

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2081
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

Paul675

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Paul Wesselhoft

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2081

By: Wesselhoft

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to DNA evidence; requiring persons
9 arrested and charged with felony offenses to submit
10 to deoxyribonucleic acid DNA testing; stating persons
11 responsible for collecting samples; providing
12 exception to submission requirement under certain
13 circumstance; requiring collectors of DNA samples be
14 properly trained; providing immunity from civil
15 liability; requiring collectors to mail DNA sample to
16 the Oklahoma State Bureau of Investigation within
17 certain time period; requiring collectors to use
18 certain sample kits; amending 22 O.S. 2001, Section
19 991a, as last amended by Section 19, Chapter 3,
20 O.S.L. 2008 (22 O.S. Supp. 2008, Section 991a), which
21 relates to sentencing powers of the court; modifying
22 DNA collection procedure to include DNA samples from
23 certain persons; amending 74 O.S. 2001, Section
24 150.27a, as last amended by Section 5, Chapter 441,
O.S.L. 2005 (74 O.S. Supp. 2008, Section 150.27a),
which relates to the Oklahoma State Bureau of
Investigation DNA Offender Database; modifying scope
of DNA database collection requirements; requiring
DNA samples be taken by certain persons; providing
immunity from civil liability for persons collecting
samples; directing agencies to mail DNA samples
within certain number of days; directing use of
certain kits; providing list of persons required to
submit a DNA sample; clarifying DNA collection
guidelines; requiring payment of DNA testing fee;
providing for expungement of DNA records; prohibiting
exclusion or suppression of DNA records under certain
circumstances; providing for codification; and
providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 241 of Title 22, unless there is
4 created a duplication in numbering, reads as follows:

5 A. Upon the effective date of this act, any person eighteen
6 (18) years of age or older who is arrested and subsequently charged
7 with a felony offense within this state shall submit to
8 deoxyribonucleic acid DNA testing for law enforcement identification
9 purposes in accordance with Section 150.27 of Title 74 of the
10 Oklahoma Statutes and the rules promulgated by the Oklahoma State
11 Bureau of Investigation for the OSBI Combined DNA Index System
12 (CODIS) Database. Samples of blood or saliva for DNA testing shall
13 be taken by peace officers, the county sheriff or employees or
14 contractors of the sheriff's office at the time of the arraignment
15 of the person. A DNA sample shall not be required if it is
16 determined that a DNA sample has previously been taken and a valid
17 sample is on file in the OSBI Combined DNA Index System (CODIS)
18 Database.

19 B. Samples of blood or saliva for DNA testing required by
20 subsection A of this section shall be taken by peace officers, the
21 county sheriff, or employees or contractors of the sheriff's office.
22 The individuals shall be properly trained to collect blood or saliva
23 samples. Persons collecting blood or saliva for DNA testing
24 pursuant to this section shall be immune from civil liabilities

1 arising from this activity. All collectors of DNA samples shall
2 ensure the collection of samples is mailed to the Oklahoma State
3 Bureau of Investigation within ten (10) days from the date of the
4 arraignment of the person. All collectors of DNA samples shall use
5 sample kits provided by the OSBI and procedures promulgated by the
6 OSBI.

7 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991a, as
8 last amended by Section 19, Chapter 3, O.S.L. 2008 (22 O.S. Supp.
9 2008, Section 991a), is amended to read as follows:

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

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

18 a. to provide restitution to the victim as provided by
19 Section 991f et seq. of this title or according to a
20 schedule of payments established by the sentencing
21 court, together with interest upon any pecuniary sum
22 at the rate of twelve percent (12%) per annum, if the
23 defendant agrees to pay such restitution or, in the
24 opinion of the court, if the defendant is able to pay

1 such restitution without imposing manifest hardship on
2 the defendant or the immediate family and if the
3 extent of the damage to the victim is determinable
4 with reasonable certainty,

5 b. to reimburse any state agency for amounts paid by the
6 state agency for hospital and medical expenses
7 incurred by the victim or victims, as a result of the
8 criminal act for which such person was convicted,
9 which reimbursement shall be made directly to the
10 state agency, with interest accruing thereon at the
11 rate of twelve percent (12%) per annum,

12 c. to engage in a term of community service without
13 compensation, according to a schedule consistent with
14 the employment and family responsibilities of the
15 person convicted,

16 d. to pay a reasonable sum into any trust fund,
17 established pursuant to the provisions of Sections 176
18 through 180.4 of Title 60 of the Oklahoma Statutes,
19 and which provides restitution payments by convicted
20 defendants to victims of crimes committed within this
21 state wherein such victim has incurred a financial
22 loss,

23 e. to confinement in the county jail for a period not to
24 exceed six (6) months,

- 1 f. to confinement as provided by law together with a term
2 of post-imprisonment community supervision for not
3 less than three (3) years of the total term allowed by
4 law for imprisonment, with or without restitution;
5 provided, however, the authority of this provision is
6 limited to Section 7115 of Title 10 of the Oklahoma
7 Statutes when the offense involved sexual abuse or
8 sexual exploitation; Sections 681, 741 and 843.1 of
9 Title 21 of the Oklahoma Statutes when the offense
10 involved sexual abuse or sexual exploitation; and
11 Sections 865 et seq., 885, 886, 888, 891, 1021,
12 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
13 1123 of Title 21 of the Oklahoma Statutes,
- 14 g. to repay the reward or part of the reward paid by a
15 certified local crimestoppers program and the Oklahoma
16 Reward System. In determining whether the defendant
17 shall repay the reward or part of the reward, the
18 court shall consider the ability of the defendant to
19 make the payment, the financial hardship on the
20 defendant to make the required payment, and the
21 importance of the information to the prosecution of
22 the defendant as provided by the arresting officer or
23 the district attorney with due regard for the
24 confidentiality of the records of the certified local

1 crimestoppers program and the Oklahoma Reward System.
2 The court shall assess this repayment against the
3 defendant as a cost of prosecution. "Certified local
4 crimestoppers program" means a crimestoppers program
5 certified by the Office of the Attorney General
6 pursuant to Section 991g of this title. The "Oklahoma
7 Reward System" means the reward program established by
8 Section 150.18 of Title 74 of the Oklahoma Statutes,

9 h. to reimburse the Oklahoma State Bureau of
10 Investigation for costs incurred by that agency during
11 its investigation of the crime for which the defendant
12 pleaded guilty, nolo contendere or was convicted,
13 including compensation for laboratory, technical, or
14 investigation services performed by the Bureau if, in
15 the opinion of the court, the defendant is able to pay
16 without imposing manifest hardship on the defendant,
17 and if the costs incurred by the Bureau during the
18 investigation of the defendant's case may be
19 determined with reasonable certainty,

20 i. to reimburse the Oklahoma State Bureau of
21 Investigation and any authorized law enforcement
22 agency for all costs incurred by that agency for
23 cleaning up an illegal drug laboratory site for which
24 the defendant pleaded guilty, nolo contendere or was

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

10 j. to pay a reasonable sum to the Crime Victims
11 Compensation Board, created by Section 142.2 et seq.
12 of Title 21 of the Oklahoma Statutes, for the benefit
13 of crime victims,

14 k. to reimburse the court fund for amounts paid to court-
15 appointed attorneys for representing the defendant in
16 the case in which the person is being sentenced,

17 l. to participate in an assessment and evaluation by an
18 assessment agency or assessment personnel certified by
19 the Department of Mental Health and Substance Abuse
20 Services pursuant to Section 3-460 of Title 43A of the
21 Oklahoma Statutes and, as determined by the
22 assessment, participate in an alcohol and drug
23 substance abuse course or treatment program or both,
24

1 pursuant to Sections 3-452 and 3-453 of Title 43A of
2 the Oklahoma Statutes, or as ordered by the court,
3 m. to be placed in a victims impact panel program or
4 victim/offender reconciliation program and payment of
5 a fee to the program of not less than Fifteen Dollars
6 (\$15.00) nor more than Fifty Dollars (\$50.00) as set
7 by the governing authority of the program to offset
8 the cost of participation by the defendant. Provided,
9 each victim/offender reconciliation program shall be
10 required to obtain a written consent form voluntarily
11 signed by the victim and defendant that specifies the
12 methods to be used to resolve the issues, the
13 obligations and rights of each person, and the
14 confidentiality of the proceedings. Volunteer
15 mediators and employees of a victim/offender
16 reconciliation program shall be immune from liability
17 and have rights of confidentiality as provided in
18 Section 1805 of Title 12 of the Oklahoma Statutes,
19 n. to install, at the expense of the defendant, an
20 ignition interlock device approved by the Board of
21 Tests for Alcohol and Drug Influence. The device
22 shall be installed upon every motor vehicle operated
23 by the defendant, and the court shall require that a
24 notation of this restriction be affixed to the

1 defendant's driver license. The restriction shall
2 remain on the driver license not exceeding two (2)
3 years to be determined by the court. The restriction
4 may be modified or removed only by order of the court
5 and notice of any modification order shall be given to
6 the Department of Public Safety. Upon the expiration
7 of the period for the restriction, the Department of
8 Public Safety shall remove the restriction without
9 further court order. Failure to comply with the order
10 to install an ignition interlock device or operating
11 any vehicle without a device during the period of
12 restriction shall be a violation of the sentence and
13 may be punished as deemed proper by the sentencing
14 court. As used in this paragraph, "ignition interlock
15 device" means a device that, without tampering or
16 intervention by another person, would prevent the
17 defendant from operating a motor vehicle if the
18 defendant has a blood or breath alcohol concentration
19 of two-hundredths (0.02) or greater,

- 20 o. to be confined by electronic monitoring administered
21 and supervised by the Department of Corrections or a
22 community sentence provider, and payment of a
23 monitoring fee to the supervising authority, not to
24 exceed Three Hundred Dollars (\$300.00) per month. Any

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

15 p. to perform one or more courses of treatment, education
16 or rehabilitation for any conditions, behaviors,
17 deficiencies or disorders which may contribute to
18 criminal conduct, including but not limited to alcohol
19 and substance abuse, mental health, emotional health,
20 physical health, propensity for violence, antisocial
21 behavior, personality or attitudes, deviant sexual
22 behavior, child development, parenting assistance, job
23 skills, vocational-technical skills, domestic
24 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,
23
24

- 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
23 restore the property and the victim consents to the
24 repairing or restoring of the property,

1 bb. to restore damaged property in kind or payment of out-
2 of-pocket expenses to the victim, if the court is able
3 to determine the actual out-of-pocket expenses
4 suffered by the victim,

5 cc. to attend a victim-offender reconciliation program if
6 the victim agrees to participate and the offender is
7 deemed appropriate for participation,

8 dd. in the case of a person convicted of prostitution
9 pursuant to Section 1029 of Title 21 of the Oklahoma
10 Statutes, require such person to receive counseling
11 for the behavior which may have caused such person to
12 engage in prostitution activities. Such person may be
13 required to receive counseling in areas including but
14 not limited to alcohol and substance abuse, sexual
15 behavior problems, or domestic abuse or child abuse
16 problems,

17 ee. in the case of a sex offender sentenced after November
18 1, 1989, and required by law to register pursuant to
19 the Sex Offender Registration Act, the court shall
20 require the person to comply with sex offender
21 specific rules and conditions of supervision
22 established by the Department of Corrections and
23 require the person to participate in a treatment
24 program designed for the treatment of sex offenders

1 during the period of time while the offender is
2 subject to supervision by the Department of
3 Corrections. The treatment program shall include
4 polygraph examinations specifically designed for use
5 with sex offenders for purposes of supervision and
6 treatment compliance, and shall be administered not
7 less than each six (6) months during the period of
8 supervision. The examination shall be administered by
9 a certified licensed polygraph examiner. The
10 treatment program must be approved by the Department
11 of Corrections or the Department of Mental Health and
12 Substance Abuse Services. Such treatment shall be at
13 the expense of the defendant based on the defendant's
14 ability to pay,

15 ff. in addition to other sentencing powers of the court,
16 the court in the case of a defendant being sentenced
17 for a felony conviction for a violation of Section 2-
18 402 of Title 63 of the Oklahoma Statutes which
19 involves marijuana may require the person to
20 participate in a drug court program, if available. If
21 a drug court program is not available, the defendant
22 may be required to participate in a community
23 sanctions program, if available,
24

1 gg. in the case of a person convicted of any false or
2 bogus check violation, as defined in Section 1541.4 of
3 Title 21 of the Oklahoma Statutes, impose a bogus
4 check fee to be paid to the district attorney. The
5 fee shall be equal to the amount assessed as court
6 costs plus Twenty-five Dollars (\$25.00) for each check
7 upon filing of the case in district court. This money
8 shall be deposited in the Bogus Check Restitution
9 Program Fund as established in subsection B of Section
10 114 of this title. Additionally, the court may
11 require the offender to pay restitution and bogus
12 check fees on any other bogus check or checks that
13 have been submitted to the District Attorney Bogus
14 Check Restitution Program, and

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

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

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

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

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

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

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

24

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

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

17 b. to attend a victims impact panel program, if such a
18 program is offered in the county where the judgment is
19 rendered, and to pay a fee, not less than Fifteen
20 Dollars (\$15.00) nor more than Fifty Dollars (\$50.00)
21 as set by the governing authority of the program and
22 approved by the court, to the program to offset the
23 cost of participation by the defendant, if in the
24

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

3 c. to both participate in the alcohol and drug substance
4 abuse course or treatment program, pursuant to
5 subparagraph a of this paragraph and attend a victims
6 impact panel program, pursuant to subparagraph b of
7 this paragraph,

8 d. to install, at the expense of the person, an ignition
9 interlock device approved by the Board of Tests for
10 Alcohol and Drug Influence, upon every motor vehicle
11 operated by such person and to require that a notation
12 of this restriction be affixed to the person's driver
13 license at the time of reinstatement of the license.
14 The restriction shall remain on the driver license for
15 such period as the court shall determine. The
16 restriction may be modified or removed by order of the
17 court and notice of the order shall be given to the
18 Department of Public Safety. Upon the expiration of
19 the period for the restriction, the Department of
20 Public Safety shall remove the restriction without
21 further court order. Failure to comply with the order
22 to install an ignition interlock device or operating
23 any vehicle without such device during the period of
24 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;

23 9. In addition to the other sentencing powers of the court, in
24 the case of a person convicted of any crime related to domestic

1 abuse, as defined in Section 60.1 of this title, the court may
2 require the defendant to undergo the treatment or participate in the
3 counseling services necessary to bring about the cessation of
4 domestic abuse against the victim. The defendant may be required to
5 pay all or part of the cost of the treatment or counseling services;

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

19 11. In addition to the other sentencing powers of the court,
20 the court, in the case of a person convicted of child abuse or
21 neglect, as defined in Section 7102 of Title 10 of the Oklahoma
22 Statutes, may require the person to undergo treatment or to
23 participate in counseling services. The defendant may be required
24

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

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

17 14. In addition to the other sentencing powers of the court, in
18 the case of a sex offender who is required by law to register
19 pursuant to the Sex Offenders Registration Act, the court may
20 prohibit the person from accessing or using any Internet social
21 networking web site that has the potential or likelihood of allowing
22 the sex offender to have contact with any child who is under the age
23 of eighteen (18) years; or

24

1 15. In addition to the other sentencing powers of the court, in
2 the case of a sex offender who is required by law to register
3 pursuant to the Sex Offenders Registration Act, the court may
4 require the person to register any electronic mail address
5 information, instant message, chat or other Internet communication
6 name or identity information that the person uses or intends to use
7 while accessing the Internet.

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
24 for the purpose of assisting the court in its final sentencing

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

22 C. When sentencing a person convicted of a crime, the court
23 shall first consider a program of restitution for the victim, as
24 well as imposition of a fine or incarceration of the offender. The

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

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

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

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

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

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

23 2. Any offender eligible to participate in the Program pursuant
24 to this act shall be eligible to participate in a county Program;

1 provided, participation in county-funded Programs shall not be
2 limited to offenders who would otherwise be sentenced to confinement
3 with the Department of Corrections.

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

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

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

23 H. As used in this section:
24

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

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

11 I. A person convicted of a felony offense or receiving any form
12 of probation for an offense in which registration is required
13 pursuant to the Sex Offenders Registration Act shall submit to
14 deoxyribonucleic acid DNA testing for law enforcement identification
15 purposes in accordance with Section 150.27 of Title 74 of the
16 Oklahoma Statutes and the rules promulgated by the Oklahoma State
17 Bureau of Investigation for the OSBI Combined DNA Index System
18 (CODIS) Database. Any defendant sentenced to probation shall be
19 required to submit to testing within thirty (30) days of sentencing
20 either to the Department of Corrections or to the county sheriff or
21 other peace officer as directed by the court. Defendants who are
22 sentenced to a term of incarceration shall submit to testing in
23 accordance with Section 530.1 of Title 57 of the Oklahoma Statutes,
24 for those defendants who enter the custody of the Department of

1 Corrections or to the county sheriff, for those defendants sentenced
2 to incarceration in a county jail. Convicted individuals who have
3 previously submitted to DNA testing under this section or pursuant
4 to being charged with a felony offense and for whom a valid sample
5 is on file in the OSBI Combined DNA Index System (CODIS) Database at
6 the time of sentencing shall not be required to submit to additional
7 testing. ~~Except as required by the Sex Offenders Registration Act,~~
8 ~~a deferred judgment does not require submission to deoxyribonucleic~~
9 ~~acid testing.~~

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

20 J. Samples of blood or saliva for DNA testing required by
21 subsection I of this section shall be taken by employees or
22 contractors of the Department of Corrections, peace officers, or the
23 county sheriff or employees or contractors of the sheriff's office.
24 The individuals shall be properly trained to collect blood or saliva

1 samples. Persons collecting blood or saliva for DNA testing
2 pursuant to this section shall be immune from civil liabilities
3 arising from this activity. All collectors of DNA samples shall
4 ensure the collection of samples are mailed to the Oklahoma State
5 Bureau of Investigation within ten (10) days of the time the subject
6 appears for testing or within ten (10) days of the date the subject
7 comes into physical custody to serve a term of incarceration. All
8 collectors of DNA samples shall use sample kits provided by the OSBI
9 and procedures promulgated by the OSBI. Persons subject to DNA
10 testing who are not received at the Lexington Assessment and
11 Reception Center shall be required to pay a fee of Fifteen Dollars
12 (\$15.00) to the agency collecting the sample for submission to the
13 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
14 pursuant to this subsection shall be deposited in the revolving
15 account or the service fee account of the collection agency or
16 department.

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

22 SECTION 3. AMENDATORY 74 O.S. 2001, Section 150.27a, as
23 last amended by Section 5, Chapter 441, O.S.L. 2005 (74 O.S. Supp.
24 2008, Section 150.27a), is amended to read as follows:

1 Section 150.27a A. There is hereby established within the
2 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
3 System (CODIS) Database for the purpose of collecting and storing
4 blood or saliva samples and DNA profiles, analyzing and typing of
5 the genetic markers contained in or derived from DNA, and
6 maintaining the records and samples of DNA of all individuals
7 ~~convicted of any felony offense, and of individuals required to~~
8 ~~register pursuant to the Sex Offenders Registration Act~~ listed in
9 this section. The purpose of this database is ~~the detection or~~
10 ~~exclusion~~ to maintain a DNA record of individuals ~~who are subjects~~
11 ~~of the investigation or prosecution of sex-related crimes, violent~~
12 ~~crimes, or other~~ listed in this section, to provide investigative
13 leads to law enforcement officials regarding potential DNA matches
14 to crimes in which biological evidence is recovered, and such
15 information shall be used for no other purpose.

16 B. ~~Any DNA specimen taken in good faith by the Department of~~
17 ~~Corrections, its employees or contractors, and submitted to the OSBI~~
18 ~~may be included, maintained, and kept by the OSBI in a database for~~
19 ~~criminal investigative purposes despite the specimen having not been~~
20 ~~taken in strict compliance with the provisions of this section or~~
21 ~~Section 991a of Title 22 of the Oklahoma Statutes.~~

22 C. ~~Upon the request to OSBI by the federal or state authority~~
23 ~~having custody of the~~ DNA samples shall be taken by employees or
24 contractors of federal, state, county or municipal law enforcement

1 or criminal justice agencies as defined by the rules promulgated by
2 the OSBI. Persons collecting blood or saliva for DNA testing
3 pursuant to this section shall be immune from civil liabilities
4 arising from this activity. The collecting agency shall ensure the
5 DNA samples are mailed to the OSBI within ten (10) days of the time
6 the sample is collected. The collecting agency shall use sample
7 kits provided by the OSBI and pursuant to procedures promulgated by
8 the OSBI.

9 1. Subject to the availability of funds, any person arrested
10 and subsequently charged for the commission of a felony offense
11 shall provide a DNA sample at the time of the arraignment of the
12 person.

13 2. Any person convicted of a felony offense after January 1,
14 2006, whose sentence includes a term of incarceration shall provide
15 a DNA sample upon entering the detention facility. These samples
16 shall be collected by authorized personnel at the detention
17 facility.

18 3. Any person convicted of a felony offense after January 1,
19 2006, whose sentence does not include a term of incarceration shall
20 provide a DNA sample within thirty (30) days of sentencing to the
21 Department of Corrections, the sheriff of the county in which the
22 person was sentenced, or other peace officer as directed by the
23 court.

1 4. Any person convicted of a felony offense who is incarcerated
2 in the custody of the Department of Corrections after July 1, 1996,
3 shall provide a DNA sample prior to release.

4 5. Any person required to register pursuant to the Sex
5 Offenders Registration Act shall provide a DNA sample to the sheriff
6 of the county in which the person was sentenced or other peace
7 officer as directed by the court.

8 6. Any person, ~~any individual~~ who was convicted of violating
9 laws of another state or the federal government, but is currently
10 incarcerated or residing in Oklahoma, shall ~~submit to~~ provide a DNA
11 ~~profiling for entry of the data into the OSBI DNA Offender Database~~
12 sample to the law enforcement agency having custody of that person.

13 This provision shall only apply when such federal or state
14 conviction carries a requirement of sex offender registration and/or
15 DNA profiling. ~~The person to be profiled shall pay a fee of One~~
16 ~~Hundred Fifty Dollars (\$150.00) to the OSBI.~~

17 C. The OSBI shall promulgate rules concerning the collection,
18 storing, expungement and dissemination of information and samples
19 for the OSBI Combined DNA Index System (CODIS) Database. The OSBI
20 shall determine the type of equipment, collection procedures, and
21 reporting documentation to be used by federal, state, county or
22 municipal law enforcement or criminal justice agencies in submitting
23 DNA samples to the OSBI. The OSBI shall provide training to
24

1 designated employees of these agencies in the proper methods of
2 performing the duties required by this section.

3 D. Persons subject to DNA testing shall pay a fee of One
4 Hundred Fifty Dollars (\$150.00) to the OSBI for submission to the
5 OSBI Combined DNA Index System (CODIS) in accordance with Section
6 1313.2 of Title 20 of the Oklahoma Statutes.

7 ~~D.~~ E. The OSBI Combined DNA Index System (CODIS) Database is
8 specifically exempt from any statute requiring disclosure of
9 information to the public. The DNA sample and the information
10 contained in the database is privileged from discovery and
11 inadmissible as evidence in any civil court proceeding. The
12 information in the database is confidential and shall not be
13 released to the public. Any person charged with the custody and
14 dissemination of information from the database shall not divulge or
15 disclose any such information except to federal, state, county or
16 municipal law enforcement or criminal justice agencies. Any person
17 violating the provisions of this section upon conviction shall be
18 deemed guilty of a misdemeanor punishable by imprisonment in the
19 county jail for not more than one (1) year.

20 ~~E. The OSBI shall promulgate rules concerning the collection,~~
21 ~~storing, expungement and dissemination of information and samples~~
22 ~~for the OSBI Combined DNA Index System (CODIS) Database. The OSBI~~
23 ~~shall determine the type of equipment, collection procedures, and~~
24 ~~reporting documentation to be used by the Department of Corrections~~

1 ~~or a county sheriff's office in submitting DNA samples to the OSBI~~
2 ~~in accordance with Section 991a of Title 22 of the Oklahoma~~
3 ~~Statutes. The OSBI shall provide training to designated employees~~
4 ~~of the Department of Corrections and a county sheriff's office in~~
5 ~~the proper methods of performing the duties required by this~~
6 ~~section.~~

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

10 1. Forensic index database consisting of DNA profiles from
11 unknown evidence samples;

12 2. Suspect index database consisting DNA profiles from samples
13 taken from individuals as a result of criminal investigations;

14 3. ~~Convicted offender~~ Offender index database consisting of DNA
15 profiles from samples authorized pursuant to ~~subsection A~~ of this
16 section; and

17 4. Missing persons and unidentified remains index or database
18 consisting of DNA profiles from unidentified remains and relatives
19 of missing persons.

20 G. ~~Any person convicted of an offense provided in this section~~
21 ~~who is in custody after July 1, 1996, shall provide a blood or~~
22 ~~saliva sample prior to release. Every person who is convicted of an~~
23 ~~offense provided in this section whose sentence does not include a~~
24 ~~term of incarceration shall provide a blood or salvia sample as a~~

1 condition of sentence DNA specimen taken in good faith by federal,
2 state, county or municipal law enforcement or criminal justice
3 personnel and submitted to the OSBI may be included, maintained, and
4 kept by the OSBI in a database for criminal investigative purposes
5 despite the specimen having not been taken in strict compliance with
6 the provisions of this section.

7 H. To ensure the rights of individuals are protected, a person
8 whose DNA specimen has been collected for inclusion in the DNA
9 database in accordance with this section may request expungement of
10 the DNA records under the conditions authorized in Section 18 of
11 Title 22 of the Oklahoma Statutes and pursuant to the procedures
12 required in Section 19 of Title 22 of the Oklahoma Statutes.

13 I. Any identification, warrant, arrest, or evidentiary use of a
14 DNA match derived from the database shall not be excluded or
15 suppressed from evidence nor shall any conviction be invalidated or
16 reversed or a plea set aside due to the failure to expunge DNA
17 records or a delay in expunging DNA records.

18 J. Individuals who have previously submitted to DNA testing
19 under this section and for whom a valid sample is on file in the
20 OSBI Combined DNA Index System (CODIS) Database shall not be
21 required to submit to additional testing.

22 SECTION 4. This act shall become effective November 1, 2009.

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