

CS for SB 1102

THE STATE SENATE
Monday, February 23, 2009

Committee Substitute for
Senate Bill No. 1102

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1102 - By: Nichols of the Senate and Terrill of the House.

[criminal procedure - misdemeanor DNA samples - emergency]

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 19, Chapter 3, O.S.L. 2008 (22 O.S. Supp. 2008, 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 court, together with interest upon any pecuniary sum

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

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

1 defendant to make the required payment, and the
2 importance of the information to the prosecution of
3 the defendant as provided by the arresting officer or
4 the district attorney with due regard for the
5 confidentiality of the records of the certified local
6 crimestoppers program and the Oklahoma Reward System.
7 The court shall assess this repayment against the
8 defendant as a cost of prosecution. "Certified local
9 crimestoppers program" means a crimestoppers program
10 certified by the Office of the Attorney General
11 pursuant to Section 991g of this title. The "Oklahoma
12 Reward System" means the reward program established by
13 Section 150.18 of Title 74 of the Oklahoma Statutes,
14 h. to reimburse the Oklahoma State Bureau of
15 Investigation for costs incurred by that agency during
16 its investigation of the crime for which the defendant
17 pleaded guilty, nolo contendere or was convicted,
18 including compensation for laboratory, technical, or
19 investigation services performed by the Bureau if, in
20 the opinion of the court, the defendant is able to pay
21 without imposing manifest hardship on the defendant,
22 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 bogus
15 check fee to be paid to the district attorney. The
16 fee shall be equal to the amount assessed as court
17 costs plus Twenty-five Dollars (\$25.00) for each check
18 upon filing of the case in district court. This money
19 shall be deposited in the Bogus Check Restitution
20 Program Fund as established in subsection B of Section
21 114 of this title. Additionally, the court may
22 require the offender to pay restitution and bogus
23 check fees on any other bogus check or checks that

1 have been submitted to the District Attorney Bogus
2 Check Restitution Program, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 10. In addition to the other sentencing powers of the court,
21 the court, in the case of a sex offender sentenced after November 1,
22 1989, and required by law to register pursuant to the Sex Offenders
23 Registration Act, shall require the person to participate in a

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

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

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

22 13. In addition to the other sentencing powers of the court, a
23 sex offender who is habitual or aggravated as defined by Section 584

1 of Title 57 of the Oklahoma Statutes and who is required to register
2 as a sex offender pursuant to the Oklahoma Sex Offenders
3 Registration Act shall be supervised by the Department of
4 Corrections for the duration of the registration period and shall be
5 assigned to a global position monitoring device by the Department of
6 Corrections for the duration of the registration period. The cost
7 of such monitoring device shall be reimbursed by the offender;

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

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

22 B. Notwithstanding any other provision of law, any person who
23 is found guilty of a violation of any provision of Section 761 or

1 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
2 guilty or nolo contendere for a violation of any provision of such
3 sections shall be ordered to participate in, prior to sentencing, an
4 alcohol and drug assessment and evaluation by an assessment agency
5 or assessment personnel certified by the Department of Mental Health
6 and Substance Abuse Services for the purpose of evaluating the
7 receptivity to treatment and prognosis of the person. The court
8 shall order the person to reimburse the agency or assessor for the
9 evaluation. The fee shall be the amount provided in subsection C of
10 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
11 shall be conducted at a certified assessment agency, the office of a
12 certified assessor or at another location as ordered by the court.
13 The agency or assessor shall, within seventy-two (72) hours from the
14 time the person is assessed, submit a written report to the court
15 for the purpose of assisting the court in its final sentencing
16 determination. No person, agency or facility operating an alcohol
17 and drug substance abuse evaluation program certified by the
18 Department of Mental Health and Substance Abuse Services shall
19 solicit or refer any person evaluated pursuant to this subsection
20 for any treatment program or alcohol and drug substance abuse
21 service in which such person, agency or facility has a vested
22 interest; however, this provision shall not be construed to prohibit
23 the court from ordering participation in or any person from

1 voluntarily utilizing a treatment program or alcohol and drug
2 substance abuse service offered by such person, agency or facility.
3 If a person is sentenced to the custody of the Department of
4 Corrections and the court has received a written evaluation report
5 pursuant to this subsection, the report shall be furnished to the
6 Department of Corrections with the judgment and sentence. Any
7 evaluation report submitted to the court pursuant to this subsection
8 shall be handled in a manner which will keep such report
9 confidential from the general public's review. Nothing contained in
10 this subsection shall be construed to prohibit the court from
11 ordering judgment and sentence in the event the defendant fails or
12 refuses to comply with an order of the court to obtain the
13 evaluation required by this subsection.

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

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

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

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

1 two (2) years. Provided further, any supervision provided for in
2 this section may be extended for a period not to exceed the
3 expiration of the maximum term or terms of the sentence upon a
4 determination by the Division of Probation and Parole of the
5 Department of Corrections that the best interests of the public and
6 the release will be served by an extended period of supervision.

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

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

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

22 3. The Department shall establish criteria and specifications
23 for contracts with counties for such Programs. A county may apply

1 to the Department for a contract for a county-funded Program for a
2 specific period of time. The Department shall be responsible for
3 ensuring that any contracting county complies in full with
4 specifications and requirements of the contract. The contract shall
5 set appropriate compensation to the county for services to the
6 Department.

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

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

18 H. As used in this section:

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

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

6 I. A person convicted of a felony offense or receiving any form
7 of probation for an offense in which registration is required
8 pursuant to the Sex Offenders Registration Act or is found guilty of
9 a misdemeanor offense of assault and battery, domestic abuse,
10 stalking, possession of a controlled substance prohibited under
11 Schedule IV of the Uniform Controlled Dangerous Substances Act,
12 outraging public decency, resisting arrest, escape or attempting to
13 escape, eluding a police officer, peeping tom, pointing a firearm,
14 unlawful carry of a firearm, illegal transport of a firearm,
15 discharging of a firearm, threatening an act of violence, breaking
16 and entering a dwelling place, destruction of property, negligent
17 homicide, or causing a personal injury accident while driving under
18 the influence of any intoxicating substance, shall submit to
19 deoxyribonucleic acid DNA testing for law enforcement identification
20 purposes in accordance with Section 150.27 of Title 74 of the
21 Oklahoma Statutes and the rules promulgated by the Oklahoma State
22 Bureau of Investigation for the OSBI Combined DNA Index System
23 (CODIS) Database. Any defendant sentenced to probation shall be

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

15 Any person who is incarcerated in the custody of the Department
16 of Corrections after July 1, 1996, and who has not been released
17 before ~~the effective date of this act~~ January 1, 2006, shall provide
18 a blood or saliva sample prior to release. Every person ~~convicted~~
19 ~~of a felony offense~~ subject to DNA testing after ~~the effective date~~
20 ~~of this act~~ January 1, 2006, whose sentence does not include a term
21 of confinement with the Department of Corrections shall submit a
22 blood or saliva sample. ~~These felons~~ Every person subject to DNA
23 testing who is sentenced to unsupervised probation or otherwise not

1 supervised by the Department of Corrections shall submit for blood
2 or saliva testing to the 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. AMENDATORY 74 O.S. 2001, Section 150.27a, as
7 last amended by Section 5, Chapter 441, O.S.L. 2005 (74 O.S. Supp.
8 2008, Section 150.27a), is amended to read as follows:

9 Section 150.27a A. There is hereby established within the
10 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
11 System (CODIS) Database for the purpose of collecting and storing
12 blood or saliva samples and DNA profiles, analyzing and typing of
13 the genetic markers contained in or derived from DNA, and
14 maintaining the records and samples of DNA of individuals convicted
15 of any felony offense, of individuals convicted of a misdemeanor
16 offense of assault and battery, domestic abuse, stalking, possession
17 of a controlled substance prohibited under Schedule IV of the
18 Uniform Controlled Dangerous Substances Act, outraging public
19 decency, resisting arrest, escape or attempting to escape, eluding a
20 police officer, peeping tom, pointing a firearm, unlawful carry of a
21 firearm, illegal transport of a firearm, discharging of a firearm,
22 threatening an act of violence, breaking and entering a dwelling
23 place, destruction of property, negligent homicide, or causing a

1 personal injury accident while driving under the influence of any
2 intoxicating substance, and of individuals required to register
3 pursuant to the Sex Offenders Registration Act. The purpose of this
4 database is the detection or exclusion of individuals who are
5 subjects of the investigation or prosecution of sex-related crimes,
6 violent crimes, or other crimes in which biological evidence is
7 recovered, and such information shall be used for no other purpose.

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

15 C. Upon the request to OSBI by the federal or state authority
16 having custody of the person, any individual who was convicted of
17 violating laws of another state or the federal government, but is
18 currently incarcerated or residing in Oklahoma, shall submit to DNA
19 profiling for entry of the data into the OSBI DNA Offender Database.
20 This provision shall only apply when such federal or state
21 conviction carries a requirement of sex offender registration and/or
22 DNA profiling. The person to be profiled shall pay a fee of One
23 Hundred Fifty Dollars (\$150.00) to the OSBI.

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

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

1 the proper methods of performing the duties required by this
2 section.

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

6 1. Forensic index database consisting of unknown evidence
7 samples;

8 2. Suspect index database consisting of samples taken from
9 individuals as a result of criminal investigations;

10 3. Convicted offender index database authorized pursuant to
11 subsection A of this section; and

12 4. Missing persons and unidentified remains index or database
13 consisting of DNA profiles from unidentified remains and relatives
14 of missing persons.

15 G. Any person convicted of ~~an~~ a felony offense ~~provided in this~~
16 ~~section~~ or convicted of a misdemeanor offense of assault and
17 battery, domestic abuse, stalking, possession of a controlled
18 substance prohibited under Schedule IV of the Uniform Controlled
19 Dangerous Substances Act, outraging public decency, resisting
20 arrest, escape or attempting to escape, eluding a police officer,
21 peeping tom, pointing a firearm, unlawful carry of a firearm,
22 illegal transport of a firearm, discharging of a firearm,
23 threatening an act of violence, breaking an entering a dwelling

1 place, destruction of property, negligent homicide, or causing a
2 personal injury incident while driving under the influence of any
3 intoxicating substance, who is in custody ~~after July 1, 1996,~~ shall
4 provide a blood or saliva sample prior to release. Every person who
5 is convicted of ~~an~~ a felony offense ~~provided in this section~~ or
6 convicted of a misdemeanor offense of assault and battery, domestic
7 abuse, stalking or possession of a controlled substance prohibited
8 under Schedule IV of the Uniform Controlled Dangerous Substances
9 Act, assault and battery, domestic abuse, stalking, possession of a
10 controlled substance prohibited under Schedule IV of the Uniform
11 Controlled Dangerous Substances Act, outraging public decency,
12 resisting arrest, escape or attempting to escape, eluding a police
13 officer, peeping tom, pointing a firearm, unlawful carry of a
14 firearm, illegal transport of a firearm, discharging of a firearm,
15 threatening an act of violence, breaking and entering a dwelling
16 place, destruction of property, negligent homicide, or causing a
17 personal injury accident while driving under the influence of any
18 intoxicating substance, whose sentence does not include a term of
19 incarceration shall provide a blood or ~~salvia~~ saliva sample as a
20 condition of sentence.

21 SECTION 3. It being immediately necessary for the preservation
22 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.
3 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-18-09 - DO
4 PASS, As Amended and Coauthored.