Elimination System Act, or any previously issued discharge permit, the Executive Director shall issue an order requiring such person or entity to comply with such provision or requirement, commence appropriate administrative enforcement proceedings, or bring a civil action. Provided, however, the issuance of a compliance order or suspension or revocation of a permit shall not be considered a condition precedent to the accrual or imposition of penalties or fines in any administrative, civil or criminal proceeding.

D. A copy of any order issued pursuant to this section shall be sent immediately to the violator. In any case in which an order or notice to a violator is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

Any order issued pursuant to this section shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty (30) days in the case of a violation of an interim compliance schedule or operation

and maintenance requirement and not to exceed a reasonable time in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. Any order or notice issued by the Executive Director may be served in any manner allowed by Oklahoma Rules of Civil Procedures applicable to a civil summons.

E. Whenever on the basis of any information available the Executive Director finds that any person regulated by the Department has violated any of the provisions of the Oklahoma Pollutant Discharge Elimination System Act, or any permit, rule, order or condition or limitation implementing any of such sections, or previously issued discharge permit or related order, the Executive Director may, after providing notice and opportunity for an enforcement hearing to the alleged violator, assess an administrative fine of not more than Ten Thousand Dollars (\$10,000.00) per day of violation, for each day during which the violation continues. The total amount of such fine shall not exceed One Hundred Twenty-five Thousand Dollars (\$125,000.00) per violation. In determining the amount of any penalty assessed under this subsection, the Executive Director shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit savings, if any, resulting from the violation, and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation. Enforcement hearings shall be conducted in accordance with the procedures set out in the Administrative Procedures Act.

F. 1. The Executive Director is authorized to commence a civil action for appropriate relief, including a permanent or temporary

injunction, for any violation for which ~~he~~ the Executive Director is authorized to issue a compliance order under subsection C of this section.

2. Any person who violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation implementing any of such provisions in a permit issued under the Oklahoma Pollutant Discharge Elimination System Act, or any requirement imposed in a pretreatment program approved under the Oklahoma Pollutant Discharge Elimination System Act, and any person who violates any order issued by the Executive Director under subsection C of this section, shall be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000.00) per day for each violation. In determining the amount of the civil penalty the court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator and such other matters as justice may require. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

3. Any action pursuant to this subsection may be brought in the district court for the district in which the property or defendant is located or defendant resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance.

4. The prior revocation of a permit shall not be a condition precedent to the filing of a civil action under the Oklahoma Pollutant Discharge Elimination System Act.

G. 1. Any person who:

- a. negligently violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any

order issued by the Executive Director hereunder, or any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or

- b. negligently introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works pursuant to the Oklahoma Pollutant Discharge Elimination System Act,

shall be punished by a fine ~~of~~ not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. ~~If a conviction of a~~ Any person is for convicted of a second or subsequent violation committed after a first conviction of such person under this paragraph, ~~punishment~~ shall be punished by a fine ~~of~~ not ~~more than~~ exceeding Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the ~~State Penitentiary Department of Corrections~~ for not more than two (2) years, or by both such fine and imprisonment.

2. Any person who:

- a. knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any order issued by the Executive Director hereunder, or any permit condition or limitation in a permit issued or any requirement imposed in a pretreatment program

authorized pursuant to the Oklahoma Pollutant Discharge Elimination System Act, or

- b. knowingly introduces into the waters of the state or a treatment works discharging into the waters of the state any pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state or local requirements or permits, which causes such treatment work to violate any effluent limitation or condition in a permit issued to the treatment works under the Oklahoma Pollutant Discharge Elimination System Act,

shall be punished by a fine ~~of~~ not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00) per day of violation, or by imprisonment in the county jail for not more than one (1) year or in the ~~State Penitentiary~~ Department of Corrections for not more than three (3) years, or by both such fine and imprisonment. ~~If a conviction of a~~ Any person is for convicted of a second or subsequent violation committed after a first conviction of such person under this paragraph, ~~punishment shall be punished by~~ a fine ~~of~~ not ~~more than~~ exceeding One Hundred Thousand Dollars (\$100,000.00) per day of violation, or by imprisonment in the ~~State Penitentiary~~ Department of Corrections for not more than six (6) years, or by both such fine and imprisonment.

3. a. Any person who knowingly violates any provision of the Oklahoma Pollutant Discharge Elimination System Act, or any permit condition or limitation in a permit issued hereunder by the Executive Director, and who knows at that time that ~~he thereby places~~ another person is thereby placed in imminent danger of death or serious bodily injury, shall, upon conviction, be ~~subject to~~ punished by a fine ~~of~~ not ~~more than~~

exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) or by imprisonment in the ~~State~~ Penitentiary Department of Corrections for not more than fifteen (15) years, or by both such fine and imprisonment. A person which is an organization shall, upon conviction of violating this subparagraph, be ~~subject to~~ punished by a fine ~~of not more than~~ exceeding One Million Dollars (\$1,000,000.00). ~~If a conviction of a~~ Any person is for a convicted of a second or subsequent violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be punished by a doubled with respect to both fine not exceeding twice that fine provided by this paragraph and imprisonment not more than twice that imprisonment provided by this paragraph.

- b. For the purpose of subparagraph a of this paragraph:
- (1) in determining whether a defendant who is an individual knew that ~~his~~ such conduct placed another person in imminent danger of death or serious bodily injury, a person shall be responsible only for actual awareness or actual belief ~~that he~~ possessed, and knowledge possessed by a person other than the defendant but not by the defendant ~~himself~~ may not be attributed to the defendant; provided, however, that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield ~~himself~~ from relevant information,

(2) it is an affirmative defense to prosecution under this subsection that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, business, profession or of a medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent, and such defense may be established under this subparagraph by a preponderance of the evidence.

4. Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act, shall, upon conviction, be punished by a fine ~~of not more than~~ exceeding Ten Thousand Dollars (\$10,000.00), or by imprisonment in the Department of Corrections for not more than two (2) years, or by both such fine and imprisonment. ~~If a conviction of a~~ Any person is for convicted of a second or subsequent violation committed after a first conviction of such person under this paragraph, ~~punishment~~ shall be punished by a fine ~~of not more than~~ exceeding Twenty Thousand Dollars (\$20,000.00) per day of violation, or by imprisonment in the Department of Corrections for not more than four (4) years, or by both such fine and imprisonment.

5. For purposes of this subsection, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

H. Whenever, ~~on the basis of~~ based on information available ~~to~~ ~~him~~, the Department finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of the Oklahoma Pollutant Discharge Elimination System Act or any requirement, rule, permit or order issued under the Oklahoma Pollutant Discharge Elimination System Act, the Department shall notify the owner or operator of such treatment works of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within thirty (30) days of the date of such notification, the Department may commence a civil action for appropriate relief, including but not limited to a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Department shall join the owner or operator of such source as a party to the action. ~~Such~~ The action shall be brought in the district court in the county in which the treatment works is located. ~~Such~~ The court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with the Oklahoma Pollutant Discharge Elimination System Act. Nothing in this subsection shall be construed to limit or prohibit any other authority the Department may have under this section.

I. 1. Any person against whom an administrative compliance or penalty order is issued under this section may obtain review of such order by filing a petition for review in district court pursuant to the Administrative Procedures Act. ~~Such~~ The court shall not set aside or remand such order unless there is not substantial evidence in the administrative record, taken as a whole, to support the finding of a violation or unless the assessment of the penalty constitutes an abuse of discretion and shall not impose additional civil penalties for the same violation unless the assessment of the

penalty constitutes an abuse of discretion. No stay of an administrative penalty order shall be granted until the amount of penalty assessed has been deposited with the reviewing district court pending resolution of the petition for review.

2. If any person fails to pay an assessment of an administrative penalty:

- a. after the order making the assessment has become final,
or
- b. after a court in an action brought under paragraph 1 of this subsection has entered a final judgment in favor of the Department, as the case may be,

the Department may commence or may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed plus interest at currently prevailing rates from the date of the final order or the date of the final judgment, as the case may be. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

3. Any person who fails to pay on a timely basis the amount of an assessment of an administrative or civil penalty shall be required to pay, in addition to such amount and interest, ~~attorneys~~ attorney fees and costs for collection proceeding and quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 19.4 of Title 74, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the Office of the Attorney General to be designated the "Attorney General's Environmental Unit Revolving Fund". The fund

shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all reimbursements court-ordered and collected pursuant to Section 991a of Title 22 of the Oklahoma Statutes. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Attorney General for the purposes of investigation, civil action, criminal action or referral to the district attorney in cases involving suspected environmental crimes investigated by the Unit or may be used to reimburse any agency participating jointly with the Attorney General in the investigation of an environmental crime pursuant to the Environmental Crimes Act or Environmental Quality Code for costs associated with such investigation. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 13. This act shall become effective November 1, 2004.

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