

1 ENGROSSED HOUSE
2 BILL NO. 3264

By: Tibbs of the House

and

Ford of the Senate

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6
7 An Act relating to the Board of Tests for Alcohol and
8 Drug Influence; amending 22 O.S. 2001, Section 991a,
9 as last amended by Section 10 of Enrolled Senate Bill
10 No. 2113 of the 2nd Session of the 52nd Oklahoma
11 Legislature, which relates to sentencing powers of
12 the court; deleting certain definition; amending 47
13 O.S. 2001, Section 759, as last amended by Section 8,
14 Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2009, Section
15 759), which relates to powers and duties of the Board
16 of Tests for Alcohol and Drug Influence; authorizing
17 Board to approve and establish standards for ignition
18 interlock devices; directing Board to promulgate
19 rules; amending 57 O.S. 2001, Section 612, which
20 relates to assignment and processing of persons
21 convicted of driving under the influence; modifying
22 definition of ignition interlock device; and
23 providing an effective date.

24 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 10 of Enrolled Senate Bill No. 2113 of the
2nd Session of the 52nd Oklahoma Legislature, is amended to read as
follows:

Section 991a. A. Except as otherwise provided in the Elderly
and Incapacitated Victim's Protection Program, when a defendant is

1 convicted of a crime and no death sentence is imposed, the court
2 shall either:

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

7 a. to provide restitution to the victim as provided by
8 Section 991f et seq. of this title or according to a
9 schedule of payments established by the sentencing
10 court, together with interest upon any pecuniary sum
11 at the rate of twelve percent (12%) per annum, if the
12 defendant agrees to pay such restitution or, in the
13 opinion of the court, if the defendant is able to pay
14 such restitution without imposing manifest hardship on
15 the defendant or the immediate family and if the
16 extent of the damage to the victim is determinable
17 with reasonable certainty,

18 b. to reimburse any state agency for amounts paid by the
19 state agency for hospital and medical expenses
20 incurred by the victim or victims, as a result of the
21 criminal act for which such person was convicted,
22 which reimbursement shall be made directly to the
23 state agency, with interest accruing thereon at the
24 rate of twelve percent (12%) per annum,

- 1 c. to engage in a term of community service without
2 compensation, according to a schedule consistent with
3 the employment and family responsibilities of the
4 person convicted,
- 5 d. to pay a reasonable sum into any trust fund,
6 established pursuant to the provisions of Sections 176
7 through 180.4 of Title 60 of the Oklahoma Statutes,
8 and which provides restitution payments by convicted
9 defendants to victims of crimes committed within this
10 state wherein such victim has incurred a financial
11 loss,
- 12 e. to confinement in the county jail for a period not to
13 exceed six (6) months,
- 14 f. to confinement as provided by law together with a term
15 of post-imprisonment community supervision for not
16 less than three (3) years of the total term allowed by
17 law for imprisonment, with or without restitution;
18 provided, however, the authority of this provision is
19 limited to Section 843.5 of Title 21 of the Oklahoma
20 Statutes when the offense involved sexual abuse or
21 sexual exploitation; Sections 681, 741 and 843.1 of
22 Title 21 of the Oklahoma Statutes when the offense
23 involved sexual abuse or sexual exploitation; and
24 Sections 865 et seq., 885, 886, 888, 891, 1021,

1 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
2 1123 of Title 21 of the Oklahoma Statutes,

- 3 g. to repay the reward or part of the reward paid by a
4 certified local crimestoppers program and the Oklahoma
5 Reward System. In determining whether the defendant
6 shall repay the reward or part of the reward, the
7 court shall consider the ability of the defendant to
8 make the payment, the financial hardship on the
9 defendant to make the required payment, and the
10 importance of the information to the prosecution of
11 the defendant as provided by the arresting officer or
12 the district attorney with due regard for the
13 confidentiality of the records of the certified local
14 crimestoppers program and the Oklahoma Reward System.
15 The court shall assess this repayment against the
16 defendant as a cost of prosecution. "Certified local
17 crimestoppers program" means a crimestoppers program
18 certified by the Office of the Attorney General
19 pursuant to Section 991g of this title. The "Oklahoma
20 Reward System" means the reward program established by
21 Section 150.18 of Title 74 of the Oklahoma Statutes,
22 h. to reimburse the Oklahoma State Bureau of
23 Investigation for costs incurred by that agency during
24 its investigation of the crime for which the defendant

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

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

23 j. to pay a reasonable sum to the Crime Victims
24 Compensation Board, created by Section 142.2 et seq.

1 of Title 21 of the Oklahoma Statutes, for the benefit
2 of crime victims,

3 k. to reimburse the court fund for amounts paid to court-
4 appointed attorneys for representing the defendant in
5 the case in which the person is being sentenced,

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

15 m. to be placed in a victims impact panel program or
16 victim/offender reconciliation program and payment of
17 a fee to the program of not less than Fifteen Dollars
18 (\$15.00) nor more than Fifty Dollars (\$50.00) as set
19 by the governing authority of the program to offset
20 the cost of participation by the defendant. Provided,
21 each victim/offender reconciliation program shall be
22 required to obtain a written consent form voluntarily
23 signed by the victim and defendant that specifies the
24 methods to be used to resolve the issues, the

1 obligations and rights of each person, and the
2 confidentiality of the proceedings. Volunteer
3 mediators and employees of a victim/offender
4 reconciliation program shall be immune from liability
5 and have rights of confidentiality as provided in
6 Section 1805 of Title 12 of the Oklahoma Statutes,
7 n. to install, at the expense of the defendant, an
8 ignition interlock device approved by the Board of
9 Tests for Alcohol and Drug Influence. The device
10 shall be installed upon every motor vehicle operated
11 by the defendant, and the court shall require that a
12 notation of this restriction be affixed to the
13 defendant's driver license. The restriction shall
14 remain on the driver license not exceeding two (2)
15 years to be determined by the court. The restriction
16 may be modified or removed only by order of the court
17 and notice of any modification order shall be given to
18 the Department of Public Safety. Upon the expiration
19 of 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 a 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. ~~As used in this paragraph, "ignition interlock~~
3 ~~device" means a device that, without tampering or~~
4 ~~intervention by another person, would prevent the~~
5 ~~defendant from operating a motor vehicle if the~~
6 ~~defendant has a blood or breath alcohol concentration~~
7 ~~of two hundredths (0.02) or greater,~~

- 8 o. to be confined by electronic monitoring administered
9 and supervised by the Department of Corrections or a
10 community sentence provider, and payment of a
11 monitoring fee to the supervising authority, not to
12 exceed Three Hundred Dollars (\$300.00) per month. Any
13 fees collected pursuant to this paragraph shall be
14 deposited with the appropriate supervising authority.
15 Any willful violation of an order of the court for the
16 payment of the monitoring fee shall be a violation of
17 the sentence and may be punished as deemed proper by
18 the sentencing court. As used in this paragraph,
19 "electronic monitoring" means confinement of the
20 defendant within a specified location or locations
21 with supervision by means of an electronic device
22 approved by the Department of Corrections which is
23 designed to detect if the defendant is in the court-
24 ordered location at the required times and which

1 records violations for investigation by a qualified
2 supervisory agency or person,

- 3 p. to perform one or more courses of treatment, education
4 or rehabilitation for any conditions, behaviors,
5 deficiencies or disorders which may contribute to
6 criminal conduct, including but not limited to alcohol
7 and substance abuse, mental health, emotional health,
8 physical health, propensity for violence, antisocial
9 behavior, personality or attitudes, deviant sexual
10 behavior, child development, parenting assistance, job
11 skills, vocational-technical skills, domestic
12 relations, literacy, education, or any other
13 identifiable deficiency which may be treated
14 appropriately in the community and for which a
15 certified provider or a program recognized by the
16 court as having significant positive impact exists in
17 the community. Any treatment, education or
18 rehabilitation provider required to be certified
19 pursuant to law or rule shall be certified by the
20 appropriate state agency or a national organization,
- 21 q. to submit to periodic testing for alcohol,
22 intoxicating substance, or controlled dangerous
23 substances by a qualified laboratory,

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- 1 r. to pay a fee, costs for treatment, education,
2 supervision, participation in a program, or any
3 combination thereof as determined by the court, based
4 upon the defendant's ability to pay the fees or costs,
5 s. to be supervised by a Department of Corrections
6 employee, a private supervision provider, or other
7 person designated by the court,
8 t. to obtain positive behavior modeling by a trained
9 mentor,
10 u. to serve a term of confinement in a restrictive
11 housing facility available in the community,
12 v. to serve a term of confinement in the county jail at
13 night or during weekends pursuant to Section 991a-2 of
14 this title or for work release,
15 w. to obtain employment or participate in employment-
16 related activities,
17 x. to participate in mandatory day reporting to
18 facilities or persons for services, payments, duties
19 or person-to-person contacts as specified by the
20 court,
21 y. to pay day fines not to exceed fifty percent (50%) of
22 the net wages earned. For purposes of this paragraph,
23 "day fine" means the offender is ordered to pay an
24 amount calculated as a percentage of net daily wages

1 earned. The day fine shall be paid to the local
2 community sentencing system as reparation to the
3 community. Day fines shall be used to support the
4 local system,

5 z. to submit to blood or saliva testing as required by
6 subsection I of this section,

7 aa. to repair or restore property damaged by the
8 defendant's conduct, if the court determines the
9 defendant possesses sufficient skill to repair or
10 restore the property and the victim consents to the
11 repairing or restoring of the property,

12 bb. to restore damaged property in kind or payment of out-
13 of-pocket expenses to the victim, if the court is able
14 to determine the actual out-of-pocket expenses
15 suffered by the victim,

16 cc. to attend a victim-offender reconciliation program if
17 the victim agrees to participate and the offender is
18 deemed appropriate for participation,

19 dd. in the case of a person convicted of prostitution
20 pursuant to Section 1029 of Title 21 of the Oklahoma
21 Statutes, require such person to receive counseling
22 for the behavior which may have caused such person to
23 engage in prostitution activities. Such person may be
24 required to receive counseling in areas including but

1 not limited to alcohol and substance abuse, sexual
2 behavior problems, or domestic abuse or child abuse
3 problems,

4 ee. in the case of a sex offender sentenced after November
5 1, 1989, and required by law to register pursuant to
6 the Sex Offender Registration Act, the court shall
7 require the person to comply with sex offender
8 specific rules and conditions of supervision
9 established by the Department of Corrections and
10 require the person to participate in a treatment
11 program designed for the treatment of sex offenders
12 during the period of time while the offender is
13 subject to supervision by the Department of
14 Corrections. The treatment program shall include
15 polygraph examinations specifically designed for use
16 with sex offenders for purposes of supervision and
17 treatment compliance, and shall be administered not
18 less than each six (6) months during the period of
19 supervision. The examination shall be administered by
20 a certified licensed polygraph examiner. The
21 treatment program must be approved by the Department
22 of Corrections or the Department of Mental Health and
23 Substance Abuse Services. Such treatment shall be at
24

1 the expense of the defendant based on the defendant's
2 ability to pay,

3 ff. in addition to other sentencing powers of the court,
4 the court in the case of a defendant being sentenced
5 for a felony conviction for a violation of Section 2-
6 402 of Title 63 of the Oklahoma Statutes which
7 involves marijuana may require the person to
8 participate in a drug court program, if available. If
9 a drug court program is not available, the defendant
10 may be required to participate in a community
11 sanctions program, if available,

12 gg. in the case of a person convicted of any false or
13 bogus check violation, as defined in Section 1541.4 of
14 Title 21 of the Oklahoma Statutes, impose a fee of
15 Twenty-five Dollars (\$25.00) to the victim for each
16 check, and impose a bogus check fee to be paid to the
17 district attorney. The bogus check fee paid to the
18 district attorney shall be equal to the amount
19 assessed as court costs plus Twenty-five Dollars
20 (\$25.00) for each check upon filing of the case in
21 district court. This money shall be deposited in the
22 Bogus Check Restitution Program Fund as established in
23 subsection B of Section 114 of this title.

24 Additionally, the court may require the offender to

1 pay restitution and bogus check fees on any other
2 bogus check or checks that have been submitted to the
3 District Attorney Bogus Check Restitution Program, and

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

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

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

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

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

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

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

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

20 a. to participate in an alcohol and drug assessment and
21 evaluation by an assessment agency or assessment
22 personnel certified by the Department of Mental Health
23 and Substance Abuse Services pursuant to Section 3-460
24 of Title 43A of the Oklahoma Statutes and, as

1 determined by the assessment, participate in an
2 alcohol and drug substance abuse course or treatment
3 program or both, pursuant to Sections 3-452 and 3-453
4 of Title 43A of the Oklahoma Statutes,

5 b. to attend a victims impact panel program, if such a
6 program is offered in the county where the judgment is
7 rendered, and to pay a fee, not less than Fifteen
8 Dollars (\$15.00) nor more than Fifty Dollars (\$50.00)
9 as set by the governing authority of the program and
10 approved by the court, to the program to offset the
11 cost of participation by the defendant, if in the
12 opinion of the court the defendant has the ability to
13 pay such fee,

14 c. to both participate in the alcohol and drug substance
15 abuse course or treatment program, pursuant to
16 subparagraph a of this paragraph and attend a victims
17 impact panel program, pursuant to subparagraph b of
18 this paragraph,

19 d. to install, at the expense of the person, an ignition
20 interlock device approved by the Board of Tests for
21 Alcohol and Drug Influence, upon every motor vehicle
22 operated by such person and to require that a notation
23 of this restriction be affixed to the person's driver
24 license at the time of reinstatement of the license.

1 The restriction shall remain on the driver license for
2 such period as the court shall determine. The
3 restriction may be modified or removed by order of the
4 court and notice of the order shall be given to the
5 Department of Public Safety. Upon the expiration of
6 the period for the restriction, the Department of
7 Public Safety shall remove the restriction without
8 further court order. Failure to comply with the order
9 to install an ignition interlock device or operating
10 any vehicle without such device during the period of
11 restriction shall be a violation of the sentence and
12 may be punished as deemed proper by the sentencing
13 court, or

14 e. beginning January 1, 1993, to submit to electronically
15 monitored home detention administered and supervised
16 by the Department of Corrections, and to pay to the
17 Department a monitoring fee, not to exceed Seventy-
18 five Dollars (\$75.00) a month, to the Department of
19 Corrections, if in the opinion of the court the
20 defendant has the ability to pay such fee. Any fees
21 collected pursuant to this subparagraph shall be
22 deposited in the Department of Corrections Revolving
23 Fund. Any order by the court for the payment of the
24

1 monitoring fee, if willfully disobeyed, may be
2 enforced as an indirect contempt of court;

3 8. In addition to the other sentencing powers of the court, in
4 the case of a person convicted of prostitution pursuant to Section
5 1029 of Title 21 of the Oklahoma Statutes, require such person to
6 receive counseling for the behavior which may have caused such
7 person to engage in prostitution activities. Such person may be
8 required to receive counseling in areas including but not limited to
9 alcohol and substance abuse, sexual behavior problems, or domestic
10 abuse or child abuse problems;

11 9. In addition to the other sentencing powers of the court, in
12 the case of a person convicted of any crime related to domestic
13 abuse, as defined in Section 60.1 of this title, the court may
14 require the defendant to undergo the treatment or participate in the
15 counseling services necessary to bring about the cessation of
16 domestic abuse against the victim. The defendant may be required to
17 pay all or part of the cost of the treatment or counseling services;

18 10. In addition to the other sentencing powers of the court,
19 the court, in the case of a sex offender sentenced after November 1,
20 1989, and required by law to register pursuant to the Sex Offenders
21 Registration Act, shall require the person to participate in a
22 treatment program designed specifically for the treatment of sex
23 offenders, if available. The treatment program will include
24 polygraph examinations specifically designed for use with sex

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

7 11. In addition to the other sentencing powers of the court,
8 the court, in the case of a person convicted of child abuse or
9 neglect, as defined in Section 1-1-105 of Title 10A of the Oklahoma
10 Statutes, may require the person to undergo treatment or to
11 participate in counseling services. The defendant may be required
12 to pay all or part of the cost of the treatment or counseling
13 services;

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

19 13. In addition to the other sentencing powers of the court, a
20 sex offender who is habitual or aggravated as defined by Section 584
21 of Title 57 of the Oklahoma Statutes and who is required to register
22 as a sex offender pursuant to the Oklahoma Sex Offenders
23 Registration Act shall be supervised by the Department of
24 Corrections for the duration of the registration period and shall be

1 assigned to a global position monitoring device by the Department of
2 Corrections for the duration of the registration period. The cost
3 of such monitoring device shall be reimbursed by the offender;

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

11 15. In addition to the other sentencing powers of the court, in
12 the case of a sex offender who is required by law to register
13 pursuant to the Sex Offenders Registration Act, the court may
14 require the person to register any electronic mail address
15 information, instant message, chat or other Internet communication
16 name or identity information that the person uses or intends to use
17 while accessing the Internet.

18 B. Notwithstanding any other provision of law, any person who
19 is found guilty of a violation of any provision of Section 761 or
20 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
21 guilty or nolo contendere for a violation of any provision of such
22 sections shall be ordered to participate in, prior to sentencing, an
23 alcohol and drug assessment and evaluation by an assessment agency
24 or assessment personnel certified by the Department of Mental Health

1 and Substance Abuse Services for the purpose of evaluating the
2 receptivity to treatment and prognosis of the person. The court
3 shall order the person to reimburse the agency or assessor for the
4 evaluation. The fee shall be the amount provided in subsection C of
5 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
6 shall be conducted at a certified assessment agency, the office of a
7 certified assessor or at another location as ordered by the court.
8 The agency or assessor shall, within seventy-two (72) hours from the
9 time the person is assessed, submit a written report to the court
10 for the purpose of assisting the court in its final sentencing
11 determination. No person, agency or facility operating an alcohol
12 and drug substance abuse evaluation program certified by the
13 Department of Mental Health and Substance Abuse Services shall
14 solicit or refer any person evaluated pursuant to this subsection
15 for any treatment program or alcohol and drug substance abuse
16 service in which such person, agency or facility has a vested
17 interest; however, this provision shall not be construed to prohibit
18 the court from ordering participation in or any person from
19 voluntarily utilizing a treatment program or alcohol and drug
20 substance abuse service offered by such person, agency or facility.
21 If a person is sentenced to the custody of the Department of
22 Corrections and the court has received a written evaluation report
23 pursuant to this subsection, the report shall be furnished to the
24 Department of Corrections with the judgment and sentence. Any

1 evaluation report submitted to the court pursuant to this subsection
2 shall be handled in a manner which will keep such report
3 confidential from the general public's review. Nothing contained in
4 this subsection shall be construed to prohibit the court from
5 ordering judgment and sentence in the event the defendant fails or
6 refuses to comply with an order of the court to obtain the
7 evaluation required by this subsection.

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

1 these prohibitions upon written application of the district
2 attorney. Both the application and the waiver shall be made part of
3 the record of the case.

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

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

23 F. The Department of Corrections, or such other agency as the
24 court may designate, shall be responsible for the monitoring and

1 administration of the restitution and service programs provided for
2 by subparagraphs a, c, and d of paragraph 1 of subsection A of this
3 section, and shall ensure that restitution payments are forwarded to
4 the victim and that service assignments are properly performed.

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

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

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

22 4. The Department is hereby authorized to provide technical
23 assistance to any county in establishing a Program, regardless of
24 whether the county enters into a contract pursuant to this

1 subsection. Technical assistance shall include appropriate
2 staffing, development of community resources, sponsorship,
3 supervision and any other requirements.

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

9 H. As used in this section:

10 1. "Ignition interlock device" means a device that, ~~without~~
11 ~~tampering or intervention by another person, would prevent the~~
12 ~~defendant from operating a motor vehicle if the defendant has a~~
13 ~~blood or breath alcohol concentration of two hundredths (0.02) or~~
14 ~~greater~~ is approved by the Board of Tests for Alcohol and Drug
15 Influence; and

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

21 I. A person convicted of a felony offense or receiving any form
22 of probation for an offense in which registration is required
23 pursuant to the Sex Offenders Registration Act, shall submit to
24 deoxyribonucleic acid DNA testing for law enforcement identification

1 purposes in accordance with Section 150.27 of Title 74 of the
2 Oklahoma Statutes and the rules promulgated by the Oklahoma State
3 Bureau of Investigation for the OSBI Combined DNA Index System
4 (CODIS) Database. Subject to the availability of funds, any person
5 convicted of a misdemeanor offense of assault and battery, domestic
6 abuse, stalking, possession of a controlled substance prohibited
7 under Schedule IV of the Uniform Controlled Dangerous Substances
8 Act, outraging public decency, resisting arrest, escape or
9 attempting to escape, eluding a police officer, peeping tom,
10 pointing a firearm, unlawful carry of a firearm, illegal transport
11 of a firearm, discharging of a firearm, threatening an act of
12 violence, breaking and entering a dwelling place, destruction of
13 property, negligent homicide, or causing a personal injury accident
14 while driving under the influence of any intoxicating substance, or
15 any alien unlawfully present under federal immigration law, upon
16 arrest, shall submit to deoxyribonucleic acid DNA testing for law
17 enforcement identification purposes in accordance with Section
18 150.27 of Title 74 of the Oklahoma Statutes and the rules
19 promulgated by the Oklahoma State Bureau of Investigation for the
20 OSBI Combined DNA Index System (CODIS) Database. Any defendant
21 sentenced to probation shall be required to submit to testing within
22 thirty (30) days of sentencing either to the Department of
23 Corrections or to the county sheriff or other peace officer as
24 directed by the court. Defendants who are sentenced to a term of

1 incarceration shall submit to testing in accordance with Section
2 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who
3 enter the custody of the Department of Corrections or to the county
4 sheriff, for those defendants sentenced to incarceration in a county
5 jail. Convicted individuals who have previously submitted to DNA
6 testing under this section and for whom a valid sample is on file in
7 the OSBI Combined DNA Index System (CODIS) Database at the time of
8 sentencing shall not be required to submit to additional testing.
9 Except as required by the Sex Offenders Registration Act, a deferred
10 judgment does not require submission to deoxyribonucleic acid
11 testing.

12 Any person who is incarcerated in the custody of the Department
13 of Corrections after July 1, 1996, and who has not been released
14 before January 1, 2006, shall provide a blood or saliva sample prior
15 to release. Every person subject to DNA testing after January 1,
16 2006, whose sentence does not include a term of confinement with the
17 Department of Corrections shall submit a blood or saliva sample.
18 Every person subject to DNA testing who is sentenced to unsupervised
19 probation or otherwise not supervised by the Department of
20 Corrections shall submit for blood or saliva testing to the sheriff
21 of the sentencing county.

22 J. Samples of blood or saliva for DNA testing required by
23 subsection I of this section shall be taken by employees or
24 contractors of the Department of Corrections, peace officers, or the

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

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

24

1 SECTION 2. AMENDATORY 47 O.S. 2001, Section 759, as last
2 amended by Section 8, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2009,
3 Section 759), is amended to read as follows:

4 Section 759. A. There is hereby re-created, to continue until
5 July 1, 2012, in accordance with the provisions of the Oklahoma
6 Sunset Law, the Board of Tests for Alcohol and Drug Influence to be
7 composed of the Dean of the University of Oklahoma College of
8 Medicine, or the Dean's designee who shall receive an appointment in
9 writing, as Chairman, and the Commissioner of Public Safety or a
10 designee, the Director of the Oklahoma State Bureau of Investigation
11 or a designee, the State Commissioner of Health or a designee, the
12 Director of the Council on Law Enforcement Education and Training or
13 a designee, one certified peace officer who is a member of a local
14 law enforcement agency selected by the Oklahoma Sheriffs and Peace
15 Officers Association and one person selected by the Oklahoma
16 Association of Chiefs of Police, as members, to serve without pay
17 other than reimbursement of necessary and actual expenses as
18 provided in the State Travel Reimbursement Act, Section 500.1 et
19 seq. of Title 74 of the Oklahoma Statutes. Each designee shall
20 receive an appointment in writing which shall become a permanent
21 part of the records of the Board. The Board is authorized to
22 appoint a State Director of Tests for Alcohol and Drug Influence, an
23 Administrative Assistant to the Board, and other employees,
24 including but not limited to persons to conduct training and provide

1 administrative assistance as necessary for the performance of its
2 functions, subject to available funding and authorized full-time
3 equivalent employee limitations. The Board may expend appropriated
4 funds for purposes consistent with Sections 751 through 761 of this
5 title and Sections 301 through 308 of Title 3 of the Oklahoma
6 Statutes. The Legislature shall appropriate funds to the Department
7 of Public Safety for the support of the Board of Tests For Alcohol
8 and Drug Influence and its employees, if any. Upon the transfer of
9 any employees from the Alcohol Drug Countermeasures Unit of the
10 Department of Public Safety to the Board of Tests For Alcohol and
11 Drug Influence on July 1, 2003, all funds of the Unit appropriated
12 and budgeted shall be transferred to the Board, and may be budgeted
13 and expended to support the functions and personnel of the Board.

14 B. Collection and analysis of a person's blood, breath, saliva
15 or urine, to be considered valid and admissible in evidence, whether
16 performed by or at the direction of a law enforcement officer or at
17 the request of the tested person, shall have been performed in
18 compliance with the rules adopted by the Board of Tests for Alcohol
19 and Drug Influence and by an individual possessing a valid permit
20 issued by the Board for this purpose or shall have been performed by
21 a laboratory accredited in Toxicology by the American Society of
22 Crime Laboratory Directors/Laboratory Accreditation Board
23 (ASCLD/LAB) or accredited by the American Board of Forensic
24 Toxicology (ABFT).

1 C. The Board of Tests for Alcohol and Drug Influence is
2 authorized to approve laboratories for the analysis, provided by the
3 provisions of this title, of specimens of blood, breath, saliva and
4 urine, and to administer a program for regular monitoring of such
5 laboratories. The Board is authorized to prescribe uniform
6 standards and conditions for, and to approve satisfactory methods,
7 procedures, techniques, devices, equipment and records for tests and
8 analyses and to prescribe and approve the requisite education and
9 training for the performance of such tests and analyses. The Board
10 shall establish standards for and ascertain the qualifications and
11 competence of individuals to administer and conduct such tests and
12 analyses, and to issue permits to laboratories and to individuals
13 which shall be subject to suspension or revocation at the discretion
14 of the Board. The Board is authorized to prescribe uniform
15 standards, conditions, methods, procedures, techniques, devices,
16 equipment and records for the collection, handling, retention,
17 storage, preservation and delivery of specimens of blood, breath,
18 saliva and urine obtained for the purpose of determining the alcohol
19 concentration thereof or the presence or concentration of any other
20 intoxicating substance therein. The Board may take such other
21 actions as may be reasonably necessary or appropriate to effectuate
22 the purposes of Sections 751 through 761 of this title and Sections
23 301 through 308 of Title 3 of the Oklahoma Statutes, and may adopt,
24 amend and repeal such other rules consistent with this chapter as

1 the Board shall determine proper. Laboratories accredited in
2 Toxicology by the American Society of Crime Laboratory
3 Directors/Laboratory Accreditation Board (ASCLD/LAB) or accredited
4 by the American Board of Forensic Toxicology (ABFT) are exempt from
5 the provisions of this subsection.

6 D. The Board of Tests for Alcohol and Drug Influence is
7 authorized to approve ignition interlock devices. The Board is
8 authorized to prescribe uniform standards and conditions for
9 configuration, installation, maintenance, removal and reporting, and
10 to approve satisfactory methods, procedures, techniques, equipment
11 and records for said devices. The Board shall establish standards
12 and ascertain the qualifications and competence of entities and
13 individuals to install, service and remove such devices, and to
14 issue licenses to said entities and individuals. The Board shall
15 promulgate such rules and may take such other actions as may be
16 necessary or appropriate to implement and administer the provisions
17 of this subsection.

18 E. The Board may set rules and charge appropriate fees for
19 operations incidental to its required duties and responsibilities.

20 ~~E.~~ F. There is hereby created in the State Treasury a revolving
21 fund for the Board of Tests for Alcohol and Drug Influence to be
22 designated the "Board of Tests for Alcohol and Drug Influence
23 Revolving Fund". The fund shall be a continuing fund, not subject
24 to fiscal year limitations, and shall consist of monies received

1 pursuant to the provisions of subsection ~~D~~ E of this section and any
2 funds previously deposited in the Board of Tests for Alcohol and
3 Drug Influence Revolving Fund. All monies accruing to the credit of
4 the fund are hereby appropriated and may be budgeted and expended by
5 the Board of Tests for Alcohol and Drug Influence for operating
6 expenses of the Board. Expenditures from the funds shall be made
7 upon warrants issued by the State Treasurer against claims filed as
8 prescribed by law with the Director of State Finance for approval
9 and payment.

10 SECTION 3. AMENDATORY 57 O.S. 2001, Section 612, is
11 amended to read as follows:

12 Section 612. A. Any person convicted of violating the
13 provisions of Section 11-902 of Title 47 of the Oklahoma Statutes
14 and sentenced to the custody of the Department of Corrections shall
15 be processed through the Lexington Assessment and Reception Center
16 or other location determined by the Director of the Department of
17 Corrections, classified and assigned as follows:

18 1. To the Department of Mental Health and Substance Abuse
19 Services for substance abuse treatment, if the person is evaluated
20 to be receptive to treatment and not deemed by the Department of
21 Corrections to be a security risk. The inmate may be required to
22 reimburse the Department of Mental Health and Substance Abuse
23 Services for all or part of the actual cost incurred for treatment
24 of the inmate while the inmate is assigned to the Department of

1 Mental Health and Substance Abuse Services. The Department of
2 Corrections shall determine whether the inmate has the ability to
3 pay for all or part of the cost of treatment. While assigned to a
4 Department of Mental Health and Substance Abuse Services treatment
5 program the inmate shall comply with the rules and regulations as
6 agreed upon by the Department of Mental Health and Substance Abuse
7 Services and the Department of Corrections. Any infraction of said
8 rules may result in the inmate's reassignment to a correctional
9 facility of the Department of Corrections. Upon successful
10 completion of the treatment program the inmate shall be properly
11 reassigned by the Department of Corrections for the completion of
12 the sentence imposed by the court. Prior to discharge from the
13 treatment facility, the treatment facility shall forward to the
14 Department of Corrections a report and discharge summary including
15 arrangements and recommendations for further disposition and follow-
16 up treatment;

17 2. To an inpatient substance abuse treatment program with the
18 offender paying for the treatment. Upon successful completion of
19 the inpatient treatment program, the offender may be assigned to a
20 halfway house, structured community placement, or home placement
21 with the advice of the treatment provider. The Department of
22 Corrections shall require as a condition of any assignment that the
23 offender have electronic monitoring or ignition interlock device
24 requirements, or both, as a condition of placement. The offender

1 shall be responsible for all costs and fees associated with
2 electronic monitoring, ignition interlock device, and supervision;
3 or

4 3. To a correctional facility when:

5 a. the person is evaluated not to be receptive to
6 treatment,

7 b. the person is evaluated to be a security risk, or

8 c. the person requires educational, medical or other
9 services or programs not available in the community
10 setting as determined by the Department.

11 B. As used in this section:

12 1. "Substance abuse treatment program" means a residential or
13 outpatient program certified by the Department of Mental Health and
14 Substance Abuse Services and selected by the Department of
15 Corrections to provide substance abuse treatment for the inmate;

16 2. "Electronic monitoring" means monitoring of the inmate
17 within a specified location or locations in a community setting by
18 means of an electronic bracelet or other device; and

19 3. "Ignition interlock device" means a device that, ~~without~~
20 ~~tampering or intervention by another person, would prevent the~~
21 ~~defendant from operating a motor vehicle if the defendant has a~~
22 ~~blood or breath alcohol concentration of five hundredths (0.05) or~~
23 ~~greater~~ is approved by the Board of Tests for Alcohol and Drug
24 Influence.

