

THE HOUSE OF REPRESENTATIVES  
Monday, February 16, 2009

House Bill No. 1412

HOUSE BILL NO. 1412 - By: NELSON of the House.

An Act relating to false or bogus checks; amending 21 O.S. 2001, Section 1541.4, as amended by Section 1, Chapter 116, O.S.L. 2002 (21 O.S. Supp. 2008, Section 1541.4), which relates to the definition of false or bogus checks; modifying definition of false or bogus checks; amending 22 O.S. 2001, Section 991a, as last amended by Section 19, Chapter 3, O.S.L. 2008 (22 O.S. Supp. 2008, Section 991a), which relates to sentencing powers of the court; directing payment of fee to certain victims; and providing an effective date.

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

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1541.4, as amended by  
2 Section 1, Chapter 116, O.S.L. 2002 (21 O.S. Supp. 2008, Section 1541.4), is amended to  
3 read as follows:  
4 Section 1541.4 The term "false or bogus check or checks" shall include checks or  
5 orders, including those converted to electronic fund transfers, which are not honored on  
6 account of insufficient funds of the maker to pay same or because the check or order was  
7 drawn on a closed account or on a nonexistent account when such checks or orders are  
8 given in exchange for money or property, in exchange for any benefit or thing of value or  
9 as a down payment for the purchase of any item of which the purchaser is taking  
10 immediate possession, as against the maker or drawer thereof. The making, drawing,  
11 uttering or delivering of a check, draft or order, payment of which is refused by the

1 drawee, shall be prima facie evidence of intent to defraud and the knowledge of  
2 insufficient funds in, or credit with, such bank or other depository; provided, ~~such maker~~  
3 ~~or drawer shall not have paid the drawee thereof the amount due thereon, together with~~  
4 ~~the protest fees, within five (5) days from the date the same is presented for payment;~~  
5 ~~and provided, further, that~~ said check or order is presented for payment within thirty  
6 (30) days after same is delivered and accepted.

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

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

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

16 a. to provide restitution to the victim as provided by Section 991f et seq.  
17 of this title or according to a schedule of payments established by the  
18 sentencing court, together with interest upon any pecuniary sum at the  
19 rate of twelve percent (12%) per annum, if the defendant agrees to pay  
20 such restitution or, in the opinion of the court, if the defendant is able  
21 to pay such restitution without imposing manifest hardship on the

1 defendant or the immediate family and if the extent of the damage to  
2 the victim is determinable with reasonable certainty,  
3 b. to reimburse any state agency for amounts paid by the state agency for  
4 hospital and medical expenses incurred by the victim or victims, as a  
5 result of the criminal act for which such person was convicted, which  
6 reimbursement shall be made directly to the state agency, with  
7 interest accruing thereon at the rate of twelve percent (12%) per  
8 annum,  
9 c. to engage in a term of community service without compensation,  
10 according to a schedule consistent with the employment and family  
11 responsibilities of the person convicted,  
12 d. to pay a reasonable sum into any trust fund, established pursuant to  
13 the provisions of Sections 176 through 180.4 of Title 60 of the  
14 Oklahoma Statutes, and which provides restitution payments by  
15 convicted defendants to victims of crimes committed within this state  
16 wherein such victim has incurred a financial loss,  
17 e. to confinement in the county jail for a period not to exceed six (6)  
18 months,  
19 f. to confinement as provided by law together with a term of post-  
20 imprisonment community supervision for not less than three (3) years  
21 of the total term allowed by law for imprisonment, with or without  
22 restitution; provided, however, the authority of this provision is limited

1 to Section 7115 of Title 10 of the Oklahoma Statutes when the offense  
2 involved sexual abuse or sexual exploitation; Sections 681, 741 and  
3 843.1 of Title 21 of the Oklahoma Statutes when the offense involved  
4 sexual abuse or sexual exploitation; and Sections 865 et seq., 885, 886,  
5 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and  
6 1123 of Title 21 of the Oklahoma Statutes,  
7 g. to repay the reward or part of the reward paid by a certified local  
8 crimestoppers program and the Oklahoma Reward System. In  
9 determining whether the defendant shall repay the reward or part of  
10 the reward, the court shall consider the ability of the defendant to  
11 make the payment, the financial hardship on the defendant to make  
12 the required payment, and the importance of the information to the  
13 prosecution of the defendant as provided by the arresting officer or the  
14 district attorney with due regard for the confidentiality of the records  
15 of the certified local crimestoppers program and the Oklahoma Reward  
16 System. The court shall assess this repayment against the defendant  
17 as a cost of prosecution. "Certified local crimestoppers program"  
18 means a crimestoppers program certified by the Office of the Attorney  
19 General pursuant to Section 991g of this title. The "Oklahoma Reward  
20 System" means the reward program established by Section 150.18 of  
21 Title 74 of the Oklahoma Statutes,

- 1           h.     to reimburse the Oklahoma State Bureau of Investigation for costs  
2                   incurred by that agency during its investigation of the crime for which  
3                   the defendant pleaded guilty, nolo contendere or was convicted,  
4                   including compensation for laboratory, technical, or investigation  
5                   services performed by the Bureau if, in the opinion of the court, the  
6                   defendant is able to pay without imposing manifest hardship on the  
7                   defendant, and if the costs incurred by the Bureau during the  
8                   investigation of the defendant's case may be determined with  
9                   reasonable certainty,
- 10          i.     to reimburse the Oklahoma State Bureau of Investigation and any  
11                   authorized law enforcement agency for all costs incurred by that  
12                   agency for cleaning up an illegal drug laboratory site for which the  
13                   defendant pleaded guilty, nolo contendere or was convicted. The court  
14                   clerk shall collect the amount and may retain five percent (5%) of such  
15                   monies to be deposited in the Court Clerk Revolving Fund to cover  
16                   administrative costs and shall remit the remainder to the Oklahoma  
17                   State Bureau of Investigation to be deposited in the OSBI Revolving  
18                   Fund established by Section 150.19a of Title 74 of the Oklahoma  
19                   Statutes or to the general fund wherein the other law enforcement  
20                   agency is located,

- 1 j. to pay a reasonable sum to the Crime Victims Compensation Board,  
2 created by Section 142.2 et seq. of Title 21 of the Oklahoma Statutes,  
3 for the benefit of crime victims,
- 4 k. to reimburse the court fund for amounts paid to court-appointed  
5 attorneys for representing the defendant in the case in which the  
6 person is being sentenced,
- 7 l. to participate in an assessment and evaluation by an assessment  
8 agency or assessment personnel certified by the Department of Mental  
9 Health and Substance Abuse Services pursuant to Section 3-460 of  
10 Title 43A of the Oklahoma Statutes and, as determined by the  
11 assessment, participate in an alcohol and drug substance abuse course  
12 or treatment program or both, pursuant to Sections 3-452 and 3-453 of  
13 Title 43A of the Oklahoma Statutes, or as ordered by the court,
- 14 m. to be placed in a victims impact panel program or victim/offender  
15 reconciliation program and payment of a fee to the program of not less  
16 than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00) as  
17 set by the governing authority of the program to offset the cost of  
18 participation by the defendant. Provided, each victim/offender  
19 reconciliation program shall be required to obtain a written consent  
20 form voluntarily signed by the victim and defendant that specifies the  
21 methods to be used to resolve the issues, the obligations and rights of  
22 each person, and the confidentiality of the proceedings. Volunteer

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

- 1 o. to be confined by electronic monitoring administered and supervised by  
2 the Department of Corrections or a community sentence provider, and  
3 payment of a monitoring fee to the supervising authority, not to exceed  
4 Three Hundred Dollars (\$300.00) per month. Any fees collected  
5 pursuant to this paragraph shall be deposited with the appropriate  
6 supervising authority. Any willful violation of an order of the court for  
7 the payment of the monitoring fee shall be a violation of the sentence  
8 and may be punished as deemed proper by the sentencing court. As  
9 used in this paragraph, "electronic monitoring" means confinement of  
10 the defendant within a specified location or locations with supervision  
11 by means of an electronic device approved by the Department of  
12 Corrections which is designed to detect if the defendant is in the court-  
13 ordered location at the required times and which records violations for  
14 investigation by a qualified supervisory agency or person,
- 15 p. to perform one or more courses of treatment, education or  
16 rehabilitation for any conditions, behaviors, deficiencies or disorders  
17 which may contribute to criminal conduct, including but not limited to  
18 alcohol and substance abuse, mental health, emotional health, physical  
19 health, propensity for violence, antisocial behavior, personality or  
20 attitudes, deviant sexual behavior, child development, parenting  
21 assistance, job skills, vocational-technical skills, domestic relations,  
22 literacy, education, or any other identifiable deficiency which may be

- 1 treated appropriately in the community and for which a certified  
2 provider or a program recognized by the court as having significant  
3 positive impact exists in the community. Any treatment, education or  
4 rehabilitation provider required to be certified pursuant to law or rule  
5 shall be certified by the appropriate state agency or a national  
6 organization,
- 7 q. to submit to periodic testing for alcohol, intoxicating substance, or  
8 controlled dangerous substances by a qualified laboratory,
- 9 r. to pay a fee, costs for treatment, education, supervision, participation  
10 in a program, or any combination thereof as determined by the court,  
11 based upon the defendant's ability to pay the fees or costs,
- 12 s. to be supervised by a Department of Corrections employee, a private  
13 supervision provider, or other person designated by the court,
- 14 t. to obtain positive behavior modeling by a trained mentor,
- 15 u. to serve a term of confinement in a restrictive housing facility available  
16 in the community,
- 17 v. to serve a term of confinement in the county jail at night or during  
18 weekends pursuant to Section 991a-2 of this title or for work release,
- 19 w. to obtain employment or participate in employment-related activities,
- 20 x. to participate in mandatory day reporting to facilities or persons for  
21 services, payments, duties or person-to-person contacts as specified by  
22 the court,

- 1           y.     to pay day fines not to exceed fifty percent (50%) of the net wages  
2                     earned. For purposes of this paragraph, "day fine" means the offender  
3                     is ordered to pay an amount calculated as a percentage of net daily  
4                     wages earned. The day fine shall be paid to the local community  
5                     sentencing system as reparation to the community. Day fines shall be  
6                     used to support the local system,
- 7           z.     to submit to blood or saliva testing as required by subsection I of this  
8                     section,
- 9           aa.    to repair or restore property damaged by the defendant's conduct, if  
10                   the court determines the defendant possesses sufficient skill to repair  
11                   or restore the property and the victim consents to the repairing or  
12                   restoring of the property,
- 13          bb.    to restore damaged property in kind or payment of out-of-pocket  
14                   expenses to the victim, if the court is able to determine the actual out-  
15                   of-pocket expenses suffered by the victim,
- 16          cc.    to attend a victim-offender reconciliation program if the victim agrees  
17                   to participate and the offender is deemed appropriate for participation,
- 18          dd.    in the case of a person convicted of prostitution pursuant to Section  
19                   1029 of Title 21 of the Oklahoma Statutes, require such person to  
20                   receive counseling for the behavior which may have caused such  
21                   person to engage in prostitution activities. Such person may be  
22                   required to receive counseling in areas including but not limited to

1 alcohol and substance abuse, sexual behavior problems, or domestic  
2 abuse or child abuse problems,  
3 ee. in the case of a sex offender sentenced after November 1, 1989, and  
4 required by law to register pursuant to the Sex Offender Registration  
5 Act, the court shall require the person to comply with sex offender  
6 specific rules and conditions of supervision established by the  
7 Department of Corrections and require the person to participate in a  
8 treatment program designed for the treatment of sex offenders during  
9 the period of time while the offender is subject to supervision by the  
10 Department of Corrections. The treatment program shall include  
11 polygraph examinations specifically designed for use with sex offenders  
12 for purposes of supervision and treatment compliance, and shall be  
13 administered not less than each six (6) months during the period of  
14 supervision. The examination shall be administered by a certified  
15 licensed polygraph examiner. The treatment program must be  
16 approved by the Department of Corrections or the Department of  
17 Mental Health and Substance Abuse Services. Such treatment shall  
18 be at the expense of the defendant based on the defendant's ability to  
19 pay,  
20 ff. in addition to other sentencing powers of the court, the court in the  
21 case of a defendant being sentenced for a felony conviction for a  
22 violation of Section 2-402 of Title 63 of the Oklahoma Statutes which

1 involves marijuana may require the person to participate in a drug  
2 court program, if available. If a drug court program is not available,  
3 the defendant may be required to participate in a community sanctions  
4 program, if available,

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

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

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

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

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

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

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

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

- 7           a.     to participate in an alcohol and drug assessment and evaluation by an  
8                     assessment agency or assessment personnel certified by the  
9                     Department of Mental Health and Substance Abuse Services pursuant  
10                    to Section 3-460 of Title 43A of the Oklahoma Statutes and, as  
11                    determined by the assessment, participate in an alcohol and drug  
12                    substance abuse course or treatment program or both, pursuant to  
13                    Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,  
14            b.     to attend a victims impact panel program, if such a program is offered  
15                    in the county where the judgment is rendered, and to pay a fee, not  
16                    less than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00)  
17                    as set by the governing authority of the program and approved by the  
18                    court, to the program to offset the cost of participation by the  
19                    defendant, if in the opinion of the court the defendant has the ability to  
20                    pay such fee,  
21            c.     to both participate in the alcohol and drug substance abuse course or  
22                    treatment program, pursuant to subparagraph a of this paragraph and

1 attend a victims impact panel program, pursuant to subparagraph b of  
2 this paragraph,

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 be deposited in the Department of Corrections Revolving Fund. Any  
2 order by the court for the payment of the monitoring fee, if willfully  
3 disobeyed, may be enforced as an indirect contempt of court;

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

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

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

1 program must be approved by the Department of Corrections or the Department of  
2 Mental Health and Substance Abuse Services. Such treatment shall be at the expense of  
3 the defendant based on the defendant's ability to pay;

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

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

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

20 14. In addition to the other sentencing powers of the court, in the case of a sex  
21 offender who is required by law to register pursuant to the Sex Offenders Registration  
22 Act, the court may prohibit the person from accessing or using any Internet social

1 networking web site that has the potential or likelihood of allowing the sex offender to  
2 have contact with any child who is under the age of eighteen (18) years; or

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

8 B. Notwithstanding any other provision of law, any person who is found guilty of a  
9 violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or  
10 any person pleading guilty or nolo contendere for a violation of any provision of such  
11 sections shall be ordered to participate in, prior to sentencing, an alcohol and drug  
12 assessment and evaluation by an assessment agency or assessment personnel certified by  
13 the Department of Mental Health and Substance Abuse Services for the purpose of  
14 evaluating the receptivity to treatment and prognosis of the person. The court shall  
15 order the person to reimburse the agency or assessor for the evaluation. The fee shall be  
16 the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma  
17 Statutes. The evaluation shall be conducted at a certified assessment agency, the office  
18 of a certified assessor or at another location as ordered by the court. The agency or  
19 assessor shall, within seventy-two (72) hours from the time the person is assessed,  
20 submit a written report to the court for the purpose of assisting the court in its final  
21 sentencing determination. No person, agency or facility operating an alcohol and drug  
22 substance abuse evaluation program certified by the Department of Mental Health and

1 Substance Abuse Services shall solicit or refer any person evaluated pursuant to this  
2 subsection for any treatment program or alcohol and drug substance abuse service in  
3 which such person, agency or facility has a vested interest; however, this provision shall  
4 not be construed to prohibit the court from ordering participation in or any person from  
5 voluntarily utilizing a treatment program or alcohol and drug substance abuse service  
6 offered by such person, agency or facility. If a person is sentenced to the custody of the  
7 Department of Corrections and the court has received a written evaluation report  
8 pursuant to this subsection, the report shall be furnished to the Department of  
9 Corrections with the judgment and sentence. Any evaluation report submitted to the  
10 court pursuant to this subsection shall be handled in a manner which will keep such  
11 report confidential from the general public's review. Nothing contained in this  
12 subsection shall be construed to prohibit the court from ordering judgment and sentence  
13 in the event the defendant fails or refuses to comply with an order of the court to obtain  
14 the evaluation required by this subsection.

15 C. When sentencing a person convicted of a crime, the court shall first consider a  
16 program of restitution for the victim, as well as imposition of a fine or incarceration of  
17 the offender. The provisions of paragraph 1 of subsection A of this section shall not apply  
18 to defendants being sentenced upon their third or subsequent to their third conviction of  
19 a felony or, beginning January 1, 1993, to defendants being sentenced for their second or  
20 subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma  
21 Statutes, except as otherwise provided in this subsection. In the case of a person being  
22 sentenced for their second or subsequent felony conviction for violation of Section 11-902

1 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the  
2 provisions of paragraph 1 of subsection A of this section if the court orders the person to  
3 submit to electronically monitored home detention administered and supervised by the  
4 Department of Corrections pursuant to subparagraph e of paragraph 7 of subsection A of  
5 this section. Provided, the court may waive these prohibitions upon written application  
6 of the district attorney. Both the application and the waiver shall be made part of the  
7 record of the case.

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

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

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**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

7 H. As used in this section:

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

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

16 I. A person convicted of a felony offense or receiving any form of probation for an  
17 offense in which registration is required pursuant to the Sex Offenders Registration Act  
18 shall submit to deoxyribonucleic acid DNA testing for law enforcement identification  
19 purposes in accordance with Section 150.27 of Title 74 of the Oklahoma Statutes and the  
20 rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI  
21 Combined DNA Index System (CODIS) Database. Any defendant sentenced to probation  
22 shall be required to submit to testing within thirty (30) days of sentencing either to the

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

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

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

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

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

17 SECTION 3. This act shall become effective November 1, 2009.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS.