

ENROLLED SENATE  
BILL NO. 1755

By: Riley of the Senate

and

Perry, Duncan, Nance,  
Ingmire, Brannon, Dank,  
DePue, Hamilton, Miller  
(Doug), Smithson, Terrill,  
Wesselhoft and Bengé of the  
House

An Act relating to sex offenders and children; amending 21 O.S. 2001, Section 644, as last amended by Section 9, Chapter 348, O.S.L. 2005 (21 O.S. Supp. 2005, Section 644), which relates to domestic abuse; modifying scope of treatment or counseling requirement; updating language; amending 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), which relates to lewd molestation; increasing certain penalty; modifying language; amending Section 1, Chapter 209, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1125), which relates to safety zone; adding locations to certain safety zone; prohibiting sex offenders from being within certain distance of safety zone; increasing penalties; adding certain exemption; amending 22 O.S. 2001, Section 60.6, as last amended by Section 16, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2005, Section 60.6), which relates to violation of protection orders; increasing penalty for second violations; conforming language; amending 22 O.S. 2001, Section 60.9, which relates to warrantless arrests; modifying reference; requiring arrest upon certain conditions; amending 22 O.S. 2001, Section 991a, as last amended by Section 3 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, which relates to powers of the court; requiring certain supervision of sex offenders for duration of registration period; prohibiting waiver or exemption from registration for sex offenders; requiring consideration of certain evidence in cases of child custody, guardianship and visitation; setting certain standard for evidence; establishing a rebuttable presumption upon presentation of certain evidence; amending 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), which relates to sex offender registration; clarifying calculation of time for required registration; amending 57 O.S. 2001, Section 584, as last amended by Section 1 of Enrolled Senate Bill No.

1707 of the 2nd Session of the 50th Oklahoma Legislature, which relates to sex offender registration; modifying time period for verification of certain address; requiring certain information on occupants where sex offender resides; amending 57 O.S. 2001, Section 587, which relates to failure to register as a sex offender; setting penalty for failure to comply with certain guidelines; amending Section 1, Chapter 223, O.S.L. 2003 (57 O.S. Supp. 2005, Section 590), which relates to prohibition for sex offenders to live within certain radius of certain places; adding prohibited places; determining calculation of certain distance; exempting certain nonprofit from certain distance prohibition; increasing penalty for certain violation; setting penalty for second or subsequent violation; prohibiting sex offenders from residing in certain dwelling; setting penalties; construing certain provisions; prohibiting certain contracts for housing sex offenders; prohibiting certain housing of sex offenders in certain locations; defining terms; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 644, as last amended by Section 9, Chapter 348, O.S.L. 2005 (21 O.S. Supp. 2005, Section 644), is amended to read as follows:

Section 644. A. Assault shall be punishable by imprisonment in a county jail not exceeding thirty (30) days, or by a fine of not more than Five Hundred Dollars (\$500.00), or by both such fine and imprisonment.

B. Assault and battery shall be punishable by imprisonment in a county jail not exceeding ninety (90) days, or by a fine of not more than One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

C. Any person who commits any assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall be guilty of domestic abuse. Upon conviction, the defendant shall be punished by imprisonment in the county jail for not more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Upon conviction for a second or subsequent offense, the person shall be punished by imprisonment in the custody of the Department of Corrections for not

more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall not apply to any second or subsequent offense.

D. Any person convicted of domestic abuse as defined in subsection C of this section that results in great bodily injury to the victim shall be guilty of a felony and punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years, or by imprisonment in the county jail for not more than one (1) year. The provisions of Section 51.1 of this title shall apply to any second or subsequent conviction of a violation of this subsection.

E. Any person convicted of domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the county jail for not less than six (6) months nor more than one (1) year, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment. Any person convicted of a second or subsequent domestic abuse as defined in subsection C of this section that was committed in the presence of a child shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, or by a fine not exceeding Seven Thousand Dollars (\$7,000.00), or by both such fine and imprisonment. The provisions of Section 51.1 of this title shall not apply to any second or subsequent offense. For every conviction of domestic abuse, the court shall:

1. Specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;

2. a. The court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner ~~or a domestic abuse counseling program approved by the court~~ or a domestic abuse treatment program certified by the Attorney General. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.

- b. A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the

defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;

3. a. The court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.
- b. The court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;

4. The court may set subsequent or other review hearings as the court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;

5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 7003-8.6 and

7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

The defendant may be required to pay all or part of the cost of the counseling or treatment, in the discretion of the court.

F. As used in subsection E of this section, "in the presence of a child" means in the physical presence of a child; or having knowledge that a child is present and may see or hear an act of domestic violence. For the purposes of subsections C and E of this section, "child" may be any child whether or not related to the victim or the defendant.

G. For the purposes of subsections C and E of this section, any conviction for assault and battery against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or any person living in the same household as the defendant, shall constitute a sufficient basis for a felony charge:

1. If that conviction is rendered in any state, county or parish court of record of this or any other state; or

2. If that conviction is rendered in any municipal court of record of this or any other state for which any jail time was served; provided, no conviction in a municipal court of record entered prior to November 1, 1997, shall constitute a prior conviction for purposes of a felony charge.

H. Any person who commits any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation against a current or former spouse, a present spouse of a former spouse, parents, a foster parent, a child, a person otherwise related by blood or marriage, a person with whom the defendant is in a dating relationship as defined by Section 60.1 of Title 22 of the Oklahoma Statutes, an individual with whom the defendant has had a child, a person who formerly lived in the same household as the defendant, or a person living in the same household as the defendant shall, upon conviction, be guilty of domestic abuse by strangulation 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 three (3) years, or by a fine of not more than Three Thousand Dollars (\$3,000.00), or by both such fine and imprisonment. Upon a second or subsequent conviction, the defendant shall be punished by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a period of not less than three (3) years nor more than ten (10) years, or by a fine of not more than Twenty Thousand Dollars (\$20,000.00), or by both such fine and imprisonment. As used in this subsection, "strangulation" means a form of asphyxia characterized by closure of the blood vessels or air passages of the neck as a result of external pressure on the neck.

I. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;

2. Attend counseling or treatment services ordered as part of any suspended or deferred sentence or probation; and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers, certified by the Attorney General.

J. There shall be no charge of fees or costs to any victim of domestic violence, stalking, or sexual assault in connection with the prosecution of a domestic violence, stalking, or sexual assault offense in this state.

K. In the course of prosecuting any charge of domestic abuse, stalking, harassment, rape, or violation of a protective order, the prosecutor shall provide the court, prior to sentencing or any plea agreement, a local history and any other available history of past convictions of the defendant within the last ten (10) years relating to domestic abuse, stalking, harassment, rape, violation of a protective order, or any other violent misdemeanor or felony convictions.

L. For purposes of subsection D of this section, "great bodily injury" means bone fracture, protracted and obvious disfigurement, protracted loss or impairment of the function of a body part, organ or mental faculty, or substantial risk of death.

SECTION 2. 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~~ three (3) years nor more than twenty (20) 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 a~~ 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)~~ ten (10) 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 3. AMENDATORY Section 1, Chapter 209, O.S.L. 2003 (21 O.S. Supp. 2005, Section 1125), is amended to read as follows:

Section 1125. A. A zone of safety is hereby created around elementary ~~and~~, junior high, and high schools, licensed child care facilities, ~~and~~ playgrounds, and parks. A person is prohibited from being within three hundred (300) feet of any elementary ~~or~~, junior high, or high school, licensed child care facility, ~~or~~ playground, or park if the person has been convicted of ~~lewd molestation, rape or sodomy in this state~~ a crime that requires the person to register pursuant to the Sex Offenders Registration Act or any similar the person has been convicted of an offense of in another state or the United States 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 Title 57 of the Oklahoma Statutes and the victim was a child under the age of thirteen (13) years.

B. A person convicted of a ~~first offense~~ violation of subsection A of this section shall be guilty of a ~~misdemeanor~~ felony punishable by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by imprisonment in the county jail for a term of not more than one (1) year, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of subsection A of this section shall be punished by a fine not exceeding Two Thousand Five Hundred Dollars (\$2,500.00), or by imprisonment in the custody of the Department of Corrections for a term of not less than three (3) years, or by both such fine and imprisonment. A person convicted of a second or subsequent offense of this section shall be guilty of a felony. This proscription of conduct shall not modify or remove any restrictions currently applicable to the person by court order, conditions of probation or as provided by other provision of law.



C. 1. A person shall be exempt from the prohibition of this section regarding a school or a licensed child care facility only under the following circumstances:

- a. the person is the custodial parent or legal guardian of a child who is an enrolled student at the school or child care facility, and
- b. the person is enrolling, delivering or retrieving such child at the school or child care facility during regular school or facility hours or for school-sanctioned or child-care-facility-sanctioned extracurricular activities, or
- c. the person is the custodial parent or legal guardian of a child that is participating in a school-sanctioned or child-care-facility-sanctioned activity and is accompanied by a person who is twenty-one (21) years of age or older that has no previous felony conviction for a crime that would require the person to register pursuant to the Sex Offenders Registration Act.

2. This exception shall not be construed to modify or remove any restrictions applicable to the person by court order, conditions of probation, or as provided by other provision of law.

D. For purpose of prosecution of any violation of this section, the provisions of Section 51.1 of ~~Title 21 of the Oklahoma Statutes~~ this title shall not apply.

SECTION 4. AMENDATORY 22 O.S. 2001, Section 60.6, as last amended by Section 16, Chapter 348, O.S.L. 2005 (22 O.S. Supp. 2005, Section 60.6), is amended to read as follows:

Section 60.6 A. Except as otherwise provided by this section, any person who:

1. Has been served with an ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment in the county jail of not more than one (1) year, or both such fine and imprisonment; and

2. After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be ~~deemed~~ guilty of a ~~misdemeanor~~ felony and shall be punished by a term of imprisonment in the county jail of custody of the Department of Corrections for not less than ten (10) days and not more than one (1) year. ~~In addition to the term of imprisonment, the person may be punished nor more than three (3) years, or by a fine of not less than One Thousand Dollars (\$1,000.00) and not Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00); and~~

~~3. Except as provided for in paragraphs 1 and 2 of subsection B of this section, after previous conviction of a violation of any protective order, is convicted of a third or subsequent offense pursuant to the provisions of this section shall be guilty of a felony and shall be punished by a term of imprisonment for not less than one (1) year nor more than three (3) years, or by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.~~

B. 1. Any person who has been served with an ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment in the county jail for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).

2. Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment in the custody of the Department of Corrections of not less than one (1) year nor more than five (5) years, or by a fine of not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.

3. In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.

4. The provisions of this subsection shall not affect the applicability of Sections 644, 645, 647 and 652 of Title 21 of the Oklahoma Statutes.

C. The minimum sentence of imprisonment issued pursuant to the provisions of ~~paragraphs~~ paragraph 2 and 3 of subsection A and paragraph 1 of subsection B of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the court to the statutory provisions for suspended sentences, deferred sentences or probation.

D. In addition to any other penalty specified by this section, the court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:

1. The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph 2 of this subsection;



5. At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the court may order the defendant to further or continue counseling, treatment, or other necessary services. The court may revoke all or any part of a suspended sentence, deferred sentence, or probation pursuant to Section 991b of Title 22 of the Oklahoma Statutes and subject the defendant to any or all remaining portions of the original sentence;

6. At the first review hearing, the court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings; and

7. If funding is available, a referee may be appointed and assigned by the presiding judge of the district court to hear designated cases set for review under this subsection. Reasonable compensation for the referees shall be fixed by the presiding judge. The referee shall meet the requirements and perform all duties in the same manner and procedure as set forth in Sections 7003-8.6 and 7303-7.5 of Title 10 of the Oklahoma Statutes pertaining to referees appointed in juvenile proceedings.

E. Ex parte and final protective orders shall include notice of these penalties.

F. When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.

G. Any district court of this state and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:

1. Attend a treatment program for domestic abusers certified by the Attorney General;

2. Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and

3. Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers certified by the Attorney General.

H. At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 60.9, is amended to read as follows:

Section 60.9 A. A peace officer, without a warrant, may arrest and take into custody a person if the peace officer has reasonable cause to believe that:

1. An emergency ex parte or final protective order has been issued and served upon the person, pursuant to ~~Section 60.1 et seq. of this title~~ the Protection from Domestic Abuse Act;

2. A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the peace officer as provided in subsection D of this section;

3. The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and

4. The person named in the order has violated the order or is then acting in violation of the order.

B. A peace officer, without a warrant, ~~may~~ shall arrest and take into custody a person if the following conditions have been met:

1. The peace officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the state or tribal court where the foreign protective order was issued;

2. A certified copy of the foreign protective order has been presented to the peace officer that appears valid on its face; and

3. The peace officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.

C. A person arrested pursuant to this section shall be brought before the court within twenty-four (24) hours after arrest to answer to a charge for violation of the order pursuant to Section 60.8 of this title, at which time the court shall do each of the following:

1. Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless extended by the court on the motion of the arrested person;

2. Set a reasonable bond pending a hearing of the alleged violation of the order; and

3. Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

D. A copy of a protective order shall be prima facie evidence that such order is valid in this state when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.

E. Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two (2) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and shall, in addition, be liable for any civil damages to the defendant.

SECTION 6. AMENDATORY 22 O.S. 2001, Section 991a, as last amended by Section 3 of Enrolled House Bill No. 3139 of the 2nd Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

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

- a. to provide restitution to the victim as provided by Section 991f et seq. of this title or according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if the defendant is able to pay such restitution without imposing manifest hardship on the defendant or the immediate family and if the extent of the damage to the victim is determinable with reasonable certainty,
- b. to reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum,

- c. to engage in a term of community service without compensation, according to a schedule consistent with the employment and family responsibilities of the person convicted,
- d. to pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within this state wherein such victim has incurred a financial loss,
- e. to confinement in the county jail for a period not to exceed six (6) months,
- f. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he or she is being sentenced,
- g. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes,
- h. to reimburse the Oklahoma State Bureau of Investigation for costs incurred by that agency during its investigation of the crime for which the defendant pleaded guilty, nolo contendere or was convicted, including compensation for laboratory, technical, or investigation services performed by the Bureau if, in the opinion of the court, the defendant is able to pay without imposing manifest hardship on the defendant, and if the costs incurred by the Bureau during the investigation of the defendant's case may be determined with reasonable certainty,
- i. to reimburse the Oklahoma State Bureau of Investigation and any authorized law enforcement agency for all costs incurred by that agency for cleaning up an illegal drug laboratory site for which the defendant pleaded guilty, nolo contendere or was

convicted. The court clerk shall collect the amount and may retain five percent (5%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Oklahoma State Bureau of Investigation to be deposited in the OSBI Revolving Fund established by Section 150.19a of Title 74 of the Oklahoma Statutes or to the general fund wherein the other law enforcement agency is located,

- j. to pay a reasonable sum to the Crime Victims Compensation Board, created by Section 142.2 et seq. of Title 21 of the Oklahoma Statutes, for the benefit of crime victims,
- k. to reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which the person is being sentenced,
- l. to participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and, as determined by the assessment, participate in an alcohol and drug substance abuse course or treatment program or both, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes, or as ordered by the court,
- m. to be placed in a victims impact panel program or victim/offender reconciliation program and payment of a fee to the program of not less than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00) as set by the governing authority of the program to offset the cost of participation by the defendant. Provided, each victim/offender reconciliation program shall be required to obtain a written consent form voluntarily signed by the victim and defendant that specifies the methods to be used to resolve the issues, the obligations and rights of each person, and the confidentiality of the proceedings. Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes,
- n. to install, at the expense of the defendant, an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence. The device shall be installed upon every motor vehicle operated by the defendant, and the court shall require that a notation of this restriction be affixed to the defendant's driver license. The restriction shall remain on the driver license not exceeding two (2) years to be determined by the court. The restriction may be modified or removed only by order of the court and notice of any modification order shall be given to



the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without a device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of two-hundredths (0.02) or greater,

- o. to be confined by electronic monitoring administered and supervised by the Department of Corrections or a community sentence provider, and payment of a monitoring fee to the supervising authority, not to exceed Three Hundred Dollars (\$300.00) per month. Any fees collected pursuant to this paragraph shall be deposited with the appropriate supervising authority. Any willful violation of an order of the court for the payment of the monitoring fee shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "electronic monitoring" means confinement of the defendant within a specified location or locations with supervision by means of an electronic device approved by the Department of Corrections which is designed to detect if the defendant is in the court-ordered location at the required times and which records violations for investigation by a qualified supervisory agency or person,
- p. to perform one or more courses of treatment, education or rehabilitation for any conditions, behaviors, deficiencies or disorders which may contribute to criminal conduct, including but not limited to alcohol and substance abuse, mental health, emotional health, physical health, propensity for violence, antisocial behavior, personality or attitudes, deviant sexual behavior, child development, parenting assistance, job skills, vocational-technical skills, domestic relations, literacy, education, or any other identifiable deficiency which may be treated appropriately in the community and for which a certified provider or a program recognized by the court as having significant positive impact exists in the community. Any treatment, education or rehabilitation provider required to be certified pursuant to law or rule shall be certified by the appropriate state agency or a national organization,
- q. to submit to periodic testing for alcohol, intoxicating substance, or controlled dangerous substances by a qualified laboratory,

- r. to pay a fee, costs for treatment, education, supervision, participation in a program, or any combination thereof as determined by the court, based upon the defendant's ability to pay the fees or costs,
- s. to be supervised by a Department of Corrections employee, a private supervision provider, or other person designated by the court,
- t. to obtain positive behavior modeling by a trained mentor,
- u. to serve a term of confinement in a restrictive housing facility available in the community,
- v. to serve a term of confinement in the county jail at night or during weekends pursuant to Section 991a-2 of this title or for work release,
- w. to obtain employment or participate in employment-related activities,
- x. to participate in mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court,
- y. to pay day fines not to exceed fifty percent (50%) of the net wages earned. For purposes of this paragraph, "day fine" means the offender is ordered to pay an amount calculated as a percentage of net daily wages earned. The day fine shall be paid to the local community sentencing system as reparation to the community. Day fines shall be used to support the local system,
- z. to submit to blood or saliva testing as required by subsection I of this section,
- aa. to repair or restore property damaged by the defendant's conduct, if the court determines the defendant possesses sufficient skill to repair or restore the property and the victim consents to the repairing or restoring of the property,
- bb. to restore damaged property in kind or payment of out-of-pocket expenses to the victim, if the court is able to determine the actual out-of-pocket expenses suffered by the victim,
- cc. to attend a victim-offender reconciliation program if the victim agrees to participate and the offender is deemed appropriate for participation,
- dd. in the case of a person convicted of prostitution pursuant to Section 1029 of Title 21 of the Oklahoma

Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems,

- ee. in the case of a sex offender sentenced after November 1, 1989, and required by law to register pursuant to the Sex Offenders Registration Act, require the person to participate in a treatment program, if available. The treatment program may include polygraphs specifically designed for use with sex offenders for purposes of supervision and treatment compliance, provided the examination is administered by a certified licensed polygraph examiner. The treatment program must be approved by the Department of Corrections or the Department of Mental Health and Substance Abuse Services. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay,
- ff. in addition to other sentencing powers of the court, the court in the case of a defendant being sentenced for a felony conviction for a violation of Section 2-402 of Title 63 of the Oklahoma Statutes which involves marijuana may require the person to participate in a drug court program, if available. If a drug court program is not available, the defendant may be required to participate in a community sanctions program, if available,
- gg. in the case of a person convicted of any false or bogus check violation, as defined in Section 1541.4 of Title 21 of the Oklahoma Statutes, impose a bogus check fee to be paid to the district attorney. The fee shall be equal to the amount assessed as court costs plus Twenty-five Dollars (\$25.00) for each check upon filing of the case in district court. This money shall be deposited in the Bogus Check Restitution Program Fund as established in subsection B of Section 114 of this title. Additionally, the court may require the offender to pay restitution and bogus check fees on any other bogus check or checks that have been submitted to the District Attorney Bogus Check Restitution Program, and
- hh. any other provision specifically ordered by the court.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence;

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

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

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

5. Order the defendant to reimburse the Oklahoma State Bureau of Investigation for all costs incurred by that agency for cleaning up an illegal drug laboratory site for which the defendant pleaded guilty, nolo contendere or was convicted. The court clerk shall collect the amount and may retain five percent (5%) of such monies to be deposited in the Court Clerk Revolving Fund to cover administrative costs and shall remit the remainder to the Oklahoma State Bureau of Investigation to be deposited in the OSBI Revolving Fund established by Section 150.19a of Title 74 of the Oklahoma Statutes;

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

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

- a. to participate in an alcohol and drug assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and, as determined by the assessment, participate in an alcohol and drug substance abuse course or treatment program or both, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,
- b. to attend a victims impact panel program, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00) as set by the governing authority of the program and approved by the court, to the program to offset the cost of participation by the defendant, if in the

opinion of the court the defendant has the ability to pay such fee,

- c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph,
- d. to install, at the expense of the person, an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver license at the time of reinstatement of the license. The restriction shall remain on the driver license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of the order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court, or
- e. beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

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

9. In addition to the other sentencing powers of the court, in the case of a person convicted of any crime related to domestic abuse, as defined in Section 60.1 of this title, the court may require the defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of

domestic abuse against the victim. The defendant may be required to pay all or part of the cost of the treatment or counseling services;

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

11. In addition to the other sentencing powers of the court, the court, in the case of a person convicted of child abuse or neglect, as defined in Section 7102 of Title 10 of the Oklahoma Statutes, may require the person to undergo treatment or to participate in counseling services. The defendant may be required to pay all or part of the cost of the treatment or counseling services;

12. In addition to the other sentencing powers of the court, the court, in the case of a person convicted of cruelty to animals pursuant to Section 1685 of Title 21 of the Oklahoma Statutes, may require the person to pay restitution to animal facilities for medical care and any boarding costs of victimized animals; or

13. In addition to the other sentencing powers of the court, ~~in the case of a sex offender who is habitual or aggravated sex offender~~ as defined by Section 584 of Title 57 of the Oklahoma Statutes, and who is required to register as a sex offender pursuant to the Oklahoma Sex Offenders Registration Act, the court shall order the habitual or aggravated sex offender be supervised by the Department of Corrections for the duration of the registration period and shall be assigned to a global position monitoring device by the Department of Corrections for the duration of the registration period. ~~The Department of Corrections shall be responsible for monitoring the global position monitoring device.~~ The cost of such monitoring device shall be reimbursed by the offender.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, an alcohol and drug assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation. The fee shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation

shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this subsection for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation required by this subsection.

C. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the Department of Corrections pursuant to subparagraph e of paragraph 7 of subsection A of this section. Provided, the court may waive these prohibitions upon written application of the district attorney. Both the application and the waiver shall be made part of the record of the case.

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

E. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections.

Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years, except as otherwise provided by law. In the case of a person convicted of a sex offense, supervision shall begin immediately upon release from incarceration and shall not be limited to two (2) years. Provided further, any supervision provided for in this section may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the release will be served by an extended period of supervision.

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

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

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

3. The Department shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Department for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Department.

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

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

H. As used in this section:

1. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a



blood or breath alcohol concentration of two-hundredths (0.02) or greater; and

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

I. A person convicted of a felony offense or receiving any form of probation for an offense in which registration is required pursuant to the Sex Offenders Registration Act shall submit to deoxyribonucleic acid DNA testing for law enforcement identification purposes in accordance with Section 150.27 of Title 74 of the Oklahoma Statutes and the rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI Combined DNA Index System (CODIS) Database. Any defendant sentenced to probation shall be required to submit to testing within thirty (30) days of sentencing either to the Department of Corrections or to the county sheriff as directed by the court. Defendants who are sentenced to a term of incarceration shall submit to testing in accordance with Section 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who enter the custody of the Department of Corrections or to the county sheriff, for those defendants sentenced to incarceration in a county jail. Convicted individuals who have previously submitted to DNA testing under this section and for whom a valid sample is on file in the OSBI Combined DNA Index System (CODIS) Database at the time of sentencing shall not be required to submit to additional testing. Except as required by the Sex Offenders Registration Act, a deferred judgment does not require submission to deoxyribonucleic acid testing.

Any person who is incarcerated in the custody of the Department of Corrections after July 1, 1996, and who has not been released before the effective date of this act, shall provide a blood or saliva sample prior to release. Every person convicted of a felony offense after the effective date of this act whose sentence does not include a term of confinement with the Department of Corrections shall submit a blood or saliva sample. Those felons sentenced to unsupervised probation or otherwise not supervised by the Department of Corrections shall submit for blood or saliva testing to the sheriff of the sentencing county.

J. Samples of blood or saliva for DNA testing required by subsection I of this section shall be taken by employees or contractors of the Department of Corrections or the county sheriff or employees or contractors of the sheriff's office. The individuals shall be properly trained to collect blood or saliva samples. Persons collecting blood or saliva for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. The Department of Corrections and the county sheriff shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation within ten (10) days of the time the subject appears for testing or within ten (10) days of the date the subject comes into physical custody to serve a term of incarceration. The Department and the sheriff's office shall use sample kits provided by the OSBI and procedures promulgated by the

OSBI. Persons subject to DNA testing who are not received at the Lexington Assessment and Reception Center shall be required to pay a fee of Fifteen Dollars (\$15.00) to the agency collecting the sample for submission to the OSBI Combined DNA Index System (CODIS) Database. Any fees collected by the Department of Corrections or the county sheriff pursuant to this subsection shall be deposited in the Department of Corrections revolving account or the sheriff's service fee account.

K. When sentencing a person who has been convicted of a crime that would subject that person to the provisions of the Sex Offenders Registration Act, neither the court nor the district attorney shall be allowed to waive or exempt such person from the registration requirements of the Sex Offenders Registration Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 109.3 of Title 43, unless there is created a duplication in numbering, reads as follows:

In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of domestic abuse, stalking and/or harassing behavior properly brought before it. If the occurrence of domestic abuse, stalking or harassing behavior is established by a preponderance of the evidence, there shall be a rebuttable presumption that it is not in the best interest of the child to have custody, guardianship, or unsupervised visitation granted to the person against whom domestic abuse, stalking or harassing behavior has been established.

SECTION 8. 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) consecutive days or longer, calculated beginning with the first day. 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) consecutive days or longer, calculated beginning with the first day, has any type of full-time or part-time employment, with or without compensation for more than five (5) cumulative days in any sixty-day period, 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) consecutive days or longer, calculated beginning with the first day, has any type of full-time or part-time employment, with or without compensation for more than five (5) cumulative days in any sixty-day period, 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) cumulative days in any sixty-day period 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. 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) consecutive days or longer, calculated beginning with the first day 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) consecutive days or longer, calculated beginning with the first day. The registration is required with local law enforcement within two (2) days after entering the jurisdiction of the law enforcement authority.

SECTION 9. AMENDATORY 57 O.S. 2001, Section 584, as last amended by Section 1, of Enrolled Senate Bill No. 1707 of the 2nd

Session of the 50th Oklahoma Legislature, is amended to read as follows:

Section 584. A. Any registration with the Department of Corrections required by the Sex Offenders Registration Act shall be in a form approved by the Department and shall include the following information about the person registering:

1. The person's name and all aliases used or under which the person has been known;

2. A complete description of the person, including a photograph and fingerprints, and when requested by the Department of Corrections, such registrant shall submit to a blood or saliva test for purposes of a deoxyribonucleic acid (DNA) profile. Submission to testing for individuals registering shall be within thirty (30) days of registration. Registrants who already have valid samples on file in the Oklahoma State Bureau of Investigation (OSBI) DNA Offender Database shall not be required to submit duplicate samples for testing;

3. The offenses listed in Section 582 of this title for which the person has been convicted or the person received a suspended sentence or any form of probation, where the offense was committed, where the person was convicted or received the suspended sentence or any form of probation, and the name under which the person was convicted or received the suspended sentence or probation;

4. The name and location of each hospital or penal institution to which the person was committed for each offense listed in Section 582 of this title;

5. Where the person previously resided, where the person currently resides, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the county and in this state. The Department of Corrections shall conduct address verification of each registered sex offender on ~~an annual~~ a semiannual basis by mailing a nonforwardable verification form to the last reported address of the person. The person shall return the verification form in person to the local law enforcement agency of that jurisdiction within ten (10) days after receipt of the form and may be photographed by the local law enforcement agency at that time. The local law enforcement agency shall forward the form to the Department of Corrections within three (3) days after receipt of the form. The verification form shall be signed by the person and state the current address of the person. Failure to return the verification form shall be a violation of the Sex Offenders Registration Act. If the offender has been determined to be a habitual or aggravated sex offender by the Department of Corrections, the address verification shall be conducted every ninety (90) days. The Department of Corrections shall notify the district attorney's office and local law enforcement agency of the appropriate county, within forty-five (45) days if unable to verify the address of a sex offender. A local law enforcement agency may notify the district attorney's office whenever it comes to the attention of the local law

enforcement agency that a sex offender is not in compliance with any provisions of this act; ~~and~~

6. The name and address of any school where the person expects to become or is enrolled or employed for any length of time; and

7. A description of all occupants residing with the person registering, including, but not limited to, name, date of birth, gender, relation to the person registering, and how long the occupant has resided there.

B. Conviction data and fingerprints shall be promptly transmitted at the time of registration to the Oklahoma State Bureau of Investigation (OSBI) and the Federal Bureau of Investigation (FBI) if the state has not previously sent the information at the time of conviction.

C. The registration with the local law enforcement authority required by the Sex Offenders Registration Act shall be in a form approved by the local law enforcement authority and shall include the following information about the person registering:

1. The person's full name, alias, date of birth, sex, race, height, weight, eye color, social security number, driver license number, and home address; and

2. A description of the offense for which the offender was convicted, the date of the conviction, and the sentence imposed, if applicable.

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.

D. Any person subject to the provisions of the Sex Offenders Registration Act who changes an address shall give written notification to the Department of Corrections and the local law

enforcement authority of the change of address and the new address no later than three (3) business days prior to the abandonment of or move from the current address. If the new address is under the jurisdiction of a different local law enforcement authority, the offender shall notify the new local law enforcement authority of any previous registration. The new local law enforcement authority shall notify the most recent registering agency by teletype or letter of the change in address of the offender. If the new address is in another state the Department of Corrections shall promptly notify the agency responsible for registration in that state of the new address of the offender.

E. The Department of Corrections shall maintain a file of all sex offender registrations. A copy of the information contained in the registration shall promptly be available to state, county and municipal law enforcement agencies, the State Superintendent of Public Instruction, the Commissioner of Health, and the National Sex Offender Registry maintained by the Federal Bureau of Investigation. The file shall promptly be made available for public inspection or copying pursuant to rules promulgated by the Department of Corrections and may be made available through Internet access. The Department of Corrections shall promptly provide all municipal police departments, all county sheriff departments and all campus police departments a list of those sex offenders registered and living in their county.

F. The Superintendent of Public Instruction is authorized to copy and shall distribute information from the sex offender registry to school districts and individual public and private schools within the state with a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer or criminal prosecution pursuant to Section 589 of Title 57 of the Oklahoma Statutes."

G. The State Commissioner of Health is authorized to distribute information from the sex offender registry to any nursing home or long-term care facility. Nothing in this subsection shall be deemed to impose any liability upon or give rise to a cause of action against any person, agency, organization, or company for failing to release information in accordance with the Sex Offenders Registration Act.

H. Each local law enforcement agency shall make its sex offender registry available upon request, without restriction, at a cost that is no more than what is charged for other records provided by the law enforcement agency pursuant to the Oklahoma Open Records Act.

When a law enforcement agency sends a copy of or otherwise makes the sex offender registry available to any public or private school offering any combination of prekindergarten through twelfth grade classes or child care facility licensed by the state, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on



this registry may result in civil liability for the employer or criminal prosecution pursuant to Section 589 of Title 57 of the Oklahoma Statutes."

I. Samples of blood or saliva for DNA testing required by subsection A of this section shall be taken by employees or contractors of the Department of Corrections. Said individuals shall be properly trained to collect blood or saliva samples. Persons collecting samples for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. The Department of Corrections shall ensure the collection of samples is mailed to the Oklahoma State Bureau of Investigation (OSBI) within ten (10) days of the time the subject appears for testing. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing pursuant to this section shall be required to pay to the Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant to this subsection shall be deposited in the Department of Corrections revolving account.

J. 1. Any person who has been convicted of or received 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, for any crime listed in Section 582 of this title and:

- a. who is subsequently convicted of a crime or an attempt to commit a crime listed in subsection A of Section 582 of this title, or
- b. who enters this state after November 1, 1997, and who has been convicted of an additional crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in subsection A of Section 582 of this title,

shall be subject to all of the registration requirements of this act and shall be designated by the Department of Corrections as a habitual sex offender. A habitual sex offender shall be required to register for the lifetime of the habitual sex offender.

2. On or after November 1, 1999, any person who has been convicted of a crime or an attempt to commit a crime, received 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, for a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes, if the offense involved sexual abuse or sexual exploitation as these terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes shall be subject to all the registration requirements of this act and shall be designated by the Department of Corrections as an aggravated sex offender. An aggravated sex offender shall be required to register for the lifetime of the aggravated sex offender.

3. Upon registration of any person designated as a habitual or aggravated sex offender, pursuant to this subsection, a local law enforcement authority shall notify, by any method of communication it deems appropriate, anyone that the local law enforcement authority determines appropriate, including, but not limited to:

- a. the family of the habitual or aggravated sex offender,
- b. any prior victim of the habitual or aggravated sex offender,
- c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places that children or other potential victims may frequent, and
- d. a nursing facility, a specialized facility, a residential care home, a continuum-of-care facility, an assisted living center, and an adult day care facility.

4. The notification may include, but is not limited to, the following information:

- a. the name and physical address of the habitual or aggravated sex offender,
- b. a physical description of the habitual or aggravated sex offender, including, but not limited to, age, height, weight and eye and hair color,
- c. a description of the vehicle that the habitual or aggravated sex offender is known to drive,
- d. any conditions or restrictions upon the probation, parole or conditional release of the habitual or aggravated sex offender,
- e. a description of the primary and secondary targets of the habitual or aggravated sex offender,
- f. a description of the method of offense of the habitual or aggravated sex offender,
- g. a current photograph of the habitual or aggravated sex offender, and
- h. the name and telephone number of the probation or parole officer of the habitual or aggravated sex offender.

5. The local law enforcement authority shall make the notification provided for in this subsection regarding a habitual or aggravated sex offender available to any person upon request.

K. Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under any provision of the Sex Offenders Registration Act.

1. Nothing in the Sex Offenders Registration Act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information in accordance with the Sex Offenders Registration Act.

2. Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in the Sex Offenders Registration Act.

SECTION 10. AMENDATORY 57 O.S. 2001, Section 587, is amended to read as follows:

Section 587. A. Any person required to register pursuant to the provisions of the Sex Offenders Registration Act, ~~Section 581 et seq. of this title,~~ who violates any provision of said act shall, upon conviction, be guilty of a felony. Any person convicted of a violation of this section shall be punished by ~~incarceration imprisonment in a correctional facility~~ the custody of the Department of Corrections for not more than five (5) years, a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

B. Any person required to register pursuant to the Sex Offenders Registration Act who fails to comply with the established guidelines for global position system (GPS) monitoring shall, upon conviction, be guilty of a felony punishable by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment in the custody of the county jail for not more than one (1) year, or by both such fine and imprisonment.

SECTION 11. AMENDATORY Section 1, Chapter 223, O.S.L. 2003 (57 O.S. Supp. 2005, Section 590), is amended to read as follows:

Section 590. It is unlawful for any person registered pursuant to the ~~Oklahoma~~ Sex Offenders Registration Act to reside, either temporarily or permanently, within a two-thousand-foot radius of any public or private school site ~~or,~~ educational institution, playground, park, or licensed child care facility. On the effective date of this act, the distance indicated in this section shall be measured from the nearest property line of the residence of the person to the nearest property line of the public or private school site, educational institution, playground, park, or licensed child care facility; provided, any nonprofit organization established and housing sex offenders prior to the effective date of this provision shall be allowed to continue its operation.

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~~ felony 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, or by imprisonment in the custody of the Department of Corrections for a term of not less than one (1) year in the county jail in addition to~~ nor more than three (3) years, or by both such fine and imprisonment. Any person convicted of a second or subsequent violation of this section shall be punished by a fine not to exceed Three Thousand Dollars (\$3,000.00), or by imprisonment in the custody of the Department of Corrections for a term of not less than three (3) years, or by both such fine and imprisonment.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 590.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. 1. It is unlawful for two or more persons required to register as sex offenders to reside together in any individual dwelling during the term of registration as a sex offender. Every person violating this provision shall be guilty, upon conviction, of a misdemeanor punishable by imprisonment in the county jail for a term not more than one (1) year and a fine in an amount not to exceed One Thousand Dollars (\$1,000.00). Every person convicted of a second or subsequent violation of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not more than five (5) years and a fine in an amount not to exceed Two Thousand Dollars (\$2,000.00).

2. The provisions of subparagraph 1 of this subsection shall not be construed to prohibit a registered sex offender from residing in any properly zoned and established boarding house, apartment building or other multi-unit structure; provided the individual dwellings are separate for each registered person. Nothing in this subsection shall prohibit the sharing of living quarters, jail or prison space, or any multi-person or dormitory-style housing of sex offenders in the custody of any jail or correctional facility or any properly zoned facility under contract with a jail or correctional agency for the purpose of housing prisoners, or any properly established treatment or nonprofit facility located in a commercial zoned area and housing persons for purposes of sex offender services and treatment.

3. For purposes of this subsection, "individual dwelling" means:

- a. a private residential property, whether owned, leased or rented, including all real property zoned as single-family residential property or zoned as multi-family residential property due to any adjacent, detached or separate living quarters of any kind on such property,
- b. any room available within any boarding house or group home as such term is defined by subsection D of this section,

- c. any single apartment for rent or lease within an apartment building, or
- d. any separate residential unit made available for sale, rent or lease within a multi-unit structure, including a condominium, duplex, triplex, quadriplex or any unit that is constructed together with other separate units into one structure.

B. The Department of Corrections is prohibited from contracting for the housing of any person required to register as a sex offender in any individual dwelling, as defined by paragraph 3 of subsection A of this section, where another person required to register as a sex offender also resides.

C. No halfway house, nonprofit organization, or private entity shall contract with the Department of Corrections or any jail to house any person required to register as a sex offender or offer housing independently to any person required to register as a sex offender if such housing facility is located within a single-family zoned residential neighborhood or is not properly zoned as a multi-unit housing structure, jail or correctional facility.

D. No person or entity shall knowingly establish or operate a boarding house or group home, or otherwise knowingly rent or lease rooms, for the residency of persons required to register pursuant to the Sex Offenders Registration Act in any single-family zoned residential area or its equivalent, or without being properly zoned or licensed as a multi-family, multi-unit, or correctional housing structure. For purposes of this subsection, "boarding house or group home" means a dwelling that is used for the residency of two or more unrelated persons.

SECTION 13. 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.

Passed the Senate the 25th day of May, 2006.

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Presiding Officer of the Senate

Passed the House of Representatives the 26th day of May, 2006.

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Presiding Officer of the House  
of Representatives