

ENGROSSED HOUSE  
BILL NO. 1880

By: Morgan (Fred) and Nance of  
the House

and

Laster and Coffee of the  
Senate

An Act relating to crimes and criminal procedure; amending Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2004, Section 51.1a), which relates to sex crimes against children; modifying penalty to conform with other laws; amending 21 O.S. 2001, Section 645, which relates to assault with a dangerous weapon; expanding scope of crime to include certain guns, weapons and devices; amending 21 O.S. 2001, Sections 741, as amended by Section 3, Chapter 275, O.S.L. 2004 and 745 (21 O.S. Supp. 2004, Section 741), which relate to kidnapping; modifying elements of kidnapping; amending 21 O.S. 2001, Section 852, which relates to omission to provide for a child; providing venue for prosecution of violations; amending 21 O.S. 2001, Section 852.1, which relates to child endangerment; expanding scope of what constitutes child endangerment; amending 21 O.S. 2001, Section 1167, as amended by Section 1, Chapter 179, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1167), which relates to destruction, mutilation, defacing, injury, or removal of cemetery structures; modifying penalty; amending 21 O.S. 2001, Sections 888 and 1115, as amended by Sections 9 and 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. 2004, Sections 888, 1115 and 1123), which relate to forcible sodomy, rape in the first degree and lewd or indecent proposals or acts against children; modifying penalties; amending 21 O.S. 2001, Section 1287, which relates to the use of a firearm while committing a felony; expanding scope of crime to include certain guns, weapons and devices; amending 21 O.S. 2001, Section 1550.2, which relates to fraudulent use of credit cards or debit cards; expanding means which are illegal; expanding scope of prohibition to include accounts; modifying penalty; amending 21 O.S. 2001, Section 1685, as amended by Section 1, Chapter 363, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1685), which relates to cruelty to animals; providing for misdemeanor and felony offenses and providing penalties therefor; specifying procedure for care of animal and assessment of charges and costs for such care; amending 22 O.S. 2001, Section 471.6, which relates to drug courts; requiring participation in active treatment and supervision periods; limiting total period of time an offender may participate in the drug court program; amending 22 O.S. 2001, Section 751, as amended by Section 5, Chapter 130, O.S.L. 2004 (22 O.S. Supp. 2004, Section 751), which relates

to admission of certain reports into evidence; expanding types of reports that may be admitted; requiring that the Horizontal Gaze Nystagmus test be received as evidence under certain circumstances; providing for testimony by the officer administering the test; amending 22 O.S. 2001, Section 979a, as last amended by Section 1, Chapter 455, O.S.L. 2004 (22 O.S. Supp. 2004, Section 979a), which relates to payment of jail costs by inmate; modifying distribution of amounts collected; amending 22 O.S. 2001, Section 982a, which relates to judicial modification of sentences; requiring the consent of the district attorney for certain applications for modification of sentence; amending 22 O.S. 2001, Section 1054, which relates to appeals and transcripts; requiring that transcript of trial be provided to the family of a murder victim; amending 37 O.S. 2001, Section 163.20, which relates to the sale or shipment of low-point beer; removing penalty pursuant to repealed sentencing schedule; amending 47 O.S. 2001, Section 10-104, which relates to the requirements in motor vehicle accidents resulting in injury or death; requiring driver in accident resulting in serious injury to submit to drug and alcohol testing; amending 47 O.S. 2001, Section 11-902, as last amended by Section 1, Chapter 548, O.S.L. 2004 (47 O.S. Supp. 2004, Section 11-902), which relates to persons under the influence of alcohol or other intoxicating substances, or a combination thereof who drive, operate or are in actual physical control of a motor vehicle; modifying certain penalties to pertain to persons who receive suspended sentences; modifying penalty for certain persons who transport children; modifying maximum age of child for transport violations; amending 47 O.S. 2001, Section 11-903, which relates to negligent homicide; modifying age of person who can be an offender; repealing 21 O.S. 2001, Sections 888, 1115 and 1123, as amended by Sections 4, 5 and 6, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2004, Sections 888, 1115 and 1123), which are duplicate sections which relate to certain sex crimes; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 455, O.S.L. 2002 (21 O.S. Supp. 2004, Section 51.1a), is amended to read as follows:

Section 51.1a Any person convicted of rape in the first degree, forcible sodomy, lewd molestation or sexual abuse of a child after having been convicted of either rape in the first degree, forcible

sodomy, lewd molestation or sexual abuse of a child shall be sentenced to life imprisonment or life without parole.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 645, is amended to read as follows:

Section 645. Every person who, with intent to do bodily harm and without justifiable or excusable cause, commits any assault, battery, or assault and battery upon the person of another with any sharp or dangerous weapon, or who, without such cause, shoots at another, with any kind of firearm ~~or~~, air gun, paintball gun or other means whatever, or who, without such cause, uses any taser weapon or other stun device upon the person of another, with intent to injure any person, although without the intent to kill such person or to commit any felony, upon conviction is guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding ten (10) years, or by imprisonment in a county jail not exceeding one (1) year.

SECTION 3. AMENDATORY 21 O.S. 2001, Section 741, as amended by Section 3, Chapter 275, O.S.L. 2004 (21 O.S. Supp. 2004, Section 741), is amended to read as follows:

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

~~First. To cause such other person to be confined or imprisoned in this state against the will of the other person; or~~

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

~~Third. To cause such person to be sold as a slave, or in any way held to service~~ holds a person in confinement against the will of such person, holds a person as a slave or in any way holds a person to service against the will of such person, or holds or confines a person for the purpose of extorting money, property, or a thing of value, shall be guilty of a felony punishable by

imprisonment in the State Penitentiary for not exceeding ten (10) years less than five (5) years. Upon any trial for a violation of this section, the consent thereto of the person kidnapped or confined, shall not be a defense, unless it appears satisfactorily to the jury, that such person was above the age of twelve (12) years, and that such consent was not extorted by threat, or by duress.

SECTION 4. AMENDATORY 21 O.S. 2001, Section 745, is amended to read as follows:

Section 745. ~~A. Every person who, without lawful authority, forcibly seizes and confines another, or inveigles or kidnaps another, for the purpose of extorting any money, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, or from any other person, or in any manner threatens either by written instrument, word of mouth, message, telegraph, telephone, by placing an ad in a newspaper, or by messenger, demands money or other thing of value, shall be guilty of a felony, and upon conviction shall suffer death or imprisonment in the State Penitentiary, not less than ten (10) years.~~

~~B.~~ Every person, not a principal in the kidnapping and not a relative or agent authorized by a relative of a kidnapped person, but who knowingly aids, assists, or participates in the disposing, receiving, possession or exchanging of any moneys, property or thing of value or advantage from the person so seized, confined, inveigled or kidnapped, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State Penitentiary, not less than five (5) years.

SECTION 5. AMENDATORY 21 O.S. 2001, Section 852, is amended to read as follows:

Section 852. A. Unless otherwise provided for by law, any parent, guardian, or person having custody or control of a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes who

willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child which is imposed by law, upon conviction, is guilty of a misdemeanor; provided, any person obligated to make child support payments who willfully and without lawful excuse becomes delinquent in said child support payments after September 1, 1993, and such delinquent child support accrues without payment by the obligor for a period of one (1) year, or exceeds Five Thousand Dollars (\$5,000.00) shall, upon conviction thereof, be guilty of a felony which is punishable in the same manner as any subsequent conviction pursuant to the provisions of this section. Any subsequent conviction pursuant to this section shall be a felony, punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. As used in this section, the duty to furnish medical attendance shall mean that the parent or person having custody or control of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; such parent or person having custody or control of a child is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted.

B. Any person who leaves the state to avoid providing necessary food, clothing, shelter, court-ordered monetary child support, or medical attendance for such child, upon conviction, shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; provided, that medical care shall be provided where permanent physical damage could result to such child; and that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated.

D. Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

E. Psychiatric and psychological testing and counseling are exempt from the provisions of this section.

F. Except for a third or subsequent conviction, all felony convictions herein shall be administered under the provisions of the Community Sentencing Act.

G. It is the duty of any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person, as such terms are defined by Section 3-403 of Title 43A of the Oklahoma Statutes, to provide for the treatment, as such term is defined by Section 3-403 of Title 43A of the Oklahoma Statutes, of such child. Any parent having legal custody of a child who is an alcohol-dependent person or a drug-dependent person who without having made a reasonable effort fails or willfully omits to provide for the treatment of such child shall be guilty of a misdemeanor. For the purpose of this subsection, the duty to provide for such treatment shall mean that the parent having legal custody of a child must provide for the treatment in such manner and on such occasions

as an ordinarily prudent person, solicitous for the welfare of a child, would provide.

H. Prosecutions for violations of this section of law shall lie in:

1. Any county where the child resides;

2. The county in which the court-ordered support was entered or registered pursuant to the provisions of the Uniform Interstate Family Support Act; or

3. The county in which the accused resides.

SECTION 6. AMENDATORY 21 O.S. 2001, Section 852.1, is amended to read as follows:

Section 852.1 A. A person who is the parent, guardian, or person having custody or control over a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes, commits child endangerment when the person knowingly permits physical or sexual abuse of a child or who knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Section 2-101 of Title 63 of the Oklahoma Statutes, or permits a child to be present at a location where a controlled dangerous substance is being consumed or used in the presence of the child. However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the abuse would result in substantial bodily harm to the person or the child.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title or Section 7006-1.1 of Title 10 of the Oklahoma Statutes.

C. Any person convicted of violating any provision of this section shall be guilty of a felony punishable by imprisonment for not more than four (4) years in the State Penitentiary or by the imposition of a fine of not more than Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 7. AMENDATORY 21 O.S. 2001, Section 1167, as amended by Section 1, Chapter 179, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1167), is amended to read as follows:

Section 1167. Every person who:

1. Shall willfully with malicious intent destroy, mutilate, deface, injure or remove any tomb, monument or gravestone, or other structure placed in any cemetery or private burying ground, or any fence, railing, or other work for the protection or ornament of any such cemetery or place of burial of any human being, or tomb, monument or gravestone, memento, veteran marker from any war, or memorial, or other structure aforesaid, or of any lot within a cemetery, or shall willfully or with malicious intent destroy, cut, break, or injure any tree, shrub or plant, within the limits thereof; or

2. Knowingly buys, sells or barter for profit any veteran marker from any war that is placed on a lot within a cemetery or place of burial of any human being, shall be deemed guilty of:

a. a misdemeanor, ~~and shall, upon conviction thereof, be punished by a fine of not less than Fifty Dollars (\$50.00), nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for a term not to exceed six (6) months, or by both such fine and imprisonment~~ if the damage, defacement or destruction causes a loss which is valued at less than Two Thousand Five Hundred Dollars (\$2,500.00), or

- b. a felony, if the damage, defacement or destruction causes a loss which is valued at Two Thousand Five Hundred Dollars (\$2,500.00) or more.

SECTION 8. AMENDATORY 21 O.S. 2001, Section 888, as amended by Section 9, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 888), is amended to read as follows:

Section 888. A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the State Penitentiary for a period of not more than twenty (20) years. Any person convicted of a ~~second~~ subsequent 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 any form of 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, and~~ shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been ~~twice~~ convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of said offenses, shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

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

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

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

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

SECTION 9. AMENDATORY 21 O.S. 2001, Section 1115, as amended by Section 10, Chapter 460, O.S.L. 2002 (21 O.S. Supp. 2004, Section 1115), is amended to read as follows:

Section 1115. Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, for a term of not less than five (5) years, life or life without parole. 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~~ second or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the State Penitentiary for life or life without parole.

SECTION 10. AMENDATORY 21 O.S. 2001, Section 1123, as last amended by Section 1, Chapter 159, O.S.L. 2003 (21 O.S. Supp. 2004, 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 subsection A of this section shall be punished by imprisonment in the State Penitentiary for not less than one (1) year nor more than twenty (20) years. The provisions of this section shall not apply unless the accused is at least three (3) years older than the victim. ~~Any person convicted of a second or subsequent violation of 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 subsection A of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court.~~ Any person convicted of a violation of this subsection after having been ~~twice~~ convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 7115 of Title 10 of the Oklahoma Statutes, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall not be eligible for any form of probation and shall be punished by imprisonment in the State Penitentiary for a term of life or life without parole.

B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16)

years of age or older, in a lewd and lascivious manner and without the consent of that person or when committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state.

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

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

SECTION 11. AMENDATORY 21 O.S. 2001, Section 1287, is amended to read as follows:

Section 1287.

#### USE OF FIREARM WHILE COMMITTING A FELONY

Any person who, while committing or attempting to commit a felony, possesses a pistol, shotgun or rifle or any other offensive weapon in such commission or attempt, whether the pistol, shotgun or rifle is loaded or not, or who possesses a blank or imitation pistol, shotgun or rifle capable of raising in the mind of one threatened with such device a fear that it is a real pistol, shotgun or rifle, or who possesses an air gun or carbon dioxide or other gas-filled weapon, electronic dart gun, paintball gun, taser weapon or other stun device, knife, dagger, dirk, switchblade knife, blackjack, ax, loaded cane, billy, hand chain or metal knuckles, in addition to the penalty provided by statute for the felony committed or attempted, upon conviction shall be guilty of a felony for possessing such weapon or device, which shall be a separate offense

from the felony committed or attempted and shall be punishable by imprisonment in the State Penitentiary for a period of not less than two (2) years nor for more than ten (10) years for the first offense, and for a period of not less than ten (10) years nor more than thirty (30) years for any second or subsequent offense.

Any person convicted of violating the provisions of this section after having been issued a concealed handgun license pursuant to the provisions of the Oklahoma Self-Defense Act shall have the license permanently revoked and shall be liable for an administrative fine of One Thousand Dollars (\$1,000.00) upon a hearing and determination by the Oklahoma State Bureau of Investigation that the person is in violation of the provisions of this section.

SECTION 12. AMENDATORY 21 O.S. 2001, Section 1550.2, is amended to read as follows:

Section 1550.2 Any person who knowingly uses or attempts to use in person or by telephone or other electronic means, for the purpose of obtaining credit, or for the purchase of goods, property or services, or for the purpose of obtaining cash advances in lieu of these items, or to deposit, obtain or transfer funds, ~~either a credit card or~~ a debit card, or an account for a credit card or a debit card, which has not been issued to such person or which is not used with the consent of the person to whom issued or a credit card ~~or~~ a debit card, or an account for a credit card or a debit card which has been revoked or cancelled by the issuer of such card and actual notice thereof has been given to such person, or a credit card ~~or~~ a debit card, or an account for a credit card or a debit card which is false, counterfeit or nonexistent is guilty of a misdemeanor and punishable by a fine of not more than Five Hundred Dollars (\$500.00) or imprisonment for not more than thirty (30) days or both such fine and imprisonment if the amount of the credit or purchase or funds deposited, obtained or transferred by such use does not exceed Five Hundred Dollars (\$500.00); ~~or, by a fine of not~~

~~less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) or imprisonment for not more than one (1) year or both such fine and imprisonment~~ if the amount of the credit or purchase or funds deposited, obtained or transferred by such use ~~exceeds~~ is Five Hundred Dollars (\$500.00) or more but less than One Thousand Dollars (\$1,000.00), the person shall be guilty of a felony and shall be punished by incarceration in the county jail for not more than one (1) year or by incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00); if the amount of the credit or purchase or funds deposited, obtained or transferred by such use is One Thousand Dollars (\$1,000.00) or more, the person shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term of not more than five (5) years, or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

SECTION 13. AMENDATORY 21 O.S. 2001, Section 1685, as amended by Section 1, Chapter 363, O.S.L. 2003 (21 O.S. Supp. 2004, Section 1685), is amended to read as follows:

Section 1685. A. Any person who shall willfully ~~or maliciously overdrive, overload, torture, destroy or kill, or cruelly beat or injure, maim or mutilate,~~ any animal in subjugation or captivity, whether wild or tame, and whether belonging to ~~himself~~ that person or to another person, or who shall cause, procure or permit any such animal to be beaten or injured, or who shall overdrive, overload, or deprive any such animal of necessary food, drink or shelter; ~~or who shall cause, procure or permit any such animal to be so overdriven, overloaded, tortured, destroyed or killed, or cruelly beaten or injured, maimed or mutilated, or deprived of necessary food, drink or shelter; or who shall willfully set on foot, instigate, engage in, or in any way further any act of cruelty to any animal, or any~~

act tending to produce such cruelty or who shall capture any animal for any purpose provided for in this subsection shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than one (1) year or a fine not exceeding One Thousand Dollars (\$1,000.00) or both such fine and imprisonment. Any second or subsequent conviction pursuant to this subsection shall be a felony and shall be punished as provided in subsection B of this section.

B. Any person who shall willfully or maliciously torture, inflict great bodily injury upon, maim, severely beat, cause the death of, or in any manner intentionally injure any animal in subjugation or captivity, whether wild or tame and whether belonging to that person or another person, or who shall cause, procure or permit any animal to be so injured or killed, or who shall overdrive, overload, or deprive any such animal of necessary food, drink or shelter, or who shall capture any animal for any purpose provided for in this subsection, shall be guilty of a felony and shall be punished by imprisonment in the State Penitentiary not exceeding five (5) years, ~~or by imprisonment in the county jail not exceeding one (1) year,~~ or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Any officer finding an animal ~~so~~ in circumstances provided for in subsection A or B of this section, or having cause to believe the animal is otherwise maltreated or abused shall ~~cause the same to be taken care of~~ arrange for the animal to be taken into emergency custody and cared for, and shall make application to the court for an order respecting the care and disposition of the animal, and the charges and costs therefor shall be a lien upon such animal, to be collected thereon as ~~upon a pledge or a lien~~ and assessed against the owner or person responsible for the condition of the animal, as determined by the court.

SECTION 14. AMENDATORY 22 O.S. 2001, Section 471.6, is amended to read as follows:

Section 471.6 A. The drug court judge shall conduct a hearing as required by subsection E of Section 471.4 of this title to determine final eligibility by considering:

1. Whether or not the offender voluntarily consents to the program requirements;

2. Whether or not to accept the offender based upon the findings and recommendations of the drug court investigation authorized by Section 471.4 of this title;

3. Whether or not there is a written plea agreement, and if so, whether the terms and conditions of the written negotiated plea between the district attorney, the defense attorney, and the offender are appropriate and consistent with the penalty provisions and conditions of other similar cases;

4. Whether or not there is an appropriate treatment program available to the offender and whether or not there is a recommended treatment plan; and

5. Any information relevant to determining eligibility; provided, however, an offender shall not be denied admittance to any drug court program based upon an inability to pay court costs or other costs or fees.

B. At the hearing to determine final eligibility for the drug court program, the judge shall not grant any admission of any offender to the program when:

1. The required treatment plan and plea agreement have not been completed;

2. The program funding or availability of treatment has been exhausted;

3. The treatment program is unwilling to accept the offender;

4. The offender was ineligible for consideration by the nature of a violent offense at the time of arrest, and the charge has been modified to meet the eligibility criteria of the program; or

5. The offender is inappropriate for admission to the program, in the discretion of the judge.

C. At the final eligibility hearing, if evidence is presented that was not discovered by the drug court investigation, the district attorney or the defense attorney may make an objection and may ask the court to withdraw the plea agreement previously negotiated. The court shall determine whether to proceed and overrule the objection, to sustain the objection and transfer the case for traditional criminal prosecution, or to require further negotiations of the plea or punishment provisions. The decision of the judge for or against eligibility and admission shall be final.

D. When the court accepts the treatment plan with the written plea agreement, the offender, upon entering the plea as agreed by the parties, shall be ordered and escorted immediately into the program. The offender must have voluntarily signed the necessary court documents before the offender may be admitted to treatment. The court documents shall include:

1. Waiver of the offender's rights to speedy trial;

2. A written plea agreement which sets forth the offense charged, the penalty to be imposed for the offense in the event of a breach of the agreement, and the penalty to be imposed, if any, in the event of a successful completion of the treatment program; provided, however, incarceration shall be prohibited when the offender completes the treatment program;

3. A written treatment plan which is subject to modification at any time during the program; and

4. A written performance contract requiring the offender to enter the treatment program as directed by the court and participate until completion, withdrawal, or removal by the court.

E. If admission into the drug court program is denied, the criminal case shall be returned to the traditional criminal docket and shall proceed as provided for any other criminal case.

F. At the time an offender is admitted to the drug court program, any bail or undertaking on behalf of the offender shall be exonerated.

G. The period of time during which an offender may participate in ~~the active treatment portion of~~ the drug court program shall be ~~not less than six (6) months nor more than twenty-four (24) months and may include a period of supervision not less than six (6) months nor more than one (1) year following the treatment portion of the program~~ exceed thirty-six (36) months and shall include, but not be limited to, the following:

1. Participation in the active treatment portion of the drug court program which shall not be less than six (6) months nor more than twenty-four (24) months, unless the active treatment is extended by the court for good cause; and

2. A period of supervision following the active treatment portion of the program, which shall not be less than six (6) months nor more than twelve (12) months; provided, in no event shall an offender participate in the drug court program for a total period of time exceeding thirty-six (36) months.

H. All participating treatment providers shall be certified by the Department of Mental Health and Substance Abuse Services and shall be selected and evaluated for performance-based effectiveness annually by the Department of Mental Health and Substance Abuse Services. Treatment programs shall be designed to be completed within twelve (12) months and shall have relapse prevention and evaluation components.

~~H.~~ I. The drug court judge shall order the offender to pay court costs, treatment costs, drug testing costs, a program user fee not to exceed Twenty Dollars (\$20.00) per month, and necessary

supervision fees, unless the offender is indigent. The drug court judge shall establish a schedule for the payment of costs and fees. The cost for treatment, drug testing, and supervision shall be set by the treatment and supervision providers respectively and made part of the court's order for payment. User fees shall be set by the drug court judge within the maximum amount authorized by this subsection and payable directly to the court clerk for the benefit and administration of the drug court program. Treatment, drug testing, and supervision costs shall be paid to the respective providers. The court clerk shall collect all other costs and fees ordered. The remaining user fees shall be remitted to the State Treasurer by the court clerk for deposit in the Department of Mental Health and Substance Abuse Services' Drug Abuse Education and Treatment Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma Statutes. Court orders for costs and fees pursuant to this subsection shall not be limited for purposes of collection to the maximum term of imprisonment for which the offender could have been imprisoned for the offense, nor shall any court order for costs and fees be limited by any term of probation, parole, supervision, treatment, or extension thereof. Court orders for costs and fees shall remain an obligation of the offender with court monitoring until fully paid.

SECTION 15. AMENDATORY 22 O.S. 2001, Section 751, as amended by Section 5, Chapter 130, O.S.L. 2004 (22 O.S. Supp. 2004, Section 751), is amended to read as follows:

Section 751. A. At any hearing prior to trial or at a forfeiture hearing:

1. A report of the findings of the laboratory of the Oklahoma State Bureau of Investigation;

2. The report of investigation or autopsy report of the medical examiner;

3. A laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof;

4. A report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as to the existence or status of any license or permit to sell, transfer, or possess precursor substances; ~~or~~

5. A report from the Department of Public Safety as to the handling and storage of evidence;

6. A medical report or record from a physician; or

7. A financial report, statement or document from a financial institution,

which has been made available to the accused by the office of the district attorney at least five (5) days prior to the hearing, with reference to all or any part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If a report is deemed relevant by the state or the accused, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders the person making the report to appear. If the accused is not served with a report, by the district attorney, within five (5) days prior to a hearing, the accused may be allowed a continuance of the portion of the hearing to which the report is relevant, to allow at least five (5) days preparation subsequent to the district attorney's furnishing of the report.

B. When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory without an order of a district court. The defendant shall additionally be required to submit to

the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

C. For purposes of the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof or a report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as to the existence or status of any license or permit to sell, transfer, or possess precursor substances:

1. The court, upon motion of the state or the accused, shall order the attendance of any person preparing a report submitted as evidence in any hearing prior to trial or forfeiture hearing, when it appears there is a substantial likelihood that material evidence not contained in such report may be produced by the testimony of the person having prepared the report;

2. The motion shall be filed and notice of the hearing on the motion to order the attendance of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control shall be given to the medical examiner's office. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required; and

3. If within five (5) days prior to the hearing or during a hearing a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the medical examiner's office, the motion is heard, and, if sustained, testimony ordered can be given.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 751.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

The Horizontal Gaze Nystagmus (HGN) test shall be received as evidence at any hearing or trial as an indicator of whether or not a person was intoxicated at the time of arrest, if accompanied by another indicator of intoxication. If the preceding burden is met by the prosecution, the officer may testify about the HGN test results based on the training and experience of the officer in the administration of the test.

SECTION 17. AMENDATORY 22 O.S. 2001, Section 979a, as last amended by Section 1, Chapter 455, O.S.L. 2004 (22 O.S. Supp. 2004, Section 979a), is amended to read as follows:

Section 979a. A. The municipal attorney or district attorney shall ask the court to require a person confined in a city or county jail, for any offense, to pay the jail facility the costs of incarceration, both before and after conviction, upon conviction or receiving a deferred sentence. The costs of incarceration shall be collected by the clerk of the court as provided for collection of other costs and fines, which shall be subject to review under the procedures set forth in Section VIII of the Rules of the Oklahoma Court of Criminal Appeals, Chapter 18, Appendix of Title 22. Costs of incarceration shall include booking, receiving and processing out, housing, food, clothing, medical care, dental care, and psychiatric services. The costs for incarceration shall be an amount equal to the actual cost of the services and shall be determined by the chief of police for city jails, by the county sheriff for county jails or by contract amount, if applicable. The cost of incarceration shall be paid by the court clerk when collected to the municipality, county or other public entity responsible for the operation of all jail facilities where the person is held before and after conviction. ~~Five percent (5%)~~ Ten

percent (10%) of any amount collected by the court clerk shall be paid to the municipal attorney's or district attorney's office, ~~five percent (5%) shall be transmitted by the court clerk to the District Attorneys Council Revolving Fund, established by Section 215.28 of Title 19 of the Oklahoma Statutes, to be used to fund personnel to process victim compensation claims in district offices designated by the Crime Victims Compensation Board~~ and the remaining amount shall be paid to the municipality, the sheriff's service fee account or, if the sheriff does not operate the jail facility, the remaining amount shall be deposited with the public entity responsible for the operation of the jail facility where the person is held. The court shall order the defendant to reimburse all actual costs of incarceration, upon conviction or upon entry of a deferred judgment and sentence unless the defendant is a mentally ill person as defined by Section 1-103 of Title 43A of the Oklahoma Statutes. The sheriff shall give notice to the defendant of the actual costs owed before any court-ordered costs are collected. The defendant shall have an opportunity to object to the amount of costs solely on the grounds that the number of days served is incorrect. If no objection is made, the costs may be collected in the amount stated in the notice to the defendant. The sheriff, municipality or other public entity responsible for the operation of the jail may collect costs of incarceration ordered by the court from the inmate's jail account. If the funds collected from the inmate's jail account are insufficient to satisfy the actual incarceration costs ordered by the court, the sheriff, municipality or other public entity responsible for the operation of the jail is authorized to collect the remaining balance of the incarceration costs by civil action. When the sheriff, municipality or other public entity responsible for the operation of the jail collects any court-ordered incarceration costs from an inmate's jail account or by criminal or

civil action, the court clerk shall be notified of the amount collected.

B. Any offender receiving routine or emergency medical services or medications or injured during the commission of a felony or misdemeanor offense and administered any medical care shall be required to reimburse the sheriff, municipality or other public entity responsible for the operation of the jail, the full amount paid by the sheriff, municipality or other public entity responsible for the operation of the jail for any medical care or treatment administered to such offender during any period of incarceration or preceding incarceration in that jail facility. The sheriff, municipality or other public entity responsible for the operation of the jail may deduct the costs of medical care and treatment as authorized by Section 531 of Title 19 of the Oklahoma Statutes. If the funds collected from the inmate's jail account are insufficient to satisfy the actual medical costs paid, the sheriff, municipality or other public entity responsible for the operation of the jail shall be authorized to collect the remaining balance of the medical care and treatment by civil actions.

C. Costs of incarceration shall be a debt of the inmate owed to the municipality, county, or other public entity responsible for the operation of the jail and may be collected as provided by law for collection of any other civil debt or criminal penalty. Jail fees shall not exceed Three Thousand Dollars (\$3,000.00).

SECTION 18. AMENDATORY 22 O.S. 2001, Section 982a, is amended to read as follows:

Section 982a. A. Any time within twelve (12) months after a sentence is imposed or within twelve (12) months after probation has been revoked, the court imposing sentence or revocation of probation may modify such sentence or revocation by directing that another penalty be imposed, if the court is satisfied that the best interests of the public will not be jeopardized. This section shall

not apply to convicted felons who have been in confinement in any state prison system for any previous felony conviction during the ten-year period preceding the date that the sentence this section applies to was imposed. If the defendant's plea of guilty or nolo contendere was the product of a plea agreement between the state and the defendant, the district attorney must first consent to the application for modification of sentence for the application to be heard by the court.

B. The Department of Corrections shall provide the court imposing sentence or revocation of probation with the report by the Lexington Assessment and Reception Center and any other information the Department can supply on the inmate. The court shall consider such reports when modifying the sentence or revocation of probation.

C. If the court considers modification of the sentence or revocation of probation, a hearing shall be made in open court. The clerk of the court imposing sentence or revocation of probation shall give notice of the hearing and provide a copy of the report by the Lexington Assessment and Reception Center to the inmate, the inmate's legal counsel and the district attorney of the county in which the inmate was convicted not less than twenty-one (21) days prior to the hearing.

D. If an appeal is taken which results in a modification of the sentence or revocation of probation of the defendant, such sentence may be further modified in the manner hereinbefore described within twelve (12) months after the receipt by the clerk of the district court of the mandate from the Supreme Court or the Court of Criminal Appeals.

SECTION 19. AMENDATORY 22 O.S. 2001, Section 1054, is amended to read as follows:

Section 1054. A. In misdemeanor and felony cases the appeal must be perfected within ninety (90) days from the date of the

pronouncement of the judgment and sentence. A transcript in both felony and misdemeanor cases must be filed as hereinafter directed.

B. It shall be the duty of the clerk of the court from which notice of appeal has been given, and in which the original record and transcript are to be filed, to notify the clerk of the Court of Criminal Appeals when the original record and transcripts are assembled for transmission to the Court of Criminal Appeals, and the parties, or their counsel, have been advised to that effect. The clerk of the Court of Criminal Appeals shall, within ten (10) days after the receipt of the district court clerk's notice of the completion of the record, issue a notice to transmit the original and one certified copy of the appeal records to the clerk of the Court of Criminal Appeals and one certified copy of the original records and transcripts to either the Oklahoma Indigent Defense System, pursuant to Section 1362 of this title, or the retained or other appointed counsel of record on appeal.

C. When the Oklahoma Indigent Defense System or another attorney has been appointed to represent an indigent defendant in an application for post-conviction relief ~~where~~ and the defendant has received one or more sentences of death, the notice to the district court clerk shall require a certified copy be sent to the Oklahoma Indigent Defense System or the other attorney in addition to the copy provided for direct appeal and that one certified copy be sent to the family of the murder victim in the case being appealed.

SECTION 20. AMENDATORY 37 O.S. 2001, Section 163.20, is amended to read as follows:

Section 163.20 A. Any person who shall engage in the sale of low-point beer in violation of the provisions of Sections 163.1 through 163.25 of this title shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished for such misdemeanor as provided for by the general statutes of this state.

~~B. Any person who engages in the sale or shipping of low point beer in violation of the provisions of Section 1 of this act on or after the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes, upon conviction, shall be guilty of a Schedule C felony if the sale or delivery is made to a person under twenty-one (21) years of age, or a misdemeanor if the sale or delivery is made to a person twenty-one (21) years of age or older.~~ Any person who engages in the sale or shipping of low-point beer in violation of the provisions of Section ~~±~~ 163.26 of this act ~~before the effective date of Section 20.1 of Title 21 of the Oklahoma Statutes~~ title shall be guilty of a felony punishable by imprisonment for not more than two (2) years, if the sale or delivery is made to a person under twenty-one (21) years of age, or a misdemeanor, if the sale or delivery is made to a person twenty-one (21) years of age or older. The fine for a violation of Section ~~±~~ 163.26 of this ~~act~~ title shall be not more than Five Thousand Dollars (\$5,000.00). In addition, if such person holds a permit issued by the Oklahoma Tax Commission pursuant to Section 163.7 of this title, the permit shall be revoked pursuant to the procedures set forth in Section 163.18H of this title.

SECTION 21. AMENDATORY 47 O.S. 2001, Section 10-104, is amended to read as follows:

Section 10-104. A. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his correct name, address and registration number of the vehicle he is driving, and shall upon request exhibit his driver license and his security verification form, as defined in Section 7-600 of this title, to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical

treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. Any driver who provides information required by this section which is intentionally inaccurate shall be subject to the provisions of Section 10-103 of this title.

B. Any driver of any vehicle involved in an accident who could be cited for any traffic offense where said accident resulted in the immediate death or serious injury of any person shall submit to drug and alcohol testing as soon as practicable after such accident occurs. The traffic offense violation shall constitute probable cause for purposes of Section 752 of this title and the procedures found in Section 752 of this title shall be followed to determine the presence of alcohol or controlled dangerous substances within the driver's blood system.

SECTION 22. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section 1, Chapter 548, O.S.L. 2004 (47 O.S. Supp. 2004, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state, whether upon public roads, highways, streets, turnpikes, other public places or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings, who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of eight-hundredths (0.08) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any intoxicating substance other than alcohol which may render such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance which may render such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

C. 1. Any person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall follow all recommendations made in the assessment and evaluation and be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year. Any person convicted of a violation for a first offense shall be fined not more than One Thousand Dollars (\$1,000.00).

2. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of any law of another state prohibiting the offense provided in subsection A of this section, is convicted of a second offense pursuant to the provisions of this section or has a prior conviction in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section and within ten (10) years of such municipal conviction is convicted pursuant to the provision of this section shall be deemed guilty of a felony and shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance

Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- ~~a. follow all recommendations made in the assessment and evaluation with a minimum of twenty-eight (28) days of treatment followed by thirty (30) days of aftercare at the defendant's expense, or~~
- ~~b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00), or~~
- ~~c. treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph; provided, if the court suspends, in whole or in part, any sentence imposed on the defendant, the court may order the defendant to follow all recommendations made in the assessment and evaluation with a minimum of twenty-eight (28) days of treatment followed by thirty (30) days of aftercare at the expense of the defendant.~~

However, if the ordered treatment ~~in subparagraph a of this paragraph~~ does not include residential or inpatient treatment for a period of not less than five (5) days, the person shall serve a term of imprisonment of at least five (5) days.

3. Any person who is convicted of a second felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

- ~~a. follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum of twenty-eight (28) days of residential or inpatient~~

~~treatment followed by ninety (90) days of aftercare at the defendant's expense, two hundred forty (240) hours of community service following the aftercare and use of an ignition interlock device, or~~

~~b.~~ placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00), ~~or~~

~~c.~~ ~~treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph; provided, if the court suspends, in whole or in part, any sentence imposed on the defendant, the court may order the defendant to follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum of twenty-eight (28) days of residential or inpatient treatment followed by ninety (90) days of aftercare at the defendant's expense, two hundred forty (240) hours of community service following the aftercare and use of an ignition interlock device.~~

However, if the ordered ~~treatment in subparagraph a of this paragraph~~ does not include residential or inpatient treatment for a period of not less than ten (10) days, the person shall serve a term of imprisonment of at least ten (10) days.

4. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

~~a.~~ ~~follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum~~

~~of twenty-eight (28) days residential or inpatient treatment followed by not less than one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and use of an ignition interlock device for a minimum of thirty (30) days, or~~

~~b.~~ placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00), ~~or~~

~~e.~~ ~~treatment, imprisonment and a fine within the limitations prescribed in subparagraphs a and b of this paragraph;~~ provided, if the court suspends, in whole or in part, any sentence imposed on the defendant, the court may order the defendant to follow all recommendations made in the assessment and evaluation at the defendant's expense with a minimum of twenty-eight (28) days residential or inpatient treatment followed by one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and use of an ignition interlock device for a minimum of thirty (30) days.

However, if the person does not undergo residential or inpatient treatment pursuant to subparagraph a of this paragraph the person shall serve a term of imprisonment of at least ten (10) days.

5. Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other

intoxicating substance, is convicted of a violation of this section shall be deemed guilty of a felony.

6. Provided, however, a conviction from another state shall not be used to enhance punishment pursuant to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than eight-hundredths (0.08).

7. In any case in which a defendant is charged with a second or subsequent driving under the influence of alcohol or other intoxicating substance offense within any municipality with a municipal court other than a court of record, the charge shall be presented to the county's district attorney and filed with the district court of the county within which the municipality is located.

D. Any person who is convicted of a violation of driving under the influence with a blood or breath alcohol concentration of fifteen-hundredths (0.15) or more shall be deemed guilty of aggravated driving under the influence. A person convicted of aggravated driving under the influence shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall comply with all recommendations and shall be punished by incarceration or imprisonment for a term of not less than twice the minimum punishment and not more than the maximum punishment prescribed by law for the crime charged as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this section and a fine of not more than Five Thousand Dollars (\$5,000.00). In addition, the court shall order mandatory residential or inpatient treatment for a minimum of twenty-eight (28) days followed by not less than one (1) year of supervision, periodic testing, and aftercare at the defendant's expense, four hundred eighty (480) hours of community service following the period of aftercare, and an ignition interlock

device for a minimum of thirty (30) days. Nothing in this subsection shall preclude the defendant from being charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

E. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or

2. A correctional facility operated by the Department of Corrections with assignment to substance abuse treatment.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked driving privilege when the person meets the statutory requirements which affect the existing driving privilege.

G. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and assessment program offered by a certified assessment agency or certified assessor for the purpose of evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation and assessment. The fee for an evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the

time the person is evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit from a ten-hour or twenty-four-hour alcohol and drug substance abuse course or a treatment program or both, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to follow all recommendations identified by the evaluation and assessment and ordered by the court. No person, agency or facility operating an evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this section for any treatment program or substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or substance abuse service offered by such person, agency or facility. If a person is sentenced to imprisonment in the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation and assessment report submitted to the court pursuant to the provisions of this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment required by this subsection. If the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment, the Department of Public Safety shall not reinstate

driving privileges until the defendant has complied in full with such order. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

H. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

I. Any person who is found guilty of a second or subsequent violation of the provisions of this section, shall be ordered by the court to have installed, after the conclusion of the mandatory revocation period pursuant to Section 6-205.1 of this title, on every motor vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person pursuant to Sections 754.1 and 755 of this title, an ignition interlock device approved by the Department of Public Safety at the person's own expense for a period of not less than six (6) months nor more than three (3) years. The person shall pay the monthly maintenance fee for each ignition interlock device installed pursuant to this subsection. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

J. Any person who is found guilty of a felony violation of the provisions of this section may be required to submit to electronic

monitoring as authorized and defined by Section 991a of Title 22 of the Oklahoma Statutes.

K. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of law of another state prohibiting the offense provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection G of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in and successfully complete all recommendations from the evaluation, such as an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

L. Any person who is found guilty of a violation of the provisions of this section who has been sentenced by the court to perform any type of community service shall not be permitted to pay a fine in lieu of performing the community service.

M. When a person is found guilty of a violation of the provisions of this section, the court shall order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of Title 63 of the Oklahoma Statutes, upon collection.

N. In any case in which a person is convicted of violating the provisions of this section and who was transporting in the motor vehicle a child ~~fifteen (15)~~ thirteen (13) years of age or younger, the fine shall be enhanced to double the amount of the whole sum otherwise prescribed; provided, if the driver of the vehicle is

eighteen (18) years of age or older, such person, upon conviction, shall be guilty of a felony and shall be sentenced to:

1. Placement in the custody of the Department of Corrections for not less than one (1) year and not more than five (5) years and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00) for a first offense;

2. Placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00) for a second offense; or

3. Placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00) for a third or subsequent offense.

SECTION 23. AMENDATORY 47 O.S. 2001, Section 11-903, is amended to read as follows:

Section 11-903. (a) When the death of any person ensues within one (1) year as a proximate result of injury received by the driving of any vehicle by any person ~~sixteen (16) years of age or older~~ in reckless disregard of the safety of others, the person so operating such vehicle shall be guilty of negligent homicide.

(b) Any person convicted of negligent homicide shall be punished by imprisonment in the county jail for not more than one (1) year or by fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

(c) The Commissioner of Public Safety shall revoke the license or permit to drive and any nonresident operating privilege of any person convicted of negligent homicide.

SECTION 24. REPEALER 21 O.S. 2001, Sections 888, 1115 and 1123, as amended by Sections 4, 5 and 6, Chapter 455, O.S.L.

2002 (21 O.S. Supp. 2004, Sections 888, 1115 and 1123), are hereby repealed.

SECTION 25. This act shall become effective November 1, 2005.

Passed the House of Representatives the 23rd day of February, 2005.

\_\_\_\_\_  
Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Presiding Officer of the Senate