

SB 830

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THE STATE SENATE
Wednesday, March 2, 2005

Senate Bill No. 830
As Amended

SENATE BILL NO. 830 - By: LEFTWICH of the Senate and MORRISSETTE of the House.

[criminal procedure - powers of the court - increasing fees - emergency]

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

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

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated ~~Victims~~ 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

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)~~ Fifteen Dollars (\$15.00) nor more than ~~Twenty-~~
3 ~~five Dollars (\$25.00)~~ Fifty Dollars (\$50.00) as set by
4 the governing authority of the program to offset the
5 cost of participation by the defendant. Provided,
6 each victim/offender reconciliation program shall be
7 required to obtain a written consent form voluntarily
8 signed by the victim and defendant that specifies the
9 methods to be used to resolve the issues, the
10 obligations and rights of each person, and the
11 confidentiality of the proceedings. Volunteer
12 mediators and employees of a victim/offender
13 reconciliation program shall be immune from liability
14 and have rights of confidentiality as provided in
15 Section 1805 of Title 12 of the Oklahoma Statutes,
16 n. to install, at the expense of the defendant, an
17 ignition interlock device approved by the Board of
18 Tests for Alcohol and Drug Influence. The device
19 shall be installed upon every motor vehicle operated
20 by the defendant, and the court shall require that a
21 notation of this restriction be affixed to the
22 defendant's driver license. The restriction shall
23 remain on the driver license not exceeding two (2)

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

1 deposited with the appropriate supervising authority.
2 Any willful violation of an order of the court for the
3 payment of the monitoring fee shall be a violation of
4 the sentence and may be punished as deemed proper by
5 the sentencing court. As used in this paragraph,
6 "electronic monitoring" means confinement of the
7 defendant within a specified location or locations
8 with supervision by means of an electronic device
9 approved by the Department of Corrections which is
10 designed to detect if the defendant is in the court-
11 ordered location at the required times and which
12 records violations for investigation by a qualified
13 supervisory agency or person,
14 p. to perform one or more courses of treatment, education
15 or rehabilitation for any conditions, behaviors,
16 deficiencies or disorders which may contribute to
17 criminal conduct, including but not limited to alcohol
18 and substance abuse, mental health, emotional health,
19 physical health, propensity for violence, antisocial
20 behavior, personality or attitudes, deviant sexual
21 behavior, child development, parenting assistance, job
22 skills, vocational-technical skills, domestic
23 relations, literacy, education, or any other

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

1 polygraphs specifically designed for use with sex
2 offenders for purposes of supervision and treatment
3 compliance, provided the examination is administered
4 by a certified licensed polygraph examiner. The
5 treatment program must be approved by the Department
6 of 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)~~ Fifty Dollars (\$50.00) as set by the
18 governing authority of the program and approved by the
19 court, to the program to offset the cost of
20 participation by the defendant, if in the opinion of
21 the court the defendant has the ability to pay such
22 fee,

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

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

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

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

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

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

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

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

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

1 The agency or assessor shall, within seventy-two (72) hours from the
2 time the person is assessed, submit a written report to the court
3 for the purpose of assisting the court in its final sentencing
4 determination. No person, agency or facility operating an alcohol
5 and drug substance abuse evaluation program certified by the
6 Department of Mental Health and Substance Abuse Services shall
7 solicit or refer any person evaluated pursuant to this subsection
8 for any treatment program or alcohol and drug substance abuse
9 service in which such person, agency or facility has a vested
10 interest; however, this provision shall not be construed to prohibit
11 the court from ordering participation in or any person from
12 voluntarily utilizing a treatment program or alcohol and drug
13 substance abuse service offered by such person, agency or facility.
14 If a person is sentenced to the custody of the Department of
15 Corrections and the court has received a written evaluation report
16 pursuant to this subsection, the report shall be furnished to the
17 Department of Corrections with the judgment and sentence. Any
18 evaluation report submitted to the court pursuant to this subsection
19 shall be handled in a manner which will keep such report
20 confidential from the general public's review. Nothing contained in
21 this subsection shall be construed to prohibit the court from
22 ordering judgment and sentence in the event the defendant fails or

1 refuses to comply with an order of the court to obtain the
2 evaluation required by this subsection.

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

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

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

20 F. The Department of Corrections, or such other agency as the
21 court may designate, shall be responsible for the monitoring and
22 administration of the restitution and service programs provided for
23 by subparagraphs a, c, and d of paragraph 1 of subsection A of this

1 section, and shall ensure that restitution payments are forwarded to
2 the victim and that service assignments are properly performed.

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

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

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

20 4. The Department is hereby authorized to provide technical
21 assistance to any county in establishing a Program, regardless of
22 whether the county enters into a contract pursuant to this
23 subsection. Technical assistance shall include appropriate

1 staffing, development of community resources, sponsorship,
2 supervision and any other requirements.

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

8 H. As used in this section:

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

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

19 I. A person convicted of an offense as provided in Section 7115
20 of Title 10 of the Oklahoma Statutes or Section 645, subsection B of
21 Section 649, Section 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8,
22 651, 652, 701.7, 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832,
23 885, 888, 891, subsection B of Section 1021, Section 1021.2, 1021.3,

1 1087, 1088, 1114, 1115, 1116, 1123, 1173, 1192, 1192.1, 1431 or 1435
2 of Title 21 of the Oklahoma Statutes, or receiving any form of
3 probation for an offense in which registration is required pursuant
4 to the Sex Offenders Registration Act, or a person convicted of any
5 felony who has a prior conviction for an offense listed in this
6 subsection shall submit to deoxyribonucleic acid (DNA) testing for
7 law enforcement identification purposes in accordance with Section
8 150.27 of Title 74 of the Oklahoma Statutes and the rules
9 promulgated by the Oklahoma State Bureau of Investigation for the
10 OSBI DNA Offender Database. Any defendant sentenced to probation
11 shall be required to submit to testing within thirty (30) days of
12 sentencing either to the Department of Corrections or to the county
13 sheriff as directed by the court. Defendants who are sentenced to a
14 term of incarceration shall submit to testing in accordance with
15 Section 530.1 of Title 57 of the Oklahoma Statutes, for those
16 defendants who enter the custody of the Department of Corrections or
17 to the county sheriff, for those defendants sentenced to
18 incarceration in a county jail. Convicted individuals who have
19 previously submitted to DNA testing under this section and for whom
20 a valid sample is on file in the OSBI DNA Offender Database at the
21 time of sentencing shall not be required to submit to additional
22 testing. Except as required by the Sex Offenders Registration Act,

1 a deferred judgment does not require submission to deoxyribonucleic
2 acid testing.

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

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

1 Lexington Assessment and Reception Center shall be required to pay a
2 fee of Fifteen Dollars (\$15.00) to the agency collecting the sample
3 for submission to the OSBI DNA Offender Database. Any fees
4 collected by the Department of Corrections or the county sheriff
5 pursuant to this subsection shall be deposited in the Department of
6 Corrections revolving account or the sheriff's service fee account.

7 SECTION 2. It being immediately necessary for the preservation
8 of the public peace, health and safety, an emergency is hereby
9 declared to exist, by reason whereof this act shall take effect and
10 be in full force from and after its passage and approval.

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