

THE HOUSE OF REPRESENTATIVES
Wednesday, February 17, 2010

House Bill No. 2751

HOUSE BILL NO. 2751 - By: DENNEY AND BILLY of the House.

An Act relating to DNA evidence; amending 22 O.S. 2001, Section 991a, as last amended by Section 2, Chapter 218, O.S.L. 2009 (22 O.S. Supp. 2009, Section 991a), which relates to sentencing powers of the court; requiring persons arrested for certain crimes to submit to deoxyribonucleic acid DNA testing; amending 74 O.S. 2001, Section 150.27a, as last amended by Section 3, Chapter 218, O.S.L. 2009 (74 O.S. Supp. 2009, Section 150.27a), which relates to OSBI Combined DNA Index System (CODIS) Database; requiring collection and storage of DNA samples of persons arrested for certain crimes; and providing an effective date.

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991a, as last amended by
2 Section 2, Chapter 218, O.S.L. 2009 (22 O.S. Supp. 2009, Section 991a), is amended to
3 read as follows:

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

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

- 1 a. to provide restitution to the victim as provided by Section 991f et seq.
2 of this title or according to a schedule of payments established by the
3 sentencing court, together with interest upon any pecuniary sum at the
4 rate of twelve percent (12%) per annum, if the defendant agrees to pay
5 such restitution or, in the opinion of the court, if the defendant is able
6 to pay such restitution without imposing manifest hardship on the
7 defendant or the immediate family and if the extent of the damage to
8 the victim is determinable with reasonable certainty,
- 9 b. to reimburse any state agency for amounts paid by the state agency for
10 hospital and medical expenses incurred by the victim or victims, as a
11 result of the criminal act for which such person was convicted, which
12 reimbursement shall be made directly to the state agency, with
13 interest accruing thereon at the rate of twelve percent (12%) per
14 annum,
- 15 c. to engage in a term of community service without compensation,
16 according to a schedule consistent with the employment and family
17 responsibilities of the person convicted,
- 18 d. to pay a reasonable sum into any trust fund, established pursuant to
19 the provisions of Sections 176 through 180.4 of Title 60 of the
20 Oklahoma Statutes, and which provides restitution payments by
21 convicted defendants to victims of crimes committed within this state
22 wherein such victim has incurred a financial loss,

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

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

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

15 i. to reimburse the Oklahoma State Bureau of Investigation and any
16 authorized law enforcement agency for all costs incurred by that
17 agency for cleaning up an illegal drug laboratory site for which the
18 defendant pleaded guilty, nolo contendere or was convicted. The court
19 clerk shall collect the amount and may retain five percent (5%) of such
20 monies to be deposited in the Court Clerk Revolving Fund to cover
21 administrative costs and shall remit the remainder to the Oklahoma
22 State Bureau of Investigation to be deposited in the OSBI Revolving

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- 1 Fund established by Section 150.19a of Title 74 of the Oklahoma
2 Statutes or to the general fund wherein the other law enforcement
3 agency is located,
- 4 j. to pay a reasonable sum to the Crime Victims Compensation Board,
5 created by Section 142.2 et seq. of Title 21 of the Oklahoma Statutes,
6 for the benefit of crime victims,
- 7 k. to reimburse the court fund for amounts paid to court-appointed
8 attorneys for representing the defendant in the case in which the
9 person is being sentenced,
- 10 l. to participate in an assessment and evaluation by an assessment
11 agency or assessment personnel certified by the Department of Mental
12 Health and Substance Abuse Services pursuant to Section 3-460 of
13 Title 43A of the Oklahoma Statutes and, as determined by the
14 assessment, participate in an alcohol and drug substance abuse course
15 or treatment program or both, pursuant to Sections 3-452 and 3-453 of
16 Title 43A of the Oklahoma Statutes, or as ordered by the court,
- 17 m. to be placed in a victims impact panel program or victim/offender
18 reconciliation program and payment of a fee to the program of not less
19 than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00) as
20 set by the governing authority of the program to offset the cost of
21 participation by the defendant. Provided, each victim/offender
22 reconciliation program shall be required to obtain a written consent

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form voluntarily signed by the victim and defendant that specifies the methods to be used to resolve the issues, the obligations and rights of each person, and the confidentiality of the proceedings. Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes,

n. to install, at the expense of the defendant, an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence. The device shall be installed upon every motor vehicle operated by the defendant, and the court shall require that a notation of this restriction be affixed to the defendant's driver license. The restriction shall remain on the driver license not exceeding two (2) years to be determined by the court. The restriction may be modified or removed only by order of the court and notice of any modification order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without a device during the period of restriction shall be a violation of the sentence and may be punished as deemed proper by the sentencing court. As used in this paragraph, "ignition interlock device" means a device that, without tampering or intervention by another person,

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1 would prevent the defendant from operating a motor vehicle if the
2 defendant has a blood or breath alcohol concentration of two-
3 hundredths (0.02) or greater,
4 o. to be confined by electronic monitoring administered and supervised by
5 the Department of Corrections or a community sentence provider, and
6 payment of a monitoring fee to the supervising authority, not to exceed
7 Three Hundred Dollars (\$300.00) per month. Any fees collected
8 pursuant to this paragraph shall be deposited with the appropriate
9 supervising authority. Any willful violation of an order of the court for
10 the payment of the monitoring fee shall be a violation of the sentence
11 and may be punished as deemed proper by the sentencing court. As
12 used in this paragraph, "electronic monitoring" means confinement of
13 the defendant within a specified location or locations with supervision
14 by means of an electronic device approved by the Department of
15 Corrections which is designed to detect if the defendant is in the court-
16 ordered location at the required times and which records violations for
17 investigation by a qualified supervisory agency or person,
18 p. to perform one or more courses of treatment, education or
19 rehabilitation for any conditions, behaviors, deficiencies or disorders
20 which may contribute to criminal conduct, including but not limited to
21 alcohol and substance abuse, mental health, emotional health, physical
22 health, propensity for violence, antisocial behavior, personality or

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

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

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

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

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

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

20 However, any such order for restitution, community service, payment to a certified
21 local crimestoppers program, payment to the Oklahoma Reward System, or confinement

1 in the county jail, or a combination thereof, shall be made in conjunction with probation
2 and shall be made a condition of the suspended sentence;

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

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

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

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

- 1 c. to both participate in the alcohol and drug substance abuse course or
2 treatment program, pursuant to subparagraph a of this paragraph and
3 attend a victims impact panel program, pursuant to subparagraph b of
4 this paragraph,
- 5 d. to install, at the expense of the person, an ignition interlock device
6 approved by the Board of Tests for Alcohol and Drug Influence, upon
7 every motor vehicle operated by such person and to require that a
8 notation of this restriction be affixed to the person's driver license at
9 the time of reinstatement of the license. The restriction shall remain
10 on the driver license for such period as the court shall determine. The
11 restriction may be modified or removed by order of the court and notice
12 of the order shall be given to the Department of Public Safety. Upon
13 the expiration of the period for the restriction, the Department of
14 Public Safety shall remove the restriction without further court order.
15 Failure to comply with the order to install an ignition interlock device
16 or operating any vehicle without such device during the period of
17 restriction shall be a violation of the sentence and may be punished as
18 deemed proper by the sentencing court, or
- 19 e. beginning January 1, 1993, to submit to electronically monitored home
20 detention administered and supervised by the Department of
21 Corrections, and to pay to the Department a monitoring fee, not to
22 exceed Seventy-five Dollars (\$75.00) a month, to the Department of

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1 Corrections, if in the opinion of the court the defendant has the ability
2 to pay such fee. Any fees collected pursuant to this subparagraph shall
3 be deposited in the Department of Corrections Revolving Fund. Any
4 order by the court for the payment of the monitoring fee, if willfully
5 disobeyed, may be enforced as an indirect contempt of court;

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

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

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

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

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

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

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

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

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

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

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

18 C. When sentencing a person convicted of a crime, the court shall first consider a
19 program of restitution for the victim, as well as imposition of a fine or incarceration of
20 the offender. The provisions of paragraph 1 of subsection A of this section shall not apply
21 to defendants being sentenced upon their third or subsequent to their third conviction of
22 a felony or, beginning January 1, 1993, to defendants being sentenced for their second or

1 subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma
2 Statutes, except as otherwise provided in this subsection. In the case of a person being
3 sentenced for their second or subsequent felony conviction for violation of Section 11-902
4 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the
5 provisions of paragraph 1 of subsection A of this section if the court orders the person to
6 submit to electronically monitored home detention administered and supervised by the
7 Department of Corrections pursuant to subparagraph e of paragraph 7 of subsection A of
8 this section. Provided, the court may waive these prohibitions upon written application
9 of the district attorney. Both the application and the waiver shall be made part of the
10 record of the case.

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

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

1 the maximum term or terms of the sentence upon a determination by the Division of
2 Probation and Parole of the Department of Corrections that the best interests of the
3 public and the release will be served by an extended period of supervision.

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

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

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

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

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

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

10 H. As used in this section:

11 1. "Ignition interlock device" means a device that, without tampering or
12 intervention by another person, would prevent the defendant from operating a motor
13 vehicle if the defendant has a blood or breath alcohol concentration of two-hundredths
14 (0.02) or greater; and

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

19 I. A person convicted of a felony offense or receiving any form of probation for an
20 offense in which registration is required pursuant to the Sex Offenders Registration Act,
21 shall submit to deoxyribonucleic acid DNA testing for law enforcement identification
22 purposes in accordance with Section 150.27 of Title 74 of the Oklahoma Statutes and the

1 rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI
2 Combined DNA Index System (CODIS) Database. Subject to the availability of funds,
3 any person convicted of a misdemeanor offense of assault and battery, domestic abuse,
4 stalking, possession of a controlled substance prohibited under Schedule IV of the
5 Uniform Controlled Dangerous Substances Act, outraging public decency, resisting
6 arrest, escape or attempting to escape, eluding a police officer, peeping tom, pointing a
7 firearm, unlawful carry of a firearm, illegal transport of a firearm, discharging of a
8 firearm, threatening an act of violence, breaking and entering a dwelling place,
9 destruction of property, negligent homicide, or causing a personal injury accident while
10 driving under the influence of any intoxicating substance, or upon arrest, any alien
11 unlawfully present under federal immigration law, ~~upon arrest~~ any individual accused of
12 murder, or any individual accused of rape, shall submit to deoxyribonucleic acid DNA
13 testing for law enforcement identification purposes in accordance with Section 150.27 of
14 Title 74 of the Oklahoma Statutes and the rules promulgated by the Oklahoma State
15 Bureau of Investigation for the OSBI Combined DNA Index System (CODIS) Database.
16 Any defendant sentenced to probation shall be required to submit to testing within thirty
17 (30) days of sentencing either to the Department of Corrections or to the county sheriff or
18 other peace officer as directed by the court. Defendants who are sentenced to a term of
19 incarceration shall submit to testing in accordance with Section 530.1 of Title 57 of the
20 Oklahoma Statutes, for those defendants who enter the custody of the Department of
21 Corrections or to the county sheriff, for those defendants sentenced to incarceration in a
22 county jail. Convicted individuals who have previously submitted to DNA testing under

1 this section and for whom a valid sample is on file in the OSBI Combined DNA Index
2 System (CODIS) Database at the time of sentencing shall not be required to submit to
3 additional testing. Except as required by the Sex Offenders Registration Act, a deferred
4 judgment does not require submission to deoxyribonucleic acid testing.

5 Any person who is incarcerated in the custody of the Department of Corrections
6 after July 1, 1996, and who has not been released before January 1, 2006, shall provide a
7 blood or saliva sample prior to release. Every person subject to DNA testing after
8 January 1, 2006, whose sentence does not include a term of confinement with the
9 Department of Corrections shall submit a blood or saliva sample. Every person subject
10 to DNA testing who is sentenced to unsupervised probation or otherwise not supervised
11 by the Department of Corrections shall submit for blood or saliva testing to the sheriff of
12 the sentencing county.

13 J. Samples of blood or saliva for DNA testing required by subsection I of this
14 section shall be taken by employees or contractors of the Department of Corrections,
15 peace officers, or the county sheriff or employees or contractors of the sheriff's office. The
16 individuals shall be properly trained to collect blood or saliva samples. Persons collecting
17 blood or saliva for DNA testing pursuant to this section shall be immune from civil
18 liabilities arising from this activity. All collectors of DNA samples shall ensure the
19 collection of samples are mailed to the Oklahoma State Bureau of Investigation within
20 ten (10) days of the time the subject appears for testing or within ten (10) days of the
21 date the subject comes into physical custody to serve a term of incarceration. All
22 collectors of DNA samples shall use sample kits provided by the OSBI and procedures

1 promulgated by the OSBI. Persons subject to DNA testing who are not received at the
2 Lexington Assessment and Reception Center shall be required to pay a fee of Fifteen
3 Dollars (\$15.00) to the agency collecting the sample for submission to the OSBI
4 Combined DNA Index System (CODIS) Database. Any fees collected pursuant to this
5 subsection shall be deposited in the revolving account or the service fee account of the
6 collection agency or department.

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

11 SECTION 2. AMENDATORY 74 O.S. 2001, Section 150.27a, as last amended
12 by Section 3, Chapter 218, O.S.L. 2009 (74 O.S. Supp. 2009, Section 150.27a), is amended
13 to read as follows:

14 Section 150.27a A. There is hereby established within the Oklahoma State Bureau
15 of Investigation the OSBI Combined DNA Index System (CODIS) Database for the
16 purpose of collecting and storing blood or saliva samples and DNA profiles, analyzing
17 and typing of the genetic markers contained in or derived from DNA, and maintaining
18 the records and samples of DNA of individuals convicted of any felony offense, of
19 individuals required to register pursuant to the Sex Offenders Registration Act, and
20 subject to the availability of funds, of individuals convicted of a misdemeanor offense of
21 assault and battery, domestic abuse, stalking, possession of a controlled substance
22 prohibited under Schedule IV of the Uniform Controlled Dangerous Substances Act,

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

1 outraging public decency, resisting arrest, escape or attempting to escape, eluding a
2 police officer, peeping tom, pointing a firearm, unlawful carry of a firearm, illegal
3 transport of a firearm, discharging of a firearm, threatening an act of violence, breaking
4 and entering a dwelling place, destruction of property, negligent homicide, or causing a
5 personal injury accident while driving under the influence of any intoxicating substance,
6 or, upon arrest, any alien unlawfully present under federal immigration law, any
7 individual accused of murder, or any individual accused of rape. The purpose of this
8 database is the detection or exclusion of individuals who are subjects of the investigation
9 or prosecution of sex-related crimes, violent crimes, or other crimes in which biological
10 evidence is recovered, and such information shall be used for no other purpose.

11 B. Any DNA specimen taken in good faith by the Department of Corrections, its
12 employees or contractors, or the county sheriff, its employees or contractors, and
13 submitted to the OSBI may be included, maintained, and kept by the OSBI in a database
14 for criminal investigative purposes despite the specimen having not been taken in strict
15 compliance with the provisions of this section or Section 991a of Title 22 of the Oklahoma
16 Statutes.

17 C. Upon the request to OSBI by the federal or state authority having custody of the
18 person, any individual who was convicted of violating laws of another state or the federal
19 government, but is currently incarcerated or residing in Oklahoma, shall submit to DNA
20 profiling for entry of the data into the OSBI DNA Offender Database. This provision
21 shall only apply when such federal or state conviction carries a requirement of sex

1 offender registration and/or DNA profiling. The person to be profiled shall pay a fee of
2 One Hundred Fifty Dollars (\$150.00) to the OSBI.

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

13 E. The OSBI shall promulgate rules concerning the collection, storing,
14 expungement and dissemination of information and samples for the OSBI Combined
15 DNA Index System (CODIS) Database. The OSBI shall determine the type of
16 equipment, collection procedures, and reporting documentation to be used by the
17 Department of Corrections or a county sheriff's office in submitting DNA samples to the
18 OSBI in accordance with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI
19 shall provide training to designated employees of the Department of Corrections and a
20 county sheriff's office in the proper methods of performing the duties required by this
21 section.

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

- 3 1. Forensic index database consisting of unknown evidence samples;
- 4 2. Suspect index database consisting of samples taken from individuals as a result
5 of criminal investigations;
- 6 3. Convicted offender index database authorized pursuant to subsection A of this
7 section; and
- 8 4. Missing persons and unidentified remains index or database consisting of DNA
9 profiles from unidentified remains and relatives of missing persons.

10 G. Any person convicted of a felony offense who is in custody shall provide a blood
11 or saliva sample prior to release. Subject to the availability of funds, any person
12 convicted of a misdemeanor offense of assault and battery, domestic abuse, stalking,
13 possession of a controlled substance prohibited under Schedule IV of the Uniform
14 Controlled Dangerous Substances Act, outraging public decency, resisting arrest, escape
15 or attempting to escape, eluding a police officer, peeping tom, pointing a firearm,
16 unlawful carry of a firearm, illegal transport of a firearm, discharging of a firearm,
17 threatening an act of violence, breaking and entering a dwelling place, destruction of
18 property, negligent homicide, or causing a personal injury incident while driving under
19 the influence of any intoxicating substance who is in custody shall provide a blood or
20 saliva sample prior to release. Every person who is convicted of a felony offense whose
21 sentence does not include a term of incarceration shall provide a blood or saliva sample
22 as a condition of sentence. Subject to the availability of funds, every person who is

1 convicted of a misdemeanor offense of assault and battery, domestic abuse, stalking,
2 possession of a controlled substance prohibited under Schedule IV of the Uniform
3 Controlled Dangerous Substances Act, outraging public decency, resisting arrest, escape
4 or attempting to escape, eluding a police officer, peeping tom, pointing a firearm,
5 unlawful carry of a firearm, illegal transport of a firearm, discharging of a firearm,
6 threatening an act of violence, breaking and entering a dwelling place, destruction of
7 property, negligent homicide, or causing a personal injury accident while driving under
8 the influence of any intoxicating substance whose sentence does not include a term of
9 incarceration shall provide a blood or saliva sample as a condition of sentence.

10 SECTION 3. This act shall become effective November 1, 2010.

11 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-16-10 - DO PASS,
12 As Coauthored.