

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
SENATE BILL NO. 1708

By: Nichols, Gumm, Garrison and  
Laster of the Senate

and

Morgan (Fred), Duncan,  
Nance, Roan and Blackwell  
of the House

COMMITTEE SUBSTITUTE

An Act relating to sex offenders; amending 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2005, Section 7115), which relates to child abuse; providing death penalty and life without parole for certain offense; providing separate penalties for certain crimes; making certain actions unlawful; providing penalty; amending 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 and Section 1, Chapter 195, O.S.L. 2003 (21 O.S. Supp. 2005, Sections 843.1 and 843.3), which relate to caretaker abuse and abuse of a vulnerable adult; modifying penalties for certain crimes; amending 21 O.S. 2001, Sections 886, as amended by Section 8, Chapter 460, O.S.L. 2002 and 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Sections 886 and 888), which relate to sodomy and forcible sodomy; modifying penalties; amending 21 O.S. 2001, Sections 1021, as last amended by Section 1, Chapter 308, O.S.L. 2003, 1021.2, 1021.3 and 1040.13a, as amended by Section 1, Chapter 110, O.S.L. 2002 (21 O.S. Supp. 2005, Sections 1021 and 1040.13a), which relate to obscenity and child pornography; modifying penalties for certain crimes; prohibiting certain materials from being exhibited in motor vehicles; defining terms; providing penalty; amending 21 O.S. 2001, Sections 1087 and 1088, which relate to pandering; modifying penalties for certain crimes; amending 21 O.S. 2001, Sections 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 and 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2005, Sections 1115 and 1123), which relate to rape and lewd acts to a child; modifying penalties for certain crimes; prohibiting certain unlawful act; defining term; providing penalty; establishing bail procedures; stating factors to be considered by court; stating legislative findings; defining terms; providing for certain notices regarding sexually violent predators; providing immunity for certain persons; establishing court procedures for commitment of sexually violent predators; stating rights of person alleged to be a sexually violent predator;

providing for the appointment of counsel; authorizing retainment of experts for examinations; providing access to certain records; authorizing certain persons to demand a jury trial; providing jury trial guidelines; establishing confinement and segregation requirements; directing person be released under certain circumstances; providing procedures for mistrials; establishing commitment procedures for persons previously found incompetent; providing for yearly examination of committed persons; requiring annual review by the court of committed persons; establishing procedures for transitional release; authorizing and establishing procedures for removal from the transitional release program; authorizing person to petition for transitional release upon approval by certain person; establishing procedures for transitional release; establishing procedures for conditional release; providing treatment plan guidelines; establishing procedures for final discharge of committed person; authorizing return of person to confinement under certain circumstances; establishing procedures for persons returned to confinement from conditional release; prohibiting the eligibility of certain person for certain release measures; directing conformity to certain constitutional requirements; establishing guidelines for persons petitioning for release or discharge; providing for reimbursement of costs; requiring certain agency to provide treatment services; requiring notice prior to release of committed persons; providing for the release of certain records; requiring certain records be sealed; establishing process for designating crime as sexually motivated; providing severability clause; establishing time limitation for issuance of driver licenses for certain persons; providing time limitation for initial and renewal licenses; directing compliance with certain driver license and renewal requirements; amending 47 O.S. 2001, Sections 751, as last amended by Section 2, Chapter 189, O.S.L. 2005, 752, as last amended by Section 15, Chapter 394, O.S.L. 2005, 753, 756 and 759, as last amended by Section 24, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2005, Sections 751, 752 and 759), which relate to implied consent tests; providing for concentration or presence of certain substances to be tested; amending 57 O.S. 2001, Section 583, as last amended by Section 2, Chapter 123, O.S.L. 2005 and Section 1, Chapter 223, O.S.L. 2003 (57 O.S. Supp. 2005, Sections 583 and 590), which relate to the Sex Offenders Registration Act; directing certain entities to inform offenders of driver license requirements; expanding scope of prohibited act; repealing 21 O.S. 2001, Section 888, as amended by Section 4, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2005, Section 888), which relates to forcible sodomy; providing for codification; providing effective dates; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7115, as amended by Section 7, Chapter 455, O.S.L. 2002 (10 O.S. Supp. 2005, Section 7115), is amended to read as follows:

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

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

know that the child will be placed at risk of abuse as proscribed by this subsection.

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

D. Any parent or other person who shall willfully or maliciously engage in enabling child neglect shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child neglect" means the causing, procuring or permitting of a willful or malicious act of child neglect, as defined by paragraph 3 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of neglect as proscribed by this subsection.

E. Any parent or other person who shall willfully or maliciously engage in child sexual abuse shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the

Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment, except as provided in Section ~~3~~ 51.1a of ~~this act~~ Title 21 of the Oklahoma Statutes. Any parent or other person convicted of child sexual abuse subsequent to a previous conviction for child sexual abuse shall be punished by death or by imprisonment for life without parole. As used in this section, "child sexual abuse" means the willful or malicious sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

F. Any parent or other person who shall willfully or maliciously engage in sexual abuse with a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

G. Any parent or other person who shall willfully or maliciously engage in enabling child sexual abuse shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "enabling child sexual abuse" means the causing, procuring or permitting of a willful or malicious act of child sexual abuse, as defined by paragraph 6 of subsection B of Section 7102 of this title, of a child under the age of eighteen (18) by another. As used in this subsection, "permit" means to authorize or allow for the care of a

child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual abuse as proscribed by this subsection.

~~G.~~ H. Any parent or other person who shall willfully or maliciously engage in child sexual exploitation shall, upon conviction, be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections not exceeding life imprisonment, or by imprisonment in a county jail not exceeding one (1) year, or by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment. As used in this subsection, "child sexual exploitation" means the willful or malicious sexual exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another.

~~H.~~ I. Any parent or other person who shall willfully or maliciously engage in sexual exploitation of a child under twelve (12) years of age shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years nor more than life imprisonment, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00).

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

exploitation, as defined by paragraph 7 of subsection B of Section 7102 of this title, of a child under eighteen (18) years of age by another. As used in this subsection, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of sexual exploitation as proscribed by this subsection.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 446 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who has been committed to the custody of the Department of Corrections pursuant to Section 24 of this act and who escapes from said custody, either while actually confined or while assigned to a transitional or conditional release program shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years nor more than seven (7) years.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 843.1, as amended by Section 8, Chapter 22, O.S.L. 2002 (21 O.S. Supp. 2005, Section 843.1), is amended to read as follows:

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

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

B. 1. Any person convicted of a violation of this section, except as provided in paragraph 2 of this subsection, shall be guilty of a felony. The violator, upon conviction, shall be

punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term not to exceed ten (10) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment. Such person's term shall further be subject to the provisions of Section 13.1 of this title.

2. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony. The person convicted of sexual abuse shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of not to exceed fifteen (15) less than twenty-five (25) years, and by a fine not exceeding Ten Thousand Dollars (\$10,000.00), ~~or by both such fine and imprisonment.~~

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

SECTION 4. AMENDATORY Section 1, Chapter 195, O.S.L. 2003 (21 O.S. Supp. 2005, Section 843.3), is amended to read as follows:

Section 843.3 A. Any person who engages in abuse, ~~sexual abuse~~ or exploitation of a vulnerable adult, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, shall, upon conviction, be fined not more than Ten Thousand Dollars (\$10,000.00) or be imprisoned not more than ~~eighteen (18) months~~ ten (10) years, or both such fine and imprisonment.

B. Any person who has a responsibility to care for a vulnerable adult who purposely, knowingly or recklessly neglects the vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes shall, upon conviction, be fined not more than Ten Thousand Dollars (\$10,000.00) or be imprisoned for not more than eighteen (18) months, or both such fine and imprisonment.

C. Any person who engages in sexual abuse or sexual exploitation of a vulnerable adult, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, shall, upon conviction, be fined

not more than Ten Thousand Dollars (\$10,000.00) and be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 886, as amended by Section 8, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 886), is amended to read as follows:

Section 886. Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the ~~penitentiary~~ custody of the Department of Corrections for not ~~exceeding ten (10) years~~ less than twenty-five (25) years.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not ~~more~~ less than ~~twenty (20)~~ twenty-five (25) years, except as provided in Section 51.1a of this title. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of

Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of said offenses, shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

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

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

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

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

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1021, as last amended by Section 1, Chapter 308, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1021), is amended to read as follows:

Section 1021. A. Every person who willfully and knowingly either:

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

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public

view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

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

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

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

B. Every person who:

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

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty, upon conviction, of a felony and shall be punished by imprisonment in a ~~state correctional institution~~ the custody of the Department of Corrections for not less than ten (10) years nor more than thirty (30) years. If the minor child is under the age of twelve (12) at the time the offense is committed, the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

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

D. For purposes of this section, "downloading on a computer" means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

SECTION 8. AMENDATORY 21 O.S. 2001, Section 1021.2, is amended to read as follows:

Section 1021.2 Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both said fine and imprisonment. If the minor is under the age of twelve (12) at the time the offense is committed, the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. Persons convicted under this section shall not be eligible for a deferred sentence. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1021.3, is amended to read as follows:

Section 1021.3 Any parent, guardian or individual having custody of a minor under the age of eighteen (18) years who knowingly permits or consents to the participation of a minor in any child pornography shall be guilty of a felony and, upon conviction, shall be imprisoned in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not more than twenty (20) years or a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both such fine and imprisonment. If the minor is

under the age of twelve (12) at the time the offense is committed,  
the person shall, upon conviction, be punished by imprisonment in  
the custody of the Department of Corrections for not less than  
twenty-five (25) years. Persons convicted under this section shall  
not be eligible for a deferred sentence. The consent of the minor  
to the activity prohibited by this section shall not constitute a  
defense.

SECTION 10. AMENDATORY 21 O.S. 2001, Section 1040.13a,  
as amended by Section 1, Chapter 110, O.S.L. 2002 (21 O.S. Supp.  
2005, Section 1040.13a), is amended to read as follows:

Section 1040.13a A. A person is guilty of violating the  
provisions of this section if, for the purposes of facilitating,  
encouraging, offering or soliciting sexual conduct with any minor,  
or other individual the person believes to be a minor, the person  
knowingly transmits by means of computer, or prints, publishes or  
reproduces by other computerized means, or buys, sells, receives,  
exchanges, or disseminates, any notice, statement, or advertisement  
of any name, telephone number, place of residence, physical  
characteristics or other descriptive or identifying information of a  
minor or other individual the person believes to be a minor. The  
fact that an undercover operative or law enforcement officer was  
involved in the detection and investigation of an offense pursuant  
to this section shall not constitute a defense to a prosecution  
under this section.

B. Any violation of the provisions of this section shall, upon  
conviction, be a misdemeanor, punishable by the imposition of a fine  
not to exceed Ten Thousand Dollars (\$10,000.00), or by imprisonment  
in the county jail not to exceed one (1) year, or by both such fine  
and imprisonment. If the minor is under the age of twelve (12) at  
the time the offense is committed, the person shall, upon  
conviction, be guilty of a felony punishable by imprisonment in the

custody of the Department of Corrections for not less than twenty-five (25) years.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1040.55 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No material which is harmful to minors shall be exhibited on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle. As used in this subsection, "material" and "harmful to minors" shall have the same meaning as provided for in Section 1040.75 of Title 21 of the Oklahoma Statutes.

B. No person shall exhibit on a television, monitor, or other viewing screen or surface, located within or on a motor vehicle, in any manner visible to any person outside the vehicle any motion picture depicting:

1. Any person, whether nude or clad, in an act or simulation of an act of sexual intercourse, unnatural copulation or other sexual activity including the showing of human genitals in a state of sexual stimulation or arousal, acts of human masturbation, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or

2. Nude or partially denuded figures including less than completely and opaquely covered human genitals, pubic regions, buttock and female breast below a point immediately above the top of the areola and including human male genitals in a discernibly turgid state, even if completely and opaquely covered.

C. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not more than Five Hundred Dollars (\$500.00).

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

Section 1087. A. No person shall:

1. Offer, or offer to secure, a child under eighteen (18) years of age for the purpose of prostitution, or for any other lewd or indecent act, or procure or offer to procure a child for, or a place for a child as an inmate in, a house of prostitution or other place where prostitution is practiced;

2. Receive or to offer or agree to receive any child under eighteen (18) years of age into any house, place, building, other structure, vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or

3. Direct, take, or transport, or to offer or agree to take or transport, or aid or assist in transporting, any child under eighteen (18) years of age to any house, place, building, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation.

B. ~~1.~~ Any person violating the provisions of subsection A of this section shall, upon conviction, be guilty of a felony punishable by imprisonment ~~of~~ in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years. If the child is under the age of twelve (12) at the time the offense is committed, the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

~~2.~~ C. Any owner, proprietor, keeper, manager, conductor, or other person who knowingly permits any violation of this section in any house, building, room, or other premises or any conveyances under ~~his~~ the control of the person or of which ~~he~~ the person has possession shall, upon conviction for the first offense, be guilty of a misdemeanor ~~and~~ punishable by imprisonment in the county jail for a period of not less than six (6) months nor more than one (1)

year, and by a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). Upon conviction for a subsequent offense pursuant to this subsection ~~such~~ the person shall be guilty of a felony and shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not less than one (1) year nor more than ten (10) years, or by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00) or by both such fine and imprisonment.

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

Section 1088. A. No person shall:

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

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

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

B. 1. Any person violating the provisions of this section other than paragraph 2 of this subsection, upon conviction, shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than twenty-five (25) years, and by a fine of not less than Five Thousand Dollars (\$5,000.00) nor more than Twenty-five Thousand Dollars (\$25,000.00). If the child is under the age of twelve (12) at the time the offense is committed, the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

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

SECTION 14. AMENDATORY 21 O.S. 2001, Section 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2005, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by death or imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections, for a term of not less than ~~five (5)~~ twenty-five (25) years, life or life without parole. Any person convicted of a second or subsequent violation of subsection A of

Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for life or life without parole.

SECTION 15. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1123), is amended to read as follows:

Section 1123. A. It is a felony for any person to knowingly and intentionally:

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

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

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

4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16)

years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or

5. In a lewd and lascivious manner and for the purpose of sexual gratification:

- a. urinate or defecate upon a child under sixteen (16) years of age,
- b. ejaculate upon or in the presence of a child,
- c. cause, expose, force or require a child to look upon the body or private parts of another person,
- d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,
- e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or
- f. force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of any violation of this subsection ~~A of this section~~ shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for not less than one (1) year nor more than twenty (20) years. If the child is under the age of twelve (12) at the time the offense is committed, the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this ~~section~~ subsection shall not apply unless the accused is at least three (3) years older than the victim. Any person convicted of a second or subsequent violation of this subsection ~~A of this section~~ shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Any person

convicted of a third or subsequent violation of this subsection ~~A of this section~~ shall be guilty of a felony punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term of life or life without parole.

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

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

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

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1126 of Title 21, unless there is created a duplication in numbering, reads as follows:

Every person who is convicted of rape, rape by instrumentation, sodomy, lewd molestation, sexual battery, incest, or other sexual abuse offense against a child victim is prohibited from residing in the same residence as the child victim until the victim reaches eighteen (18) years of age. "Child victim" means a person less than eighteen (18) years of age at the time of the offense. Any violation of the provisions of this section shall be a misdemeanor on the first offense and a felony on any second or subsequent offense.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1104.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Prior to conducting any hearing on the amount of bail, the magistrate, judge, or court shall, to the extent feasible, obtain the criminal history of the arrested person.

B. The magistrate, judge, or court shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the community if the person is currently charged with an offense as enumerated in Section 13.1 of Title 21 of the Oklahoma Statutes or an offense for which the person would, upon conviction, be required to register as a sex offender pursuant to the Sex Offenders Registration Act.

C. The magistrate, judge, or court shall consider the following factors and such others as it deems appropriate in determining, for the purpose of rebuttal of the presumption against bail described in subsection B of this section, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history of the person including, but not limited to, the physical and mental condition of the person, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal street gang as defined in Section 856 of Title 21 of the Oklahoma Statutes, and any records concerning appearances at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the release of the person.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-101 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that a small but extremely dangerous group of sexually violent predators exists who do not have a mental disease or defect that renders them appropriate for involuntary treatment of mentally ill persons defined in Title 43A of the Oklahoma Statutes, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under Title 43A of the Oklahoma Statutes, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in sexually violent behavior.

The Legislature further finds that the likelihood of a sexually violent predator engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure for mentally ill persons pursuant to Title 43A of the Oklahoma Statutes is inadequate to address the risk these sexually violent predators pose to society.

The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long-term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment of mentally ill persons pursuant to Title 43A of the Oklahoma Statutes; therefore, a separate civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the Legislature.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-102 of Title 43A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the Department of Corrections and the Department of Mental Health and Substance Abuse Services;

2. "Director" means the Director of the Department of Corrections;

3. "Likely to engage in repeat acts of sexual violence" means the propensity of the person to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others;

4. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

5. "Person" means an individual who is a potential or actual subject of proceedings under this act;

6. "Sexually motivated" means that one of the purposes for which the person committed the crime was for the purpose of sexual gratification;

7. "Sexually violent offense" means:

- a. rape, pursuant to Section 1114 of Title 21 of the Oklahoma Statutes,
- b. rape by instrumentation, pursuant to Section 1111.1 of Title 21 of the Oklahoma Statutes,
- c. lewd, indecent proposals or acts against a child under sixteen (16), pursuant to Section 1123 of Title 21 of the Oklahoma Statutes,
- d. incest, pursuant to Section 885 of Title 21 of the Oklahoma Statutes,
- e. forcible sodomy, pursuant to Section 888 of Title 21 of the Oklahoma Statutes,
- f. any conviction for a felony offense in effect at any time prior to the effective date of this act that is comparable to a sexually violent offense as defined in subparagraphs a through e of this paragraph or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this paragraph,
- g. an attempt, conspiracy or criminal solicitation to commit a sexually violent offense as defined in this paragraph, or
- h. any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated;

8. "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who

suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence;

9. "Transitional release" means any halfway house, work release, or other placement designed to assist in the adjustment and reintegration of the person into the community once released from commitment; and

10. "Treatment staff" includes the staff of the Department of Corrections and the Department of Mental Health and Substance Abuse Services that provide treatment, supervision, other services for sexually violent predators.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-103 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. When it appears that a person may meet the criteria of a sexually violent predator, as defined in Section 19 of this act, the agency with jurisdiction shall give written notice of such to the district attorney of the county where that person was charged, sixty (60) days prior to:

1. The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

2. Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial; or

3. Release of a person who has been found not guilty by reason of insanity of a sexually violent offense.

B. The agency with jurisdiction shall inform the district attorney of the following:

1. The name of the person, identifying factors, anticipated future residence and offense history; and

2. Documentation of institutional adjustment and any treatment received.

C. The agency with jurisdiction, its employees, officials and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-104 of Title 43A, unless there is created a duplication in numbering, reads as follows:

When it appears that a person presently confined for a sexually violent offense meets the criteria of a sexually violent predator and is about to be released, the district attorney of the county where the person was convicted or charged or the Attorney General, if requested by the district attorney, may file a petition, within forty-five (45) days of the date the prosecuting attorney received the written notice by the agency of jurisdiction as provided in Section 20 of this act, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-105 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Upon the filing of a petition under Section 21 of this act, a judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be taken into custody.

B. Within seventy-two (72) hours after a person is taken into custody, the person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At the hearing, the court shall:

1. Verify the identity of the person; and

2. Determine whether probable cause exists to believe that the person is a sexually violent predator.

C. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

D. At the probable cause hearing, the person is entitled to the following:

1. To be represented by counsel, and if indigent, the court shall appoint counsel to assist the person;

2. To be allowed to present evidence on his or her behalf;

3. To be provided the opportunity to cross-examine witnesses who present testimony against such person; and

4. To be given access to and a copy of all petitions and reports in the court file.

E. If, at the conclusion of the hearing, a probable cause determination is made, the court shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-106 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Within forty-five (45) days after the completion of the probable cause hearing pursuant to Section 22 of this act, the court shall conduct a trial to determine whether the person is a sexually violent predator. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. Whenever any person is subjected to an examination under this act, the person may retain experts or professional persons to perform an examination on behalf of that person. When the person wishes to be examined by a qualified expert

or professional person chosen by that person, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the request of the person, shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on behalf of the person.

B. The person, the district attorney or the Attorney General shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four (4) days prior to trial. The jury shall be composed of six (6) persons having the qualifications of jurors in courts of record. If no demand is made, the trial shall be before the court.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-107 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the determination that the person is a sexually violent predator is made by a jury, the determination shall be by unanimous verdict of the jury. The verdict or court decision may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the Department of Corrections for control, care and treatment until such time as the person is no longer a threat to the public. Such control, care and treatment shall be provided at a facility operated by the Department of Corrections.

B. At all times, persons committed for control, care and treatment by the Department of Corrections pursuant to this act shall be kept in a secure facility, and such persons shall be

segregated at all times from any other person under the custody of the Department of Corrections.

C. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the release of the person.

D. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety (90) days of the previous trial.

E. If the person charged with a sexually violent offense has been found incompetent to stand trial, is about to be released from the custody of the state and commitment of the person is sought pursuant to this act, the court shall first hear evidence and determine whether the person did commit the act or acts charged. The rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on the following:

1. Whether the person did commit the act or acts charged;

2. The extent to which the incompetence or developmental disability of the person affected the outcome of the hearing, including its effect on the ability of the person to consult with and assist counsel and to testify on his or her own behalf;

3. The extent to which the evidence could be reconstructed without the assistance of the person; and

4. The strength of the evidence presented by the state.

F. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider

whether the person should be committed pursuant to the provisions of this section.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-108 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Each person committed under this act shall have a current examination of the mental condition of the person made once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified professional person to examine the person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The Director of the Department of Corrections shall provide the committed person with an annual written notice of the right of the person to petition the court for release over the objection of the Director. The notice shall contain a waiver of rights. The Director shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing.

B. If the court, at the hearing, determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be in transitional release, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The district attorney or the Attorney General, if requested by the district attorney, shall represent the state and shall have a right to a jury trial and to have the committed person

evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on his or her behalf, and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the mental abnormality or personality disorder of the committed person remains such that the person is not safe to be placed in transitional release, and if transitionally released, is likely to engage in acts of sexual violence.

C. If, upon conclusion of the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. If the court or jury determines otherwise, the court shall order that the person be placed in transitional release.

D. If the court determines that the person should be placed in transitional release, the Director of the Department of Corrections shall transfer the person to the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the Director may establish for the program and every directive of the treatment staff of the transitional release program.

E. At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form

delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

F. Upon the person being returned to the secure commitment facility from the transitional release program, notice shall be given by the Director of the Department of Corrections to the court. The court shall set the matter for a hearing within two (2) working days of receipt of notice of the person having been returned to the secure commitment facility and cause notice thereof to be given to the district attorney or Attorney General, the person and the Director. The state shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-109 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the Director of the Department of Corrections determines that the mental abnormality or personality disorder of a person has so changed that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the Director shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the district attorney. The court, upon receipt of the petition for transitional release, shall order a hearing within thirty (30) days. The district attorney or the Attorney General, if requested by the district attorney, shall represent the state and shall have the right to have the petitioner examined by an expert or professional

person chosen by the district attorney or Attorney General. The hearing shall be before a jury if demanded by the petitioner, district attorney or Attorney General. The burden of proof shall be upon the district attorney or Attorney General to show beyond a reasonable doubt that the mental abnormality or personality disorder of the petitioner remains such that the petitioner is not safe to be at large and, if placed in transitional release, is likely to engage in repeat acts of sexual violence.

B. If, upon conclusion of the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-110 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. During any period the person is in transitional release, the person, at least once every year and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the mental abnormality or personality disorder of the person has so changed as to warrant such person being considered for conditional release. The treatment staff shall forward a report of the examination to the court. The court shall review the report of the examination. If the court determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the mental abnormality or personality disorder of the person remains such that the person is not safe to be at large and that if placed on conditional release is likely to engage in repeat

acts of sexual violence. At the hearing, the person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the district attorney or the Attorney General, the person, and the Director of the Department of Corrections.

B. If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-111 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff, shall establish a treatment plan which the person shall be ordered to follow. The treatment plan may include, but shall not be limited to, the following provisions:

1. Determining where the person shall reside and with whom;
2. Taking prescribed medications;
3. Attending individual and group counseling;
4. Maintaining employment;
5. Having no contact with children;
6. Not frequenting facilities, locations or events in which children are likely to be present; and
7. Not engaging in activities in which contact with children is likely.

Upon a showing by the person that he or she accepts the treatment plan and is prepared to follow the treatment plan, the court shall release the person from the transitional release program.

B. After a minimum of five (5) years have passed in which the person has been free of violations of conditions of the treatment plan, the treatment staff, or other professionals directed by the court may examine the person to determine if the mental abnormality or personality disorder of the person has changed so as to warrant the person being considered for final discharge. The person preparing the report shall forward the report to the court. The court shall review the report. If the court determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the mental abnormality or personality disorder of the person remains such that the person is not appropriate for final discharge. At the hearing, the person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the district attorney or the Attorney General, the person and the Director of the Department of Corrections.

C. If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the Director for placement in a secure facility, transitional release program or conditional release program. Otherwise, the court shall order the person finally discharged. In the event the court does

not order final discharge of the person, the person shall retain the right to annual review.

D. At any time during which the person is on conditional release and the professional person designated by the court to monitor the compliance of the person with the treatment plan determines that the person has violated any material condition of that plan, that professional person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to a secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the district court is open for business after the verbal or telephonic request was made.

E. Upon the person being returned to a secure commitment facility from conditional release, notice shall be given by the Director to the court. The court shall set the matter for a hearing within two (2) business days of receipt of notice of the person having been returned to the secure commitment facility. The court shall provide notice to the district attorney or Attorney General, the person and the Director. The burden of proof shall be upon the state to show probable cause that the person violated the conditions of conditional release. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility, the transitional release program, or to conditional release. The court may order such other further conditions with which the person shall comply if the person is returned to either the transitional release program or to conditional release.

F. The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under the provisions of this act.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-112 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Any person for whom a petition, pursuant to this act, has been filed who is in the secure confinement of the state shall not be eligible for bail, bond, house arrest or any other measures releasing the person from the physical, protective custody of the state.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-113 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for care and treatment.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-114 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall prohibit a person from filing a petition for transitional release, conditional release or final discharge pursuant to this act. However, if a person has previously filed a petition for transitional release, conditional release or final discharge without the approval of the Director of the Department of Corrections and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the condition of the petitioner had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner has so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from the committed person without the approval of the Director, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon

frivolous grounds and, if so, shall deny the petition without a hearing.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-115 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Department of Corrections shall be responsible for all costs relating to the evaluation and treatment of persons committed to the custody of the Director under any provision of this act. Reimbursement may be obtained by the Director for the cost of care and treatment of persons committed to the custody of the Director.

B. The Department of Mental Health and Substance Abuse Services shall be responsible for providing all evaluation and treatment services for sexually violent predators who have been committed to the custody of the Department of Corrections.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-116 of Title 43A, unless there is created a duplication in numbering, reads as follows:

In addition to any other information required to be released under this act and prior to the release of a person committed under this act, the Director of the Department of Corrections shall give written notice of such release to any victim of the crime for which the person was convicted who is alive and whose address is known to the Director or, if the victim is deceased, to the family of the victim, if the address of the family is known to the Director. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of employment as a result of the failure to notify as required in this section.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-117 of Title 43A, unless there is created a duplication in numbering, reads as follows:

In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction, district attorney or Attorney General for the purpose of meeting the notice requirement, as provided in Section 20 of this act, and determining whether a person is or continues to be a sexually violent predator.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-118 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be part of the record but shall be sealed and opened only upon order of the court.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-119 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The district attorney shall file a special allegation of sexual motivation within ten (10) days after arraignment in every criminal case other than sex offenses as listed in paragraph 7 of Section 19 of this act and amendments thereto, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact-finder.

B. In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation

was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in paragraph 7 of Section 19 of this act.

C. The district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-120 of Title 43A, unless there is created a duplication in numbering, reads as follows:

If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or applications, and to this end, the provisions of this act are declared to be severable.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-115.3 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided by law, any applicant or licensee who is subject to registration pursuant to the Sex Offenders Registration Act and who is eligible for a driver license shall be issued a driver license for a period of no more than one (1) year. The applicant or licensee shall be subject to the provisions of this section for the duration of the registration period.

B. The expiration date of an initial license shall be no more than one (1) year from the last day of the month of issuance or no more than one (1) year from the last day of the birth month of the applicant immediately preceding the date of issuance, if requested by the applicant.

C. The expiration date of a renewal license shall be no more than one (1) year from the last day of the month of expiration of the previous license or no more than one (1) year from the last day of the birth month of the licensee immediately preceding the expiration date of the previous license, if requested by the licensee.

D. All other requirements for a driver license or renewal shall apply to persons subject to the provisions of this section.

SECTION 39. AMENDATORY 47 O.S. 2001, Section 751, as last amended by Section 2, Chapter 189, O.S.L. 2005 (47 O.S. Supp. 2005, Section 751), is amended to read as follows:

Section 751. A. 1. Any person who operates a motor vehicle upon the public roads, highways, streets, turnpikes or other public place or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings within this state shall be deemed to have given consent to a test or tests of such person's blood or breath, for the purpose of determining the alcohol concentration as defined in Section 756 of this title, and such person's blood, saliva or urine for determining the presence ~~and~~ or concentration of any other intoxicating substance therein as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings while under the influence of alcohol or other intoxicating substance, or the combined

influence of alcohol and any other intoxicating substance, or if the person is involved in a traffic accident that resulted in the immediate death or serious injury of any person and is removed from the scene of the accident to a hospital or other health care facility outside the State of Oklahoma before a law enforcement officer can effect an arrest.

2. A law enforcement officer, having reasonable grounds to believe that such person was operating or in actual physical control of a motor vehicle while under the influence may direct the administration of or administer the test or tests.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

B. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules of the Board of Tests for Alcohol and Drug Influence, hereinafter referred to as the Board, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence ~~and~~ or concentration of any other intoxicating substance therein.

In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules of the Board.

In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence ~~and~~ or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance.

C. In the event the person is incapable of submitting to and successfully completing, by reason of illness or injury or other physical disability, the test to be administered, an alternate test may be administered in accordance with the rules of the Board.

D. Any person who is unconscious or otherwise incapable of refusing to submit to a test of such person's blood or breath to determine the alcohol concentration thereof, or to a test of such person's blood, saliva or urine to determine the presence ~~and~~ or concentration of any other intoxicating substance therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.

An unconscious person who has been issued a citation by a law enforcement officer for one of the offenses listed in subsection A of this section is arrested for purposes of this section. The arresting officer must leave a copy of the citation with the arrested person which may be accomplished by handing it to the arrested person, or by leaving it with the personal effects of the arrested party, so as to inform the unconscious person of the arrest.

Any person who has been arrested for one of the offenses listed in subsection A of this section who is unconscious or injured and who requires immediate medical treatment as determined by a treating physician may be released on the person's own recognizance for medical reasons by the arresting officer. The arresting officer who releases an arrested person on the person's own recognizance must indicate the release on the face of the citation. Any person

released on his or her own recognizance for medical reasons shall remain at liberty pending the filing of charges.

E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, or the presence or concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance. The cost of such additional test shall be at the expense of the arrested person.

A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such specimens shall be treated in accordance with the rules applicable to the specimens obtained by an arresting officer.

F. When a law enforcement officer has determined that the blood alcohol content of an individual is to be tested for the presence ~~and~~ or concentration of alcohol, other intoxicating substance, or the combination of alcohol and any other intoxicating substance, the law enforcement officer shall inform the individual to be tested that the withdrawal of blood shall only be performed by certain medical personnel as provided for in Section 752 of this title.

SECTION 40. AMENDATORY 47 O.S. 2001, Section 752, as last amended by Section 15, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2005, Section 752), is amended to read as follows:

Section 752. A. Only a licensed medical doctor, licensed osteopathic physician, licensed chiropractic physician, registered nurse, licensed practical nurse, physician's assistant, certified by the State Board of Medical Licensure and Supervision, an employee of a hospital or other health care facility authorized by the hospital or health care facility to withdraw blood, or other qualified person authorized by the Board of Tests for Alcohol and Drug Influence acting at the request of a law enforcement officer may withdraw

blood for purpose of having a determination made of its concentration of alcohol or presence or concentration of other intoxicating substance. Only qualified persons authorized by the Board may collect breath, saliva or urine, or administer tests of breath under the provisions of this title.

B. If the person authorized to withdraw blood as specified in subsection A of this section is presented with a written statement:

1. Authorizing blood withdrawal signed by the person whose blood is to be withdrawn;

2. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has agreed to the withdrawal of blood;

3. Signed by a duly authorized peace officer that the person whose blood is to be withdrawn has been placed under arrest and that the officer has probable cause to believe that the person, while intoxicated, has operated a motor vehicle in such manner as to have caused the death or serious physical injury of another person, or the person has been involved in a traffic accident and has been removed from the scene of the accident that resulted in the death or great bodily injury, as defined in subsection B of Section 646 of Title 21 of the Oklahoma Statutes, of any person to a hospital or other health care facility outside the State of Oklahoma before the law enforcement officer was able to effect an arrest for such offense; or

4. In the form of an order from a district court that blood be withdrawn, the person authorized to withdraw the blood and the hospital or other health care facility where the withdrawal occurs may rely on such a statement or order as evidence that the person has consented to or has been required to submit to the clinical procedure and shall not require the person to sign any additional consent or waiver form. In such a case, the person authorized to perform the procedure, the employer of such person, and the hospital

or other health care facility shall not be liable in any action alleging lack of consent or lack of informed consent.

C. No person specified in subsection A of this section, no employer of such person, and no hospital or other health care facility where blood is withdrawn shall incur any civil or criminal liability as a result of the proper withdrawal of blood when acting at the request of a law enforcement officer by the provisions of Section 751 or 753 of this title, or when acting in reliance upon a signed statement or court order as provided in this section, if the act is performed in a reasonable manner according to generally accepted clinical practice. No person specified in subsection A of this section shall incur any civil or criminal liability as a result of the proper collection of breath, saliva or urine when acting at the request of a law enforcement officer under the provisions of Section 751 or 753 of this title or when acting pursuant to a court order.

D. The blood, breath, saliva or urine specimens obtained shall be tested by the appropriate test as determined by the Board, or tested by a laboratory that is exempt from the Board rules pursuant to Section 759 of this title, to determine the alcohol concentration thereof, or the presence and concentration of any other intoxicating substance which might have affected the ability of the person tested to operate a motor vehicle safely.

E. When blood is withdrawn or saliva or urine is collected for testing of its alcohol concentration or other intoxicating substance presence or concentration, at the request of a law enforcement officer, a sufficient quantity of the same specimen shall be obtained to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess blood, saliva or urine specimen shall be retained by a laboratory approved by the Board, in accordance with the rules and regulations of the Board, or by a laboratory that is exempt from the

Board rules pursuant to Section 759 of this title, for sixty (60) days from the date of collection. At any time within that period, the tested person or his or her attorney may direct that such blood, saliva or urine specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional blood, saliva or urine specimen prior to the completion of the independent analysis, except the analyst performing the independent analysis and agents of the analyst.

F. When a test of breath is performed for the purpose of determining the alcohol concentration thereof, except when such test is performed by means of an automated analyzer as designated by the Board, a sufficient quantity of breath, or of the alcohol content of a fixed or measured quantity of breath, shall be obtained, in accordance with the rules and regulations of the Board, to enable the tested person, at his or her own option and expense, to have an independent analysis made of such specimen. The excess specimen of breath, or of its alcohol content, shall be retained by the law enforcement agency employing the arresting officer, in accordance with the rules and regulations of the Board, for sixty (60) days from the date of collection. At any time within that period, the tested person, or his or her attorney, may direct that such specimen be sent or delivered to a laboratory of his or her own choosing and approved by the Board for an independent analysis. Neither the tested person, nor any agent of such person, shall have access to the additional specimen of breath, or of its alcohol content, prior to the completion of the independent analysis thereof, except the analyst performing the independent analysis and agents of the analyst.

G. The costs of collecting blood, breath, saliva or urine specimens for the purpose of determining the alcohol or other

intoxicating substance thereof, by or at the direction of a law enforcement officer, shall be borne by the law enforcement agency employing such officer. The cost of collecting, retaining and sending or delivering to an independent laboratory the excess specimens of blood, breath, saliva or urine for independent analysis at the option of the tested person shall also be borne by such law enforcement agency. The cost of the independent analysis of such specimen of blood, breath, saliva or urine shall be borne by the tested person at whose option such analysis is performed. The tested person, or his or her agent, shall make all necessary arrangements for the performance of such independent analysis other than the forwarding or delivery of such specimen.

H. Tests of blood or breath for the purpose of determining the alcohol concentration thereof, and tests of blood, saliva or urine for the purpose of determining the presence ~~and~~ or concentration of any other intoxicating substance therein, under the provisions of this title, whether administered by or at the direction of a law enforcement officer or administered independently, at the option of the tested person, on the excess specimen of such person's blood, breath, saliva or urine, to be considered valid and admissible in evidence under the provisions of this title, shall have been administered or performed in accordance with the rules and regulations of the Board, or performed by a laboratory that is exempt from the Board rules pursuant to Section 759 of this title.

I. Any person who has been arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle while under the influence of alcohol, any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance who is not requested by a law enforcement officer to submit to a test shall be entitled to have an independent test of his or her blood, breath, saliva or urine which is appropriate as

determined by the Board for the purpose of determining its alcohol concentration or the presence or concentration of any other intoxicating substance therein, performed by a person of his or her own choosing who is qualified as stipulated in this section. The arrested person shall bear the responsibility for making all necessary arrangements for the administration of such independent test and for the independent analysis of any specimens obtained, and bear all costs thereof. The failure or inability of the arrested person to obtain an independent test shall not preclude the admission of other competent evidence bearing upon the question of whether such person was under the influence of alcohol, or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance.

J. Any agency or laboratory certified by the Board or any agency or laboratory that is exempt from the Board rules pursuant to Section 759 of this title, which analyses breath, blood, or urine shall make available a written report of the results of the test administered by or at the direction of the law enforcement officer to:

1. The tested person, or his or her attorney;
2. The Commissioner of Public Safety; and
3. The Fatality Analysis Reporting System (FARS) analyst of the state, upon request.

The results of the tests provided for in this title shall be admissible in civil actions.

SECTION 41. AMENDATORY 47 O.S. 2001, Section 753, is amended to read as follows:

Section 753. If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance, or

the combined influence of alcohol and any other intoxicating substance, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has operated the motor vehicle in such a manner as to have caused the death or serious physical injury of any other person or persons. In such event, such test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for such test or tests. The sample shall be taken in a medically acceptable manner at a hospital or other suitable health care facility. The Commissioner of Public Safety, upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance and that the person had refused to submit to the test or tests, shall revoke the license to drive and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. If the person is a resident or a nonresident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety shall deny to the person the issuance of a license or permit for a period as provided by Section 6-205.1 of this title subject to a review as provided in Section 754 of this title. The revocation or denial shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer or by the Department as provided in Section 754 of this title.

SECTION 42. AMENDATORY 47 O.S. 2001, Section 756, is amended to read as follows:

Section 756. A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any

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

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

2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol.

However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than eight-hundredths (0.08) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public

health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and

3. Evidence that there was, at the time of the test, an alcohol concentration of eight-hundredths (0.08) or more shall be admitted as prima facie evidence that the person was under the influence of alcohol.

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

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

SECTION 43. AMENDATORY 47 O.S. 2001, Section 759, as last amended by Section 24, Chapter 418, O.S.L. 2004 (47 O.S. Supp. 2005, Section 759), is amended to read as follows:

Section 759. A. There is hereby re-created, to continue until July 1, 2006, in accordance with the provisions of the Oklahoma Sunset Law, ~~Section 3901 et seq. of Title 74 of the Oklahoma Statutes,~~ the Board of Tests for Alcohol and Drug Influence to be composed of the Dean of the University of Oklahoma College of Medicine, or the Dean's designee who shall receive an appointment in writing, as Chairman, and the Commissioner of Public Safety or a designee, the Director of the Oklahoma State Bureau of Investigation or a designee, the State Commissioner of Health or a designee, the Director of the Council on Law Enforcement Education and Training or a designee, one certified peace officer who is a member of a local law enforcement agency selected by the Oklahoma Sheriffs and Peace Officers Association and one person selected by the Oklahoma Association of Chiefs of Police, as members, to serve without pay other than reimbursement of necessary and actual expenses as

provided in the State Travel Reimbursement Act, ~~Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.~~ Each designee shall receive an appointment in writing which shall become a permanent part of the records of the Board. The Board is authorized to appoint a State Director of Tests for Alcohol and Drug Influence, an Administrative Assistant to the Board, and other employees, including but not limited to persons to conduct training and provide administrative assistance as necessary for the performance of its functions, subject to available funding and authorized full-time equivalent employee limitations. The Board may expend appropriated funds for purposes consistent with Sections 751 through 761 of this title and Sections 301 through 308 of Title 3 of the Oklahoma Statutes. The Legislature shall appropriate funds to the Department of Public Safety for the support of the Board of Tests For Alcohol and Drug Influence and its employees, if any. Upon the transfer of any employees from the Alcohol Drug Countermeasures Unit of the Department of Public Safety to the Board of Tests For Alcohol and Drug Influence on ~~the effective date of this act~~ July 1, 2003, all funds of the Unit appropriated and budgeted shall be transferred to the Board, and may be budgeted and expended to support the functions and personnel of the Board.

B. Collection and analysis of a person's blood, breath, saliva or urine, to be considered valid and admissible in evidence, whether performed by or at the direction of a law enforcement officer or at the request of the tested person, shall have been performed in compliance with the rules adopted by the Board of Tests for Alcohol and Drug Influence and by an individual possessing a valid permit issued by the Board for this purpose or shall have been performed by a laboratory accredited in Toxicology by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited by the American Board of Forensic Toxicology (ABFT).

C. The Board of Tests for Alcohol and Drug Influence is authorized to approve laboratories for the analysis, provided by the provisions of this title, of specimens of blood, breath, saliva and urine, and to administer a program for regular monitoring of such laboratories. The Board is authorized to prescribe uniform standards and conditions for, and to approve satisfactory methods, procedures, techniques, devices, equipment and records for tests and analyses and to prescribe and approve the requisite education and training for the performance of such tests and analyses. The Board shall establish standards for and ascertain the qualifications and competence of individuals to administer and conduct such tests and analyses, and to issue permits to laboratories and to individuals which shall be subject to suspension or revocation at the discretion of the Board. The Board is authorized to prescribe uniform standards, conditions, methods, procedures, techniques, devices, equipment and records for the collection, handling, retention, storage, preservation and delivery of specimens of blood, breath, saliva and urine obtained for the purpose of determining the alcohol concentration thereof or the presence ~~and~~ or concentration of any other intoxicating substance therein. The Board may take such other actions as may be reasonably necessary or appropriate to effectuate the purposes of Sections 751 through 761 of this title and Sections 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt, amend and repeal such other rules consistent with this chapter as the Board shall determine proper. Laboratories accredited in Toxicology by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited by the American Board of Forensic Toxicology (ABFT) are exempt from the provisions of this subsection.

D. The Board may set rules and charge appropriate fees for operations incidental to its required duties and responsibilities.

E. There is hereby created in the State Treasury a revolving fund for the Board of Tests for Alcohol and Drug Influence to be designated the "Board of Tests for Alcohol and Drug Influence Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of monies received pursuant to the provisions of subsection D of this section and any funds previously deposited in the Board of Tests for Alcohol and Drug Influence Revolving Fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Board of Tests for Alcohol and Drug Influence for operating expenses of the Board. Expenditures from the funds 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 44. AMENDATORY 57 O.S. 2001, Section 583, as last amended by Section 2, Chapter 123, O.S.L. 2005 (57 O.S. Supp. 2005, Section 583), is amended to read as follows:

Section 583. A. Any person who becomes subject to the provisions of the Sex Offenders Registration Act on or after November 1, 1989, shall be registered as follows:

1. With the Department of Corrections within three (3) business days of being convicted or receiving a suspended sentence or any probationary term, including a deferred sentence imposed in violation of subsection G of Section 991c of Title 22 of the Oklahoma Statutes, if the person is not incarcerated, or within three (3) business days of release of the person from a correctional institution, except as provided in subsection B of this section;

2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside for more than seven (7) days. The registration is required within three (3) days after entering the jurisdiction of the law enforcement authority; and

3. With the Department of Corrections and the local law enforcement authority no less than three (3) business days prior to abandoning or moving from the address of the previous registration.

For purposes of this section, "local law enforcement authority" means:

- a. the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state, or
- b. the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state, and
- c. the police or security department of any institution of higher learning within this state if the person:
  - (1) enrolls as a full-time or part-time student,
  - (2) is a full-time or part-time employee at an institution of higher learning, or
  - (3) resides or intends to reside or stay on any property owned or controlled by the institution of higher learning.

B. Any person who has been convicted of an offense or received a deferred judgment for an offense on or after November 1, 1989, in another jurisdiction, which offense if committed or attempted in this state, would have been punishable as one or more of the offenses listed in Section 582 of this title and who enters this state shall be registered as follows:

1. With the Department of Corrections when the person enters and intends to be in the state for any purpose for five (5) days or longer, has any type of full-time or part-time employment, with or without compensation for more than five (5) days, or is enrolled as a full-time or part-time student within this state. Such

registration is required within two (2) days after entering the state;

2. With the local law enforcement authority having jurisdiction in the area where the person intends to reside or to stay for more than five (5) days, has any type of full-time or part-time employment, with or without compensation for more than five (5) days, or is enrolled as a full-time or part-time student within this state. The registration is required with local law enforcement within two (2) days after entering the jurisdiction of the law enforcement authority;

3. With the Department of Corrections and the local law enforcement authority no less than three (3) business days prior to abandoning or moving from the address of the previous registration; and

4. For persons convicted of an offense or receiving a deferred judgment in another jurisdiction requiring registration, which offense if committed or attempted in this state, would have been punishable as one or more of the offenses listed in Section 582 of this title, shall maintain the registration for a period of ten (10) years from the date the person was initially required to register in Oklahoma, unless the person was convicted of a crime that would be classified as an habitual or aggravated sex offender within the State of Oklahoma, at which time registration shall continue at all times.

C. When a person has been convicted or received probation within the State of Oklahoma and the person is not classified as an habitual or aggravated sex offender, the person shall be required to register for a period of ten (10) years from the date of the completion of the sentence and the information received pursuant to the registration with the Department of Corrections required by this section shall be maintained by the Department of Corrections for at least ten (10) years from the date of the last registration.

D. When a person has been convicted or received probation within the State of Oklahoma and the person is not classified as an habitual or aggravated sex offender, the person shall be required to register for a period of ten (10) years from the date of completion of the sentence and the information received pursuant to the registration with the local law enforcement authority required by this section shall be maintained by such authority for at least ten (10) years from the date of the last registration.

E. When registering an offender as provided in this section the Department of Corrections or the local law enforcement agency having jurisdiction shall:

1. Inform the offender of the duty to register and obtain the information required for registration as described in this section;

2. Inform the offender that if the offender changes address, the offender shall give notice of the move and the new address to the Department of Corrections and to the local law enforcement authority in the location in which the offender previously resided in writing no later than three (3) days before the offender establishes residence or is temporarily domiciled at the new address;

3. Inform the offender that if the offender changes address to another state, the offender shall give notice of the move and shall register the new address with the Department of Corrections and with a designated law enforcement agency in the new state not later than ten (10) days before the offender establishes residency or is temporarily domiciled in the new state, if the new state has a registration requirement;

4. Inform the offender that if the offender participates in any full-time or part-time employment, in another state, with or without compensation for more than fourteen (14) days or an aggregate period exceeding thirty (30) days in a calendar year, then the offender has a duty to register as a sex offender in that state;

5. Inform the offender that if the offender enrolls in any type of school in another state as a full-time or part-time student then the offender has a duty to register as a sex offender in that state;

6. Inform the offender that if the offender enrolls in any school within this state as a full-time or part-time student, then the offender has a duty to register as a sex offender with the Department of Corrections and the local law enforcement authority;

7. Inform the offender that if the offender participates in any full-time or part-time employment at any school, with or without compensation, or participates in any vocational course or occupation at any school in this state, then the offender has a duty to notify the Department of Corrections and the local law enforcement authority in writing of such employment or participation at least three (3) days before commencing or upon terminating such employment or participation;

8. Inform the offender that if the offender graduates, transfers, drops, terminates or otherwise changes enrollment or employment at any school in this state, then the offender shall notify the Department of Corrections and the local law enforcement authority in writing of such change in enrollment or employment within three (3) days of the change; ~~and~~

9. Inform the offender that if the offender makes application for an original or renewal driver license, then the offender shall be subject to annual driver license renewal requirements as provided in Section 38 of this act; and

10. Require the offender to read and sign a form stating that the duty of the person to register under the Sex Offenders Registration Act has been explained.

F. For the purpose of this section, the "date of the completion of the sentence" means the day an offender completes all incarceration, probation and parole pertaining to the sentence.

G. Any person who resides in another state and who has been convicted of an offense or received a deferred judgment for an offense in this state, or in another jurisdiction, which offense if committed or attempted in this state would have been punishable as one or more of the offenses listed in Section 582 of this title, and who is the spouse of a person living in this state shall be registered as follows:

1. With the Department of Corrections when the person enters and intends to be in the state for any purpose for five (5) days or longer or an aggregate period of five (5) days or longer in a calendar year. Such registration is required within two (2) days after entering the state; and

2. With the local law enforcement authority having jurisdiction in the area where the person intends to reside or to stay within this state for two (2) days or longer. The registration is required with local law enforcement within two (2) days after entering the jurisdiction of the law enforcement authority.

SECTION 45. AMENDATORY Section 1, Chapter 223, O.S.L. 2003 (57 O.S. Supp. 2005, Section 590), is amended to read as follows:

Section 590. A. It is unlawful for any person registered pursuant to the ~~Oklahoma~~ Sex Offenders Registration Act to reside within a two-thousand-foot radius of any public or private school site or educational institution or any licensed child care facility.

B. Nothing in this provision shall require any person to sell or otherwise dispose of any real estate or home acquired or owned prior to the conviction of the person as a sex offender. Any person willfully violating the provisions of this section by intentionally moving into any neighborhood or to any real estate or home within the prohibited distance shall, upon conviction, be guilty of a misdemeanor punishable by a fine not to exceed Three Thousand Dollars (\$3,000.00) on a first offense, and any second or subsequent

offense shall be punishable by incarceration for one (1) year in the county jail in addition to such fine.

SECTION 46. REPEALER 21 O.S. 2001, Section 888, as amended by Section 4, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2005, Section 888), is hereby repealed.

SECTION 47. Sections 1 through 17 and Sections 38 through 46 of this act shall become effective July 1, 2006.

SECTION 48. Sections 18 through 37 of this act shall become effective July 1, 2007.

SECTION 49. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-2-10027      GRS      04/12/06