

**ENGROSSED**

**House Bill No. 3289**

**As Amended**

ENGROSSED HOUSE BILL NO. 3289 - By: McNiel and Pittman of the House  
and Bingman of the Senate.

**[ criminal procedure - sentencing powers of the court -  
victims - effective date ]**

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 132, Chapter 234, O.S.L. 2009 (22 O.S. Supp.  
2009, Section 991a), 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  
convicted of a crime and no death sentence is imposed, the court  
shall either:

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

a. to provide restitution to the victim as provided by  
Section 991f et seq. of this title or according to a  
schedule of payments established by the sentencing

1 court, together with interest upon any pecuniary sum  
2 at the rate of twelve percent (12%) per annum, if the  
3 defendant agrees to pay such restitution or, in the  
4 opinion of the court, if the defendant is able to pay  
5 such restitution without imposing manifest hardship on  
6 the defendant or the immediate family and if the  
7 extent of the damage to the victim is determinable  
8 with reasonable certainty,

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

16 c. to engage in a term of community service without  
17 compensation, according to a schedule consistent with  
18 the employment and family responsibilities of the  
19 person convicted,

20 d. to pay a reasonable sum into any trust fund,  
21 established pursuant to the provisions of Sections 176  
22 through 180.4 of Title 60 of the Oklahoma Statutes,  
23 and which provides restitution payments by convicted

1 defendants to victims of crimes committed within this  
2 state wherein such victim has incurred a financial  
3 loss,  
4 e. to confinement in the county jail for a period not to  
5 exceed six (6) months,  
6 f. to confinement as provided by law together with a term  
7 of post-imprisonment community supervision for not  
8 less than three (3) years of the total term allowed by  
9 law for imprisonment, with or without restitution;  
10 provided, however, the authority of this provision is  
11 limited to Section 843.5 of Title 21 of the Oklahoma  
12 Statutes when the offense involved sexual abuse or  
13 sexual exploitation; Sections 681, 741 and 843.1 of  
14 Title 21 of the Oklahoma Statutes when the offense  
15 involved sexual abuse or sexual exploitation; and  
16 Sections 865 et seq., 885, 886, 888, 891, 1021,  
17 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and  
18 1123 of Title 21 of the Oklahoma Statutes,  
19 g. to repay the reward or part of the reward paid by a  
20 certified local crimestoppers program and the Oklahoma  
21 Reward System. In determining whether the defendant  
22 shall repay the reward or part of the reward, the  
23 court shall consider the ability of the defendant to

1 make the payment, the financial hardship on the  
2 defendant to make the required payment, and the  
3 importance of the information to the prosecution of  
4 the defendant as provided by the arresting officer or  
5 the district attorney with due regard for the  
6 confidentiality of the records of the certified local  
7 crimestoppers program and the Oklahoma Reward System.  
8 The court shall assess this repayment against the  
9 defendant as a cost of prosecution. "Certified local  
10 crimestoppers program" means a crimestoppers program  
11 certified by the Office of the Attorney General  
12 pursuant to Section 991g of this title. The "Oklahoma  
13 Reward System" means the reward program established by  
14 Section 150.18 of Title 74 of the Oklahoma Statutes,  
15 h. to reimburse the Oklahoma State Bureau of  
16 Investigation for costs incurred by that agency during  
17 its investigation of the crime for which the defendant  
18 pleaded guilty, nolo contendere or was convicted,  
19 including compensation for laboratory, technical, or  
20 investigation services performed by the Bureau if, in  
21 the opinion of the court, the defendant is able to pay  
22 without imposing manifest hardship on the defendant,  
23 and if the costs incurred by the Bureau during the

1 investigation of the defendant's case may be  
2 determined with reasonable certainty,  
3 i. to reimburse the Oklahoma State Bureau of  
4 Investigation and any authorized law enforcement  
5 agency for all costs incurred by that agency for  
6 cleaning up an illegal drug laboratory site for which  
7 the defendant pleaded guilty, nolo contendere or was  
8 convicted. The court clerk shall collect the amount  
9 and may retain five percent (5%) of such monies to be  
10 deposited in the Court Clerk Revolving Fund to cover  
11 administrative costs and shall remit the remainder to  
12 the Oklahoma State Bureau of Investigation to be  
13 deposited in the OSBI Revolving Fund established by  
14 Section 150.19a of Title 74 of the Oklahoma Statutes  
15 or to the general fund wherein the other law  
16 enforcement agency is located,  
17 j. to pay a reasonable sum to the Crime Victims  
18 Compensation Board, created by Section 142.2 et seq.  
19 of Title 21 of the Oklahoma Statutes, for the benefit  
20 of crime victims,  
21 k. to reimburse the court fund for amounts paid to court-  
22 appointed attorneys for representing the defendant in  
23 the case in which the person is being sentenced,

1           1.    to participate in an assessment and evaluation by an  
2                   assessment agency or assessment personnel certified by  
3                   the Department of Mental Health and Substance Abuse  
4                   Services pursuant to Section 3-460 of Title 43A of the  
5                   Oklahoma Statutes and, as determined by the  
6                   assessment, participate in an alcohol and drug  
7                   substance abuse course or treatment program or both,  
8                   pursuant to Sections 3-452 and 3-453 of Title 43A of  
9                   the Oklahoma Statutes, or as ordered by the court,  
10           m.   to be placed in a victims impact panel program or  
11                   victim/offender reconciliation program and payment of  
12                   a fee to the program of not less than Fifteen Dollars  
13                   (\$15.00) nor more than Fifty Dollars (\$50.00) as set  
14                   by the governing authority of the program to offset  
15                   the cost of participation by the defendant.  Provided,  
16                   each victim/offender reconciliation program shall be  
17                   required to obtain a written consent form voluntarily  
18                   signed by the victim and defendant that specifies the  
19                   methods to be used to resolve the issues, the  
20                   obligations and rights of each person, and the  
21                   confidentiality of the proceedings.  Volunteer  
22                   mediators and employees of a victim/offender  
23                   reconciliation program shall be immune from liability

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

1 intervention by another person, would prevent the  
2 defendant from operating a motor vehicle if the  
3 defendant has a blood or breath alcohol concentration  
4 of two-hundredths (0.02) or greater,  
5 o. to be confined by electronic monitoring administered  
6 and supervised by the Department of Corrections or a  
7 community sentence provider, and payment of a  
8 monitoring fee to the supervising authority, not to  
9 exceed Three Hundred Dollars (\$300.00) per month. Any  
10 fees collected pursuant to this paragraph shall be  
11 deposited with the appropriate supervising authority.  
12 Any willful violation of an order of the court for the  
13 payment of the monitoring fee shall be a violation of  
14 the sentence and may be punished as deemed proper by  
15 the sentencing court. As used in this paragraph,  
16 "electronic monitoring" means confinement of the  
17 defendant within a specified location or locations  
18 with supervision by means of an electronic device  
19 approved by the Department of Corrections which is  
20 designed to detect if the defendant is in the court-  
21 ordered location at the required times and which  
22 records violations for investigation by a qualified  
23 supervisory agency or person,

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

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

1 community sentencing system as reparation to the  
2 community. Day fines shall be used to support the  
3 local system,  
4 z. to submit to blood or saliva testing as required by  
5 subsection I of this section,  
6 aa. to repair or restore property damaged by the  
7 defendant's conduct, if the court determines the  
8 defendant possesses sufficient skill to repair or  
9 restore the property and the victim consents to the  
10 repairing or restoring of the property,  
11 bb. to restore damaged property in kind or payment of out-  
12 of-pocket expenses to the victim, if the court is able  
13 to determine the actual out-of-pocket expenses  
14 suffered by the victim,  
15 cc. to attend a victim-offender reconciliation program if  
16 the victim agrees to participate and the offender is  
17 deemed appropriate for participation,  
18 dd. in the case of a person convicted of prostitution  
19 pursuant to Section 1029 of Title 21 of the Oklahoma  
20 Statutes, require such person to receive counseling  
21 for the behavior which may have caused such person to  
22 engage in prostitution activities. Such person may be  
23 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

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.

1           Additionally, the court may require the offender to  
2           pay restitution and bogus check fees on any other  
3           bogus check or checks that have been submitted to the  
4           District Attorney Bogus Check Restitution Program, and  
5           hh.   any other provision specifically ordered by the court.

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

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

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

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

1 costs incurred by the Bureau during the investigation of the  
2 defendant's case may be determined with reasonable certainty;

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

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

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

22 a. to participate in an alcohol and drug assessment and  
23 evaluation by an assessment agency or assessment

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

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

18 e. beginning January 1, 1993, to submit to electronically  
19 monitored home detention administered and supervised  
20 by the Department of Corrections, and to pay to the  
21 Department a monitoring fee, not to exceed Seventy-  
22 five Dollars (\$75.00) a month, to the Department of  
23 Corrections, if in the opinion of the court the

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

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

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

22 10. In addition to the other sentencing powers of the court,  
23 the court, in the case of a sex offender sentenced after November 1,

1 1989, and required by law to register pursuant to the Sex Offenders  
2 Registration Act, shall require the person to participate in a  
3 treatment program designed specifically for the treatment of sex  
4 offenders, if available. The treatment program will include  
5 polygraph examinations specifically designed for use with sex  
6 offenders for the purpose of supervision and treatment compliance,  
7 provided the examination is administered by a certified licensed  
8 polygraph examiner. The treatment program must be approved by the  
9 Department of Corrections or the Department of Mental Health and  
10 Substance Abuse Services. Such treatment shall be at the expense of  
11 the defendant based on the defendant's ability to pay;

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

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

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

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

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

1        16. In addition to the other sentencing powers of the court, in  
2 the case of a sex offender who is required by law to register  
3 pursuant to the Sex Offenders Registration Act, the court may  
4 prohibit the person from residing, either temporarily or  
5 permanently, within a specified distance of the primary residence of  
6 the victim of the sex offender. The court shall have the discretion  
7 to determine the distance requirement as the court deems  
8 appropriate.

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

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

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

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

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

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

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

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

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

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

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

6           H. As used in this section:

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

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

17           I. A person convicted of a felony offense or receiving any form  
18 of probation for an offense in which registration is required  
19 pursuant to the Sex Offenders Registration Act shall submit to  
20 deoxyribonucleic acid DNA testing for law enforcement identification  
21 purposes in accordance with Section 150.27 of Title 74 of the  
22 Oklahoma Statutes and the rules promulgated by the Oklahoma State  
23 Bureau of Investigation for the OSBI Combined DNA Index System

1 (CODIS) Database. Any defendant sentenced to probation shall be  
2 required to submit to testing within thirty (30) days of sentencing  
3 either to the Department of Corrections or to the county sheriff or  
4 other peace officer as directed by the court. Defendants who are  
5 sentenced to a term of incarceration shall submit to testing in  
6 accordance with Section 530.1 of Title 57 of the Oklahoma Statutes,  
7 for those defendants who enter the custody of the Department of  
8 Corrections or to the county sheriff, for those defendants sentenced  
9 to incarceration in a county jail. Convicted individuals who have  
10 previously submitted to DNA testing under this section and for whom  
11 a valid sample is on file in the OSBI Combined DNA Index System  
12 (CODIS) Database at the time of sentencing shall not be required to  
13 submit to additional testing. Except as required by the Sex  
14 Offenders Registration Act, a deferred judgment does not require  
15 submission to deoxyribonucleic acid testing.

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

1 of Corrections shall submit for blood or saliva testing to the  
2 sheriff of the sentencing county.

3 J. Samples of blood or saliva for DNA testing required by  
4 subsection I of this section shall be taken by employees or  
5 contractors of the Department of Corrections, peace officers, or the  
6 county sheriff or employees or contractors of the sheriff's office.  
7 The individuals shall be properly trained to collect blood or saliva  
8 samples. Persons collecting blood or saliva for DNA testing  
9 pursuant to this section shall be immune from civil liabilities  
10 arising from this activity. All collectors of DNA samples shall  
11 ensure the collection of samples are mailed to the Oklahoma State  
12 Bureau of Investigation within ten (10) days of the time the subject  
13 appears for testing or within ten (10) days of the date the subject  
14 comes into physical custody to serve a term of incarceration. All  
15 collectors of DNA samples shall use sample kits provided by the OSBI  
16 and procedures promulgated by the OSBI. Persons subject to DNA  
17 testing who are not received at the Lexington Assessment and  
18 Reception Center shall be required to pay a fee of Fifteen Dollars  
19 (\$15.00) to the agency collecting the sample for submission to the  
20 OSBI Combined DNA Index System (CODIS) Database. Any fees collected  
21 pursuant to this subsection shall be deposited in the revolving  
22 account or the service fee account of the collection agency or  
23 department.

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

6           SECTION 2. This act shall become effective November 1, 2010.

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-10 - DO  
8 PASS, As Amended and Coauthored.