

CS for EHB 1484

1 THE STATE SENATE

2 Monday, April 7, 2003

3 Committee Substitute for

4 ENGROSSED

5 House Bill No. 1484

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1484 - By: WALKER
7 of the House and WILKERSON of the Senate.

8 [crimes and punishments - amending various sections
9 in Titles 22 and 57 - punishment for sex offenses -
10 effective date]

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

12 SECTION 1. AMENDATORY 57 O.S. 2001, Section 509.4, is
13 amended to read as follows:

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

19 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991a, as
20 last amended by Section 1, Chapter 464, O.S.L. 2002 (22 O.S. Supp.
21 2002, Section 991a), is amended to read as follows:

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

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

5 a. to provide restitution to the victim as provided by
6 Section 991f et seq. of this title or according to a
7 schedule of payments established by the sentencing
8 court, together with interest upon any pecuniary sum
9 at the rate of twelve percent (12%) per annum, if the
10 defendant agrees to pay such restitution or, in the
11 opinion of the court, if the defendant is able to pay
12 such restitution without imposing manifest hardship on
13 the defendant or the immediate family and if the
14 extent of the damage to the victim is determinable
15 with reasonable certainty,

16 b. to reimburse any state agency for amounts paid by the
17 state agency for hospital and medical expenses
18 incurred by the victim or victims, as a result of the
19 criminal act for which such person was convicted,
20 which reimbursement shall be made directly to the
21 state agency, with interest accruing thereon at the
22 rate of twelve percent (12%) per annum,

- 1 c. to engage in a term of community service without
2 compensation, according to a schedule consistent with
3 the employment and family responsibilities of the
4 person convicted,
- 5 d. to pay a reasonable sum into any trust fund,
6 established pursuant to the provisions of Sections 176
7 through 180.4 of Title 60 of the Oklahoma Statutes,
8 and which provides restitution payments by convicted
9 defendants to victims of crimes committed within this
10 state wherein such victim has incurred a financial
11 loss,
- 12 e. to confinement in the county jail for a period not to
13 exceed six (6) months,
- 14 f. to reimburse the court fund for amounts paid to court-
15 appointed attorneys for representing the defendant in
16 the case in which he or she is being sentenced,
- 17 g. to repay the reward or part of the reward paid by a
18 certified local crimestoppers program and the Oklahoma
19 Reward System. In determining whether the defendant
20 shall repay the reward or part of the reward, the
21 court shall consider the ability of the defendant to
22 make the payment, the financial hardship on the
23 defendant to make the required payment, and the

1 importance of the information to the prosecution of
2 the defendant as provided by the arresting officer or
3 the district attorney with due regard for the
4 confidentiality of the records of the certified local
5 crimestoppers program and the Oklahoma Reward System.
6 The court shall assess this repayment against the
7 defendant as a cost of prosecution. "Certified local
8 crimestoppers program" means a crimestoppers program
9 certified by the Office of the Attorney General
10 pursuant to Section 991g of this title. The "Oklahoma
11 Reward System" means the reward program established by
12 Section 150.18 of Title 74 of the Oklahoma Statutes,
13 h. to reimburse the Oklahoma State Bureau of
14 Investigation for costs incurred by that agency during
15 its investigation of the crime for which the defendant
16 pleaded guilty, nolo contendere or was convicted,
17 including compensation for laboratory, technical, or
18 investigation services performed by the Bureau if, in
19 the opinion of the court, the defendant is able to pay
20 without imposing manifest hardship on the defendant,
21 and if the costs incurred by the Bureau during the
22 investigation of the defendant's case may be
23 determined with reasonable certainty,

- 1 i. to reimburse the Oklahoma State Bureau of
2 Investigation and any authorized law enforcement
3 agency for all costs incurred by that agency for
4 cleaning up an illegal drug laboratory site for which
5 the defendant pleaded guilty, nolo contendere or was
6 convicted. The court clerk shall collect the amount
7 and may retain five percent (5%) of such monies to be
8 deposited in the Court Clerk Revolving Fund to cover
9 administrative costs and shall remit the remainder to
10 the Oklahoma State Bureau of Investigation to be
11 deposited in the OSBI Revolving Fund established by
12 Section 150.19a of Title 74 of the Oklahoma Statutes
13 or to the general fund wherein the other law
14 enforcement agency is located,
- 15 j. to pay a reasonable sum to the Crime Victims
16 Compensation Board, created by Section 142.2 et seq.
17 of Title 21 of the Oklahoma Statutes, for the benefit
18 of crime victims,
- 19 k. to reimburse the court fund for amounts paid to court-
20 appointed attorneys for representing the defendant in
21 the case in which the person is being sentenced,
- 22 l. to participate in substance abuse education or
23 treatment, pursuant to Sections 3-452 and 3-453 of

1 Title 43A of the Oklahoma Statutes, or as ordered by
2 the court,
3 m. to be placed in a victims impact panel program or
4 victim/offender reconciliation program and payment of
5 a fee to the program of not less than Five Dollars
6 (\$5.00) nor more than Twenty-five Dollars (\$25.00) as
7 set by the governing authority of the program to
8 offset the cost of participation by the defendant.
9 Provided, each victim/offender reconciliation program
10 shall be required to obtain a written consent form
11 voluntarily signed by the victim and defendant that
12 specifies the methods to be used to resolve the
13 issues, the obligations and rights of each person, and
14 the confidentiality of the proceedings. Volunteer
15 mediators and employees of a victim/offender
16 reconciliation program shall be immune from liability
17 and have rights of confidentiality as provided in
18 Section 1805 of Title 12 of the Oklahoma Statutes,
19 n. to install an ignition interlock device approved by
20 the Department of Public Safety at the defendant's own
21 expense. The device shall be installed upon every
22 motor vehicle operated by the defendant, and the court
23 shall require that a notation of this restriction be

1 affixed to the defendant's driver license. The
2 restriction shall remain on the driver license not
3 exceeding two (2) years to be determined by the court.
4 The restriction may be modified or removed only by
5 order of the court and notice of any modification
6 order shall be given to the Department of Public
7 Safety. Upon the expiration of the period for the
8 restriction, the Department of Public Safety shall
9 remove the restriction without further court order.
10 Failure to comply with the order to install an
11 ignition interlock device or operating any vehicle
12 without a device during the period of restriction
13 shall be a violation of the sentence and may be
14 punished as deemed proper by the sentencing court. As
15 used in this paragraph, "ignition interlock device"
16 means a device that, without tampering or intervention
17 by another person, would prevent the defendant from
18 operating a motor vehicle if the defendant has a blood
19 or breath alcohol concentration of five-hundredths
20 (0.05) or greater,
21 o. to be confined by electronic monitoring administered
22 and supervised by the Department of Corrections or a
23 community sentence provider, and payment of a

1 monitoring fee to the supervising authority, not to
2 exceed Seventy-five Dollars (\$75.00) per month. Any
3 fees collected pursuant to this paragraph shall be
4 deposited with the appropriate supervising authority.
5 Any willful violation of an order of the court for the
6 payment of the monitoring fee shall be a violation of
7 the sentence and may be punished as deemed proper by
8 the sentencing court. As used in this paragraph,
9 "electronic monitoring" means confinement of the
10 defendant within a specified location or locations
11 with supervision by means of an electronic device
12 approved by the Department of Corrections which is
13 designed to detect if the defendant is in the court-
14 ordered location at the required times and which
15 records violations for investigation by a qualified
16 supervisory agency or person,

17 p. to perform one or more courses of treatment, education
18 or rehabilitation for any conditions, behaviors,
19 deficiencies or disorders which may contribute to
20 criminal conduct, including but not limited to alcohol
21 and substance abuse, mental health, emotional health,
22 physical health, propensity for violence, antisocial
23 behavior, personality or attitudes, deviant sexual

1 behavior, child development, parenting assistance, job
2 skills, vocational-technical skills, domestic
3 relations, literacy, education, or any other
4 identifiable deficiency which may be treated
5 appropriately in the community and for which a
6 certified provider or a program recognized by the
7 court as having significant positive impact exists in
8 the community. Any treatment, education or
9 rehabilitation provider required to be certified
10 pursuant to law or rule shall be certified by the
11 appropriate state agency or a national organization,
12 q. to submit to periodic testing for alcohol,
13 intoxicating substance, or controlled dangerous
14 substances by a qualified laboratory,
15 r. to pay a fee, costs for treatment, education,
16 supervision, participation in a program, or any
17 combination thereof as determined by the court, based
18 upon the defendant's ability to pay the fees or costs,
19 s. to be supervised by a Department of Corrections
20 employee, a private supervision provider, or other
21 person designated by the court,
22 t. to obtain positive behavior modeling by a trained
23 mentor,

- 1 u. to serve a term of confinement in a restrictive
2 housing facility available in the community,
- 3 v. to serve a term of confinement in the county jail at
4 night or during weekends pursuant to Section 991a-2 of
5 this title or for work release,
- 6 w. to obtain employment or participate in employment-
7 related activities,
- 8 x. to participate in mandatory day reporting to
9 facilities or persons for services, payments, duties
10 or person-to-person contacts as specified by the
11 court,
- 12 y. to pay day fines not to exceed fifty percent (50%) of
13 the net wages earned. For purposes of this paragraph,
14 "day fine" means the offender is ordered to pay an
15 amount calculated as a percentage of net daily wages
16 earned. The day fine shall be paid to the local
17 community sentencing system as reparation to the
18 community. Day fines shall be used to support the
19 local system,
- 20 z. to submit to blood or saliva testing as required by
21 subsection I of this section,
- 22 aa. to repair or restore property damaged by the
23 defendant's conduct, if the court determines the

1 defendant possesses sufficient skill to repair or
2 restore the property and the victim consents to the
3 repairing or restoring of the property,
4 bb. to restore damaged property in kind or payment of out-
5 of-pocket expenses to the victim, if the court is able
6 to determine the actual out-of-pocket expenses
7 suffered by the victim,
8 cc. to attend a victim-offender reconciliation program if
9 the victim agrees to participate and the offender is
10 deemed appropriate for participation,
11 dd. in the case of a person convicted of prostitution
12 pursuant to Section 1029 of Title 21 of the Oklahoma
13 Statutes, require such person to receive counseling
14 for the behavior which may have caused such person to
15 engage in prostitution activities. Such person may be
16 required to receive counseling in areas including but
17 not limited to alcohol and substance abuse, sexual
18 behavior problems, or domestic abuse or child abuse
19 problems,
20 ee. in the case of a sex offender sentenced after November
21 1, 1989, and required by law to register pursuant to
22 the Sex Offender Registration Act, require the person
23 to participate in a treatment program, if available.

1 The treatment program may include polygraphs
2 specifically designed for use with sex offenders for
3 purposes of supervision and treatment compliance,
4 provided the examination is administered by a
5 certified licensed polygraph examiner. The treatment
6 program must be approved by the Department of
7 Corrections or the Department of Mental Health and
8 Substance Abuse Services. Such treatment shall be at
9 the expense of the defendant based on the defendant's
10 ability to pay,

11 ff. in addition to other sentencing powers of the court,
12 the court in the case of a defendant being sentenced
13 for a felony conviction for a violation of Section 2-
14 402 of Title 63 of the Oklahoma Statutes which
15 involves marijuana may require the person to
16 participate in a drug court program, if available. If
17 a drug court program is not available, the defendant
18 may be required to participate in a community
19 sanctions program, if available, and

20 gg. any other provision specifically ordered by the court.

21 However, any such order for restitution, community service,
22 payment to a certified local crimestoppers program, payment to the
23 Oklahoma Reward System, or confinement in the county jail, or a

1 combination thereof, shall be made in conjunction with probation and
2 shall be made a condition of the suspended sentence;

3 2. Impose a fine prescribed by law for the offense, with or
4 without probation or commitment and with or without restitution or
5 service as provided for in this section, Section 991a-4.1 of this
6 title or Section 227 of Title 57 of the Oklahoma Statutes;

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

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

18 5. Order the defendant to reimburse the Oklahoma State Bureau
19 of Investigation for all costs incurred by that agency for cleaning
20 up an illegal drug laboratory site for which the defendant pleaded
21 guilty, nolo contendere or was convicted. The court clerk shall
22 collect the amount and may retain five percent (5%) of such monies
23 to be deposited in the Court Clerk Revolving Fund to cover

1 administrative costs and shall remit the remainder to the Oklahoma
2 State Bureau of Investigation to be deposited in the OSBI Revolving
3 Fund established by Section 150.19a of Title 74 of the Oklahoma
4 Statutes;

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

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

- 14 a. to participate in an alcohol and drug substance abuse
15 course or treatment program, pursuant to Sections 3-
16 452 and 3-453 of Title 43A of the Oklahoma Statutes,
17 b. to attend a victims impact panel program, if such a
18 program is offered in the county where the judgment is
19 rendered, and to pay a fee, not less than Fifteen
20 Dollars (\$15.00) nor more than Twenty-five Dollars
21 (\$25.00) as set by the governing authority of the
22 program and approved by the court, to the program to
23 offset the cost of participation by the defendant, if

1 in the opinion of the court the defendant has the
2 ability to pay such fee,
3 c. to both participate in the alcohol and drug substance
4 abuse course or treatment program, pursuant to
5 subparagraph a of this paragraph and attend a victims
6 impact panel program, pursuant to subparagraph b of
7 this paragraph,
8 d. to install an ignition interlock device, at the
9 person's own expense, approved by the Department of
10 Public Safety, upon every motor vehicle operated by
11 such person and to require that a notation of this
12 restriction be affixed to the person's driver license
13 at the time of reinstatement of the license. The
14 restriction shall remain on the driver license for
15 such period as the court shall determine. The
16 restriction may be modified or removed by order of the
17 court and notice of the order shall be given to the
18 Department of Public Safety. Upon the expiration of
19 the period for the restriction, the Department of
20 Public Safety shall remove the restriction without
21 further court order. Failure to comply with the order
22 to install an ignition interlock device or operating
23 any vehicle without such device during the period of

1 restriction shall be a violation of the sentence and
2 may be punished as deemed proper by the sentencing
3 court, or

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

16 8. In addition to the other sentencing powers of the court, in
17 the case of a person convicted of prostitution pursuant to Section
18 1029 of Title 21 of the Oklahoma Statutes, require such person to
19 receive counseling for the behavior which may have caused such
20 person to engage in prostitution activities. Such person may be
21 required to receive counseling in areas including but not limited to
22 alcohol and substance abuse, sexual behavior problems, or domestic
23 abuse or child abuse problems;

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

8 10. In addition to the other sentencing powers of the court,
9 the court, in the case of a sex offender sentenced after November 1,
10 1989, and required by law to register pursuant to the Sex Offenders
11 Registration Act, shall require the person to participate in a
12 treatment program designed specifically for the treatment of sex
13 offenders, if available. The treatment program may include
14 polygraphs specifically designed for use with sex offenders for the
15 purpose of supervision and treatment compliance, provided the
16 examination is administered by a certified licensed polygraph
17 examiner. The treatment program must be approved by the Department
18 of Corrections or the Department of Mental Health and Substance
19 Abuse Services. Such treatment shall be at the expense of the
20 defendant based on the defendant's ability to pay; or

21 11. In addition to the other sentencing powers of the court,
22 the court, in the case of a person convicted of child abuse or
23 neglect, as defined in Section 7102 of Title 10 of the Oklahoma

1 Statutes, may require the person to undergo treatment or to
2 participate in counseling services. The defendant may be required
3 to pay all or part of the cost of the treatment or counseling
4 services.

5 B. Notwithstanding any other provision of law, any person who
6 is found guilty of a violation of any provision of Section 761 or
7 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
8 guilty or nolo contendere for a violation of any provision of such
9 sections shall be ordered to participate in, prior to sentencing, an
10 alcohol and drug substance abuse evaluation program offered by a
11 facility or qualified practitioner certified by the Department of
12 Mental Health and Substance Abuse Services for the purpose of
13 evaluating the receptivity to treatment and prognosis of the person.
14 The court shall order the person to reimburse the facility or
15 qualified practitioner for the evaluation. The Department of Mental
16 Health and Substance Abuse Services shall establish a fee schedule,
17 based upon a person's ability to pay, provided the fee for an
18 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
19 evaluation shall be conducted at a certified facility, the office of
20 a qualified practitioner or at another location as ordered by the
21 court. The facility or qualified practitioner shall, within
22 seventy-two (72) hours from the time the person is assessed, submit
23 a written report to the court for the purpose of assisting the court

1 in its final sentencing determination. No person, agency or
2 facility operating an alcohol and drug substance abuse evaluation
3 program certified by the Department of Mental Health and Substance
4 Abuse Services shall solicit or refer any person evaluated pursuant
5 to this subsection for any treatment program or alcohol and drug
6 substance abuse service in which such person, agency or facility has
7 a vested interest; however, this provision shall not be construed to
8 prohibit the court from ordering participation in or any person from
9 voluntarily utilizing a treatment program or alcohol and drug
10 substance abuse service offered by such person, agency or facility.
11 If a person is sentenced to the custody of the Department of
12 Corrections and the court has received a written evaluation report
13 pursuant to this subsection, the report shall be furnished to the
14 Department of Corrections with the judgment and sentence. Any
15 evaluation report submitted to the court pursuant to this subsection
16 shall be handled in a manner which will keep such report
17 confidential from the general public's review. Nothing contained in
18 this subsection shall be construed to prohibit the court from
19 ordering judgment and sentence in the event the defendant fails or
20 refuses to comply with an order of the court to obtain the
21 evaluation required by this subsection.

22 As used in this subsection, "qualified practitioner" means a
23 person with at least a bachelor's degree in substance abuse

1 treatment, mental health or a related health care field and at least
2 two (2) years' experience in providing alcohol treatment, other drug
3 abuse treatment, or both alcohol and other drug abuse treatment who
4 is certified each year by the Department of Mental Health and
5 Substance Abuse Services to provide these assessments. However, any
6 person who does not meet the requirements for a qualified
7 practitioner as defined herein, but who has been previously
8 certified by the Department of Mental Health and Substance Abuse
9 Services to provide alcohol or drug treatment or assessments, shall
10 be considered a qualified practitioner provided all education,
11 experience and certification requirements stated herein are met
12 within two (2) years from the effective date of this act.

13 C. When sentencing a person convicted of a crime, the court
14 shall first consider a program of restitution for the victim, as
15 well as imposition of a fine or incarceration of the offender. The
16 provisions of paragraph 1 of subsection A of this section shall not
17 apply to defendants being sentenced upon their third or subsequent
18 to their third conviction of a felony or, beginning January 1, 1993,
19 to defendants being sentenced for their second or subsequent felony
20 conviction for violation of Section 11-902 of Title 47 of the
21 Oklahoma Statutes, except as otherwise provided in this subsection.
22 In the case of a person being sentenced for their second or
23 subsequent felony conviction for violation of Section 11-902 of

1 Title 47 of the Oklahoma Statutes, the court may sentence the person
2 pursuant to the provisions of paragraph 1 of subsection A of this
3 section if the court orders the person to submit to electronically
4 monitored home detention administered and supervised by the
5 Department of Corrections pursuant to subparagraph e of paragraph 6
6 of subsection A of this section. Provided, the court may waive
7 these prohibitions upon written application of the district
8 attorney. Both the application and the waiver shall be made part of
9 the record of the case.

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

13 E. Probation, for purposes of subsection A of this section, is
14 a procedure by which a defendant found guilty of a crime, whether
15 upon a verdict or plea of guilty or upon a plea of nolo contendere,
16 is released by the court subject to conditions imposed by the court
17 and subject to the supervision of the Department of Corrections.
18 Such supervision shall be initiated upon an order of probation from
19 the court, and shall not exceed two (2) years, except as otherwise
20 provided by law. In the case of a person convicted of a sex
21 offense, supervision shall begin immediately upon release from
22 incarceration or if parole is granted and is not be limited to two
23 (2) years. Provided further, any supervision provided for in this

1 section may be extended for a period not to exceed the expiration of
2 the maximum term or terms of the sentence upon a determination by
3 the Division of Probation and Parole of the Department of
4 Corrections that the best interests of the public and the release
5 will be served by an extended period of supervision.

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

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

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

21 3. The Department shall establish criteria and specifications
22 for contracts with counties for such Programs. A county may apply
23 to the Department for a contract for a county-funded Program for a

1 specific period of time. The Department shall be responsible for
2 ensuring that any contracting county complies in full with
3 specifications and requirements of the contract. The contract shall
4 set appropriate compensation to the county for services to the
5 Department.

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

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

17 H. As used in this section:

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

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

6 I. A person convicted of an offense as provided in Section 7115
7 of Title 10 of the Oklahoma Statutes or Section 645, subsection B of
8 Section 649, Section 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8,
9 651, 652, 701.7, 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832,
10 885, 888, 891, subsection B of Section 1021, Section 1021.2, 1021.3,
11 1087, 1088, 1114, 1115, 1116, 1123, 1173, 1192, 1192.1, 1431 or 1435
12 of Title 21 of the Oklahoma Statutes, or receiving any form of
13 probation for an offense in which registration is required pursuant
14 to the Sex Offenders Registration Act, or a person convicted of any
15 felony who has a prior conviction for an offense listed in this
16 subsection shall submit to deoxyribonucleic acid DNA testing for law
17 enforcement identification purposes in accordance with Section
18 150.27 of Title 74 of the Oklahoma Statutes and the rules
19 promulgated by the Oklahoma State Bureau of Investigation for the
20 OSBI DNA Offender Database. Submission to testing shall be required
21 within thirty (30) days of sentencing for those defendants who do
22 not become subject to the custody of the Department of Corrections,
23 and submission to testing shall be done in accordance with Section

1 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who
2 enter the custody of the Department of Corrections as a result of
3 sentencing. Convicted individuals who have previously submitted to
4 DNA testing under this section and for whom a valid sample is on
5 file in the OSBI DNA Offender Database at the time of their
6 sentencing shall not be required to submit to additional testing.
7 Except as required by the Sex Offenders Registration Act, a deferred
8 judgment does not require submission to deoxyribonucleic acid
9 testing.

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

16 J. Samples of blood or saliva for DNA testing required by
17 subsection I of this section shall be taken by employees or
18 contractors of the Department of Corrections. The individuals shall
19 be properly trained to collect blood or saliva samples. Persons
20 collecting blood or saliva for DNA testing pursuant to this section
21 shall be immune from civil liabilities arising from this activity.
22 The Department of Corrections shall ensure the collection of samples
23 are mailed to the Oklahoma State Bureau of Investigation within ten

1 (10) days of the time the subject appears for testing or within ten
2 (10) days of the date the subject comes into the custody of the
3 Department of Corrections. The Department shall use sample kits
4 provided by the OSBI and procedures promulgated by the OSBI.
5 Persons subject to DNA testing who are not received at the Lexington
6 Assessment and Reception Center shall be required to pay to the
7 Department of Corrections a fee of Fifteen Dollars (\$15.00). Any
8 fees collected pursuant to this subsection shall be deposited in the
9 Department of Corrections revolving account.

10 SECTION 3. AMENDATORY 57 O.S. 2001, Section 332.7, is
11 amended to read as follows:

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

- 16 1. Has completed serving one-third (1/3) of the sentence;
- 17 2. Has reached at least sixty (60) years of age and also has
18 served at least fifty percent (50%) of the time of imprisonment that
19 would have been imposed for that offense pursuant to the applicable
20 Truth in Sentencing matrix, provided in Sections 598 through 601,
21 Chapter 133, O.S.L. 1997; provided, however, no inmate serving a
22 sentence for crimes listed in Schedules A, S-1, S-2 or S-3 of
23 Section 6, Chapter 133, O.S.L. 1997, or serving a sentence of life

1 imprisonment without parole shall be eligible to be considered for
2 parole pursuant to this paragraph;

3 3. Has reached eighty-five percent (85%) of the midpoint of the
4 time of imprisonment that would have been imposed for an offense
5 that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of
6 Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable
7 matrix; provided, however, no inmate serving a sentence of life
8 imprisonment without parole shall be eligible to be considered for
9 parole pursuant to this paragraph; or

10 4. Has reached seventy-five percent (75%) of the midpoint of
11 the time of imprisonment that would have been imposed for an offense
12 that is listed in any other schedule, pursuant to the applicable
13 matrix; provided, however, no inmate serving a sentence of life
14 imprisonment without parole shall be eligible to be considered for
15 parole pursuant to this paragraph.

16 B. For a crime committed on or after July 1, 1998, any person
17 in the custody of the Department of Corrections shall be eligible
18 for consideration for parole who has completed serving one-third
19 (1/3) of the sentence; provided, however, no inmate serving a
20 sentence of life imprisonment without parole shall be eligible to be
21 considered for parole pursuant to this subsection.

22 C. The parole hearings conducted for persons pursuant to
23 paragraph 3 of subsection A of this section or for any person who

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

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

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

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

20 1. Within three (3) years of the denial or waiver, if the
21 person was convicted of a violent crime, as set forth in Section 571
22 of this title, and was eligible for consideration pursuant to

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

9 E. Any person in the custody of the Department of Corrections
10 for a crime committed prior to July 1, 1998, who has been considered
11 for parole on a docket created for a type of parole consideration
12 that has been abolished by the Legislature shall not be considered
13 for parole except in accordance with this section.

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

21 G. The Pardon and Parole Board shall not recommend to the
22 Governor any person who has been convicted of three or more felonies
23 arising out of separate and distinct transactions, with three or

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

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

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

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

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

20 L. All references in this section to matrices or schedules
21 shall be construed with reference to the provisions of Sections 6,
22 598, 599, 600 and 601, Chapter 133, O.S.L. 1997.

1 M. Any person in the custody of the Department of Corrections
2 who is convicted of a felony sex offense and is required to register
3 as a sex offender pursuant to Section 581 et seq. of this title who
4 is paroled shall immediately be placed on intensive supervision.

5 SECTION 4. This act shall become effective November 1, 2003.

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-2-03 - DO
7 PASS, As Amended.