

3 Senate Bill No. 646
4 As Amended

5 SENATE BILL NO. 646 - By: NICHOLS and GUMM of the Senate and NANCE
6 of the House.

7 [criminal procedure - powers of the court - DNA samples -
8 CODIS - effective date -
9 emergency]

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

11 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991a, as
12 last amended by Section 2, Chapter 418, O.S.L. 2004 (22 O.S. Supp.
13 2004, Section 991a), is amended to read as follows:

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

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

22 a. to provide restitution to the victim as provided by
23 Section 991f et seq. of this title or according to a
24 schedule of payments established by the sentencing
25 court, together with interest upon any pecuniary sum

1 at the rate of twelve percent (12%) per annum, if the
2 defendant agrees to pay such restitution or, in the
3 opinion of the court, if the defendant is able to pay
4 such restitution without imposing manifest hardship on
5 the defendant or the immediate family and if the
6 extent of the damage to the victim is determinable
7 with reasonable certainty,
8 b. to reimburse any state agency for amounts paid by the
9 state agency for hospital and medical expenses
10 incurred by the victim or victims, as a result of the
11 criminal act for which such person was convicted,
12 which reimbursement shall be made directly to the
13 state agency, with interest accruing thereon at the
14 rate of twelve percent (12%) per annum,
15 c. to engage in a term of community service without
16 compensation, according to a schedule consistent with
17 the employment and family responsibilities of the
18 person convicted,
19 d. to pay a reasonable sum into any trust fund,
20 established pursuant to the provisions of Sections 176
21 through 180.4 of Title 60 of the Oklahoma Statutes,
22 and which provides restitution payments by convicted
23 defendants to victims of crimes committed within this

1 state wherein such victim has incurred a financial
2 loss,
3 e. to confinement in the county jail for a period not to
4 exceed six (6) months,
5 f. to reimburse the court fund for amounts paid to court-
6 appointed attorneys for representing the defendant in
7 the case in which he or she is being sentenced,
8 g. to repay the reward or part of the reward paid by a
9 certified local crimestoppers program and the Oklahoma
10 Reward System. In determining whether the defendant
11 shall repay the reward or part of the reward, the
12 court shall consider the ability of the defendant to
13 make the payment, the financial hardship on the
14 defendant to make the required payment, and the
15 importance of the information to the prosecution of
16 the defendant as provided by the arresting officer or
17 the district attorney with due regard for the
18 confidentiality of the records of the certified local
19 crimestoppers program and the Oklahoma Reward System.
20 The court shall assess this repayment against the
21 defendant as a cost of prosecution. "Certified local
22 crimestoppers program" means a crimestoppers program
23 certified by the Office of the Attorney General

1 pursuant to Section 991g of this title. The "Oklahoma
2 Reward System" means the reward program established by
3 Section 150.18 of Title 74 of the Oklahoma Statutes,
4 h. to reimburse the Oklahoma State Bureau of
5 Investigation for costs incurred by that agency during
6 its investigation of the crime for which the defendant
7 pleaded guilty, nolo contendere or was convicted,
8 including compensation for laboratory, technical, or
9 investigation services performed by the Bureau if, in
10 the opinion of the court, the defendant is able to pay
11 without imposing manifest hardship on the defendant,
12 and if the costs incurred by the Bureau during the
13 investigation of the defendant's case may be
14 determined with reasonable certainty,
15 i. to reimburse the Oklahoma State Bureau of
16 Investigation and any authorized law enforcement
17 agency for all costs incurred by that agency for
18 cleaning up an illegal drug laboratory site for which
19 the defendant pleaded guilty, nolo contendere or was
20 convicted. The court clerk shall collect the amount
21 and may retain five percent (5%) of such monies to be
22 deposited in the Court Clerk Revolving Fund to cover
23 administrative costs and shall remit the remainder to

1 the Oklahoma State Bureau of Investigation to be
2 deposited in the OSBI Revolving Fund established by
3 Section 150.19a of Title 74 of the Oklahoma Statutes
4 or to the general fund wherein the other law
5 enforcement agency is located,
6 j. to pay a reasonable sum to the Crime Victims
7 Compensation Board, created by Section 142.2 et seq.
8 of Title 21 of the Oklahoma Statutes, for the benefit
9 of crime victims,
10 k. to reimburse the court fund for amounts paid to court-
11 appointed attorneys for representing the defendant in
12 the case in which the person is being sentenced,
13 l. to participate in an assessment and evaluation by an
14 assessment agency or assessment personnel certified by
15 the Department of Mental Health and Substance Abuse
16 Services pursuant to Section 3-460 of Title 43A of the
17 Oklahoma Statutes and, as determined by the
18 assessment, participate in an alcohol and drug
19 substance abuse course or treatment program or both,
20 pursuant to Sections 3-452 and 3-453 of Title 43A of
21 the Oklahoma Statutes, or as ordered by the court,
22 m. to be placed in a victims impact panel program or
23 victim/offender reconciliation program and payment of

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

1 may be modified or removed only by order of the court
2 and notice of any modification order shall be given to
3 the Department of Public Safety. Upon the expiration
4 of the period for the restriction, the Department of
5 Public Safety shall remove the restriction without
6 further court order. Failure to comply with the order
7 to install an ignition interlock device or operating
8 any vehicle without a device during the period of
9 restriction shall be a violation of the sentence and
10 may be punished as deemed proper by the sentencing
11 court. As used in this paragraph, "ignition interlock
12 device" means a device that, without tampering or
13 intervention by another person, would prevent the
14 defendant from operating a motor vehicle if the
15 defendant has a blood or breath alcohol concentration
16 of two-hundredths (0.02) or greater,
17 o. to be confined by electronic monitoring administered
18 and supervised by the Department of Corrections or a
19 community sentence provider, and payment of a
20 monitoring fee to the supervising authority, not to
21 exceed Three Hundred Dollars (\$300.00) per month. Any
22 fees collected pursuant to this paragraph shall be
23 deposited with the appropriate supervising authority.

1 Any willful violation of an order of the court for the
2 payment of the monitoring fee shall be a violation of
3 the sentence and may be punished as deemed proper by
4 the sentencing court. As used in this paragraph,
5 "electronic monitoring" means confinement of the
6 defendant within a specified location or locations
7 with supervision by means of an electronic device
8 approved by the Department of Corrections which is
9 designed to detect if the defendant is in the court-
10 ordered location at the required times and which
11 records violations for investigation by a qualified
12 supervisory agency or person,

13 p. to perform one or more courses of treatment, education
14 or rehabilitation for any conditions, behaviors,
15 deficiencies or disorders which may contribute to
16 criminal conduct, including but not limited to alcohol
17 and substance abuse, mental health, emotional health,
18 physical health, propensity for violence, antisocial
19 behavior, personality or attitudes, deviant sexual
20 behavior, child development, parenting assistance, job
21 skills, vocational-technical skills, domestic
22 relations, literacy, education, or any other
23 identifiable deficiency which may be treated

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

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

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

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

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

19 gg. in the case of a person convicted of any false or
20 bogus check violation, as defined in Section 1541.4 of
21 Title 21 of the Oklahoma Statutes, impose a bogus
22 check fee to be paid to the district attorney. The
23 fee shall be equal to the amount assessed as court

1 costs plus Twenty-five Dollars (\$25.00) for each check
2 upon filing of the case in district court. This money
3 shall be deposited in the Bogus Check Restitution
4 Program Fund as established in subsection B of Section
5 114 of this title. Additionally, the court may
6 require the offender to pay restitution and bogus
7 check fees on any other bogus check or checks that
8 have been submitted to the District Attorney Bogus
9 Check Restitution Program, and

10 hh. any other provision specifically ordered by the court.

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

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

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

22 4. Order the defendant to reimburse the Oklahoma State Bureau
23 of Investigation for costs incurred by that agency during its

1 investigation of the crime for which the defendant pleaded guilty,
2 nolo contendere or was convicted, including compensation for
3 laboratory, technical, or investigation services performed by the
4 Bureau if, in the opinion of the court, the defendant is able to pay
5 without imposing manifest hardship on the defendant, and if the
6 costs incurred by the Bureau during the investigation of the
7 defendant's case may be determined with reasonable certainty;

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

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

20 7. In addition to the other sentencing powers of the court, in
21 the case of a person convicted of operating or being in control of a
22 motor vehicle while the person was under the influence of alcohol,
23 other intoxicating substance, or a combination of alcohol or another

1 intoxicating substance, or convicted of operating a motor vehicle
2 while the ability of the person to operate such vehicle was impaired
3 due to the consumption of alcohol, require such person:

4 a. to participate in an alcohol and drug assessment and
5 evaluation by an assessment agency or assessment
6 personnel certified by the Department of Mental Health
7 and Substance Abuse Services pursuant to Section 3-460
8 of Title 43A of the Oklahoma Statutes and, as
9 determined by the assessment, participate in an
10 alcohol and drug substance abuse course or treatment
11 program or both, pursuant to Sections 3-452 and 3-453
12 of Title 43A of the Oklahoma Statutes,

13 b. to attend a victims impact panel program, if such a
14 program is offered in the county where the judgment is
15 rendered, and to pay a fee, not less than Fifteen
16 Dollars (\$15.00) nor more than Twenty-five Dollars
17 (\$25.00) as set by the governing authority of the
18 program and approved by the court, to the program to
19 offset the cost of participation by the defendant, if
20 in the opinion of the court the defendant has the
21 ability to pay such fee,

22 c. to both participate in the alcohol and drug substance
23 abuse course or treatment program, pursuant to

1 subparagraph a of this paragraph and attend a victims
2 impact panel program, pursuant to subparagraph b of
3 this paragraph,
4 d. to install, at the expense of the person, an ignition
5 interlock device approved by the Board of Tests for
6 Alcohol and Drug Influence, upon every motor vehicle
7 operated by such person and to require that a notation
8 of this restriction be affixed to the person's driver
9 license at the time of reinstatement of the license.
10 The restriction shall remain on the driver license for
11 such period as the court shall determine. The
12 restriction may be modified or removed by order of the
13 court and notice of the order shall be given to the
14 Department of Public Safety. Upon the expiration of
15 the period for the restriction, the Department of
16 Public Safety shall remove the restriction without
17 further court order. Failure to comply with the order
18 to install an ignition interlock device or operating
19 any vehicle without such device during the period of
20 restriction shall be a violation of the sentence and
21 may be punished as deemed proper by the sentencing
22 court, or

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

13 8. In addition to the other sentencing powers of the court, in
14 the case of a person convicted of prostitution pursuant to Section
15 1029 of Title 21 of the Oklahoma Statutes, require such person to
16 receive counseling for the behavior which may have caused such
17 person to engage in prostitution activities. Such person may be
18 required to receive counseling in areas including but not limited to
19 alcohol and substance abuse, sexual behavior problems, or domestic
20 abuse or child abuse problems;

21 9. In addition to the other sentencing powers of the court, in
22 the case of a person convicted of any crime related to domestic
23 abuse, as defined in Section 60.1 of this title, the court may

1 require the defendant to undergo the treatment or participate in the
2 counseling services necessary to bring about the cessation of
3 domestic abuse against the victim. The defendant may be required to
4 pay all or part of the cost of the treatment or counseling services;

5 10. In addition to the other sentencing powers of the court,
6 the court, in the case of a sex offender sentenced after November 1,
7 1989, and required by law to register pursuant to the Sex Offenders
8 Registration Act, shall require the person to participate in a
9 treatment program designed specifically for the treatment of sex
10 offenders, if available. The treatment program may include
11 polygraphs specifically designed for use with sex offenders for the
12 purpose of supervision and treatment compliance, provided the
13 examination is administered by a certified licensed polygraph
14 examiner. The treatment program must be approved by the Department
15 of Corrections or the Department of Mental Health and Substance
16 Abuse Services. Such treatment shall be at the expense of the
17 defendant based on the defendant's ability to pay;

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

1 to pay all or part of the cost of the treatment or counseling
2 services; or

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

8 B. Notwithstanding any other provision of law, any person who
9 is found guilty of a violation of any provision of Section 761 or
10 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
11 guilty or nolo contendere for a violation of any provision of such
12 sections shall be ordered to participate in, prior to sentencing, an
13 alcohol and drug assessment and evaluation by an assessment agency
14 or assessment personnel certified by the Department of Mental Health
15 and Substance Abuse Services for the purpose of evaluating the
16 receptivity to treatment and prognosis of the person. The court
17 shall order the person to reimburse the agency or assessor for the
18 evaluation. The fee shall be the amount provided in subsection C of
19 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
20 shall be conducted at a certified assessment agency, the office of a
21 certified assessor or at another location as ordered by the court.
22 The agency or assessor shall, within seventy-two (72) hours from the
23 time the person is assessed, submit a written report to the court

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

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

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

1 E. Probation, for purposes of subsection A of this section, is
2 a procedure by which a defendant found guilty of a crime, whether
3 upon a verdict or plea of guilty or upon a plea of nolo contendere,
4 is released by the court subject to conditions imposed by the court
5 and subject to the supervision of the Department of Corrections.
6 Such supervision shall be initiated upon an order of probation from
7 the court, and shall not exceed two (2) years, except as otherwise
8 provided by law. In the case of a person convicted of a sex
9 offense, supervision shall begin immediately upon release from
10 incarceration and shall not be limited to two (2) years. Provided
11 further, any supervision provided for in this section may be
12 extended for a period not to exceed the expiration of the maximum
13 term or terms of the sentence upon a determination by the Division
14 of Probation and Parole of the Department of Corrections that the
15 best interests of the public and the release will be served by an
16 extended period of supervision.

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

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

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

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

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

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

6 H. As used in this section:

7 1. "Ignition interlock device" means a device that, without
8 tampering or intervention by another person, would prevent the
9 defendant from operating a motor vehicle if the defendant has a
10 blood or breath alcohol concentration of two-hundredths (0.02) or
11 greater; and

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

17 I. A person convicted of an offense ~~as provided in Section 7115~~
18 ~~of Title 10 of the Oklahoma Statutes or Section 645, subsection B of~~
19 ~~Section 649, Section 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8,~~
20 ~~651, 652, 701.7, 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832,~~
21 ~~885, 888, 891, subsection B of Section 1021, Section 1021.2, 1021.3,~~
22 ~~1087, 1088, 1114, 1115, 1116, 1123, 1173, 1192, 1192.1, 1431 or 1435~~
23 ~~of Title 21~~ 150.27a of Title 74 of the Oklahoma Statutes, or

1 receiving any form of probation for an offense in which registration
2 is required pursuant to the Sex Offenders Registration Act, ~~or a~~
3 ~~person convicted of any felony who has a prior conviction for an~~
4 ~~offense listed in this subsection~~ shall submit to deoxyribonucleic
5 acid DNA testing for law enforcement identification purposes in
6 accordance with Section 150.27 of Title 74 of the Oklahoma Statutes
7 and the rules promulgated by the Oklahoma State Bureau of
8 Investigation for the OSBI Combined DNA Offender Index System
9 (CODIS) Database. Any defendant sentenced to probation shall be
10 required to submit to testing within thirty (30) days of sentencing
11 either to the Department of Corrections or to the county sheriff as
12 directed by the court. Defendants who are sentenced to a term of
13 incarceration shall submit to testing in accordance with Section
14 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who
15 enter the custody of the Department of Corrections or to the county
16 sheriff, for those defendants sentenced to incarceration in a county
17 jail. Convicted individuals who have previously submitted to DNA
18 testing under this section and for whom a valid sample is on file in
19 the OSBI DNA Offender Database at the time of sentencing shall not
20 be required to submit to additional testing. Except as required by
21 the Sex Offenders Registration Act, a deferred judgment does not
22 require submission to deoxyribonucleic acid testing.

1 ~~Any person convicted of an offense as provided in this section~~
2 ~~who is in custody after July 1, 1996, shall provide a blood or~~
3 ~~saliva sample prior to release. Every person who is convicted of an~~
4 ~~offense as provided in this subsection whose sentence does not~~
5 ~~include a term of confinement shall provide a blood or saliva sample~~
6 ~~as a condition of the sentence.~~

7 J. Samples of blood or saliva for DNA testing required by
8 subsection I of this section shall be taken by employees or
9 contractors of the Department of Corrections or the county sheriff
10 or employees or contractors of the sheriff's office. The
11 individuals shall be properly trained to collect blood or saliva
12 samples. Persons collecting blood or saliva for DNA testing
13 pursuant to this section shall be immune from civil liabilities
14 arising from this activity. The Department of Corrections and the
15 county sheriff shall ensure the collection of samples are mailed to
16 the Oklahoma State Bureau of Investigation within ten (10) days of
17 the time the subject appears for testing or within ten (10) days of
18 the date the subject comes into physical custody to serve a term of
19 incarceration. The Department and the sheriff's office shall use
20 sample kits provided by the OSBI and procedures promulgated by the
21 OSBI. Persons subject to DNA testing who are not received at the
22 Lexington Assessment and Reception Center shall be required to pay a
23 fee of Fifteen Dollars (\$15.00) to the agency collecting the sample

1 for submission to the OSBI DNA Offender Database. Any fees
2 collected by the Department of Corrections or the county sheriff
3 pursuant to this subsection shall be deposited in the Department of
4 Corrections revolving account or the sheriff's service fee account.

5 SECTION 2. AMENDATORY 57 O.S. 2001, Section 530.1, as
6 amended by Section 2, Chapter 143, O.S.L. 2004 (57 O.S. Supp. 2004,
7 Section 530.1), is amended to read as follows:

8 Section 530.1 A. The Department of Corrections, by the rules
9 of that Department, shall have the following duties which shall be
10 performed as part of the assessment and reception process of the
11 Department of Corrections, upon reception of each inmate:

12 1. To administer, or cause to be administered, physical and
13 psychological examination of all inmates, including ~~the collection~~
14 ~~of any requirement to collect biological samples for DNA specimens~~
15 ~~as required testing~~ pursuant to Section 991a of Title 22 of the
16 Oklahoma Statutes and Section 150.27a of Title 74 of the Oklahoma
17 Statutes, or other provision of law;

18 2. To identify the vocational-technical skills of all inmates.
19 The information shall be noted on and made a part of the record for
20 each inmate;

21 3. To assess the educational and training needs of all inmates;

22 4. To determine from available records and interviews, the
23 place of birth of new inmates. The Department of Corrections shall

1 furnish a list of foreign-born nationals and suspected foreign-born
2 nationals to the Immigration and Naturalization Service on a weekly
3 basis;

4 5. To determine initial security and custody classifications;

5 6. To determine and recommend for placement in an alcohol or
6 substance abuse treatment facility or program, as provided for in
7 this section, any inmate convicted of alcohol related offenses or
8 otherwise in need of alcohol or substance abuse treatment;

9 7. To determine and recommend for placement in the Department
10 of Corrections Special Care Unit at the State Penitentiary at
11 McAlester any inmate who is in need of acute psychiatric care;

12 8. To plan for immediate assignments to institutions, community
13 treatment centers, alcohol or substance abuse treatment centers or
14 programs, alternatives to incarceration authorized by law, or other
15 facilities, public or private, designated by the Department;

16 9. To recommend possible future assignments to institutions,
17 community treatment centers, alcohol or substance abuse treatment
18 centers or programs, alternatives to incarceration authorized by
19 law, or other facilities designated by the Department;

20 10. To provide orientation and instruction with respect to
21 rules and procedures for prisoners; and

22 11. To obtain all relevant juvenile court records and relevant
23 Department of Juvenile Justice agency records, if any, pertaining to

1 inmates and make said records a part of the permanent record
2 maintained by the Department of Corrections regarding the inmate.
3 The information contained in those records shall be used to
4 determine security level and placement of inmates.

5 B. An alcohol or substance abuse treatment center in which an
6 inmate is placed shall provide services and standards of treatment
7 as provided by the Department of Mental Health and Substance Abuse
8 Services under its rules for alcoholism or substance abuse
9 treatment. Upon placement of a prisoner in a center for alcoholism
10 or substance abuse treatment, the Department of Corrections shall
11 enter into a third party contract with such center for the custodial
12 and professional services rendered to any prisoner. Such contract
13 may include requirements imposed by law on the Department of
14 Corrections or reimbursement for such services, if necessary. The
15 Department of Corrections is further authorized to enter into third
16 party contracts for substance abuse treatment programs which are
17 certified by the Department of Mental Health and Substance Abuse
18 Services to provide professional services on an outpatient basis to
19 prisoners in need of substance abuse treatment and follow-up
20 treatment while assigned to alternatives to incarceration.

21 C. The Department of Juvenile Justice shall allow reasonable
22 access to its database for the purpose of obtaining the juvenile
23 records required by subsection A of this section.

1 D. The Department of Corrections shall adopt rules governing
2 the implementation of this section.

3 SECTION 3. AMENDATORY 74 O.S. 2001, Section 150.27, as
4 amended by Section 3, Chapter 143, O.S.L. 2004 (74 O.S. Supp. 2004,
5 Section 150.27), is amended to read as follows:

6 Section 150.27 A. There shall be established within the
7 Oklahoma State Bureau of Investigation (OSBI) a deoxyribonucleic
8 acid (DNA) laboratory for the purpose of determining DNA profiles to
9 be used for evidence in criminal proceedings. The OSBI shall
10 coordinate the use of this laboratory and equipment with federal,
11 state, county, and municipal law enforcement agencies. All county
12 sheriff departments and all police departments for municipalities
13 may participate in this laboratory. The OSBI shall establish
14 standards and guidelines for the deoxyribonucleic acid (DNA)
15 laboratory and shall comply with any regulations applicable to DNA
16 testing, sampling and laboratory standards.

17 B. ~~The OSBI shall make a DNA profile of any blood or saliva~~
18 ~~specimen received pursuant to Section 991a of Title 22 of the~~
19 ~~Oklahoma Statutes, and may make a DNA profile of any blood or saliva~~
20 ~~specimen received for any other purpose by the Bureau. When the~~
21 ~~Bureau makes a sufficient DNA profile, it shall be placed in and~~
22 place the DNA profile in its DNA population database. The DNA
23 population database shall not be indexed by donor name, and the

1 Bureau shall promulgate rules to protect the privacy of the DNA
2 donors.

3 SECTION 4. AMENDATORY 74 O.S. 2001, Section 150.27a, as
4 amended by Section 1, Chapter 61, O.S.L. 2004 (74 O.S. Supp. 2004,
5 Section 150.27a), is amended to read as follows:

6 Section 150.27a A. There is hereby established within the
7 Oklahoma State Bureau of Investigation the OSBI Combined DNA
8 ~~Offender~~ Index System (CODIS) Database for the purpose of collecting
9 and storing blood or saliva samples and DNA profiles, analyzing and
10 typing of the genetic markers contained in or derived from DNA, and
11 maintaining the records and samples of DNA of individuals convicted
12 of ~~violation of Section 7115 of Title 10 of the Oklahoma Statutes or~~
13 ~~Section 645, subsection B of Section 649, Section 650, 650.2, 650.4,~~
14 ~~650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 716, 741,~~
15 ~~759, 798, 799, 800, 801, 832, 885, 888, 891, subsection B of Section~~
16 ~~1021, Section 1021.2, 1021.3, 1087, 1088, 1114, 1115, 1116, 1123,~~
17 ~~1173, 1192, 1192.1, 1431 or 1435 of Title 21 of the Oklahoma~~
18 ~~Statutes~~ any felony offense, and of individuals required to register
19 pursuant to the Sex Offenders Registration Act. The purpose of this
20 database is the detection or exclusion of individuals who are
21 subjects of the investigation or prosecution of sex-related crimes,
22 violent crimes, or other crimes in which biological evidence is
23 recovered, and such information shall be used for no other purpose.

1 B. Any DNA specimen taken in good faith by the Department of
2 Corrections, its employees or contractors, and submitted to the OSBI
3 may be included, maintained, and kept by the OSBI in a database for
4 criminal investigative purposes despite the specimen having not been
5 taken in strict compliance with the provisions of this section or
6 Section 991a of Title 22 of the Oklahoma Statutes.

7 C. Upon the request to OSBI by the federal or state authority
8 having custody of the person, any individual who was convicted of
9 violating laws of another state or the federal government, but is
10 currently incarcerated or residing in Oklahoma, shall submit to DNA
11 profiling for entry of the data into the OSBI DNA Offender Database.
12 This provision shall only apply when such federal or state
13 conviction carries a requirement of sex offender registration and/or
14 DNA profiling. The person to be profiled shall pay a fee of One
15 Hundred Fifty Dollars (\$150.00) to the OSBI.

16 D. The OSBI Combined DNA Offender Index System (CODIS) Database
17 is specifically exempt from any statute requiring disclosure of
18 information to the public. The information contained in the
19 database is privileged from discovery and inadmissible as evidence
20 in any civil court proceeding. The information in the database is
21 confidential and shall not be released to the public. Any person
22 charged with the custody and dissemination of information from the
23 database shall not divulge or disclose any such information except

1 to federal, state, county or municipal law enforcement or criminal
2 justice agencies. Any person violating the provisions of this
3 section upon conviction shall be deemed guilty of a misdemeanor
4 punishable by imprisonment in the county jail for not more than one
5 (1) year.

6 E. The OSBI shall promulgate rules concerning the collection,
7 storing, expungement and dissemination of information and samples
8 for the OSBI Combined DNA Offender Index System (CODIS) Database.
9 The OSBI shall determine the type of equipment, collection
10 procedures, and reporting documentation to be used by the Department
11 of Corrections in submitting DNA samples to the OSBI in accordance
12 with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI
13 shall provide training to designated employees of the Department of
14 Corrections in the proper methods of performing the duties required
15 by this section.

16 F. The OSBI Combined DNA Index System (CODIS) Database may
17 include secondary databases and indexes including, but not limited
18 to:

19 1. Forensic index database consisting of unknown evidence
20 samples;

21 2. Suspect index database consisting of samples taken from
22 individuals as a result of criminal investigations;

1 3. Convicted offender index database authorized pursuant to
2 subsection A of this section; and

3 4. Missing persons and unidentified remains index or database
4 consisting of DNA profiles from unidentified remains and relatives
5 of missing persons.

6 G. Any person convicted of an offense provided in this section
7 who is in custody after July 1, 1996, shall provide a blood or
8 saliva sample prior to release. Every person who is convicted of an
9 offense provided in this section whose sentence does not include a
10 term of incarceration shall provide a blood or saliva sample as a
11 condition of sentence.

12 SECTION 5. This act shall become effective July 1, 2005.

13 SECTION 6. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
18 PASS, As Amended and Coauthored.