

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 1724

By: Easley

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5
6 AS INTRODUCED

7 An Act relating to fees; amending 22 O.S. 2001,
8 Section 991a, as last amended by Section 132, Chapter
9 234, O.S.L. 2009 (22 O.S. Supp. 2009, Section 991a),
10 which relates to suspension of judgment and sentence;
11 increasing maximum fee for victims impact panel
12 program; amending 47 O.S. 2001, Section 11-902, as
13 last amended by Section 3, Chapter 310, O.S.L. 2009
14 (47 O.S. Supp. 2009, Section 11-902), which relates
15 to reckless driving, driving while intoxicated and
16 negligent homicide; increasing maximum fee for
17 victims impact panel program; and declaring an
18 emergency.

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

20 SECTION 1. AMENDATORY 22 O.S. 2001, Section 991a, as
21 last amended by Section 132, Chapter 234, O.S.L. 2009 (22 O.S. Supp.
22 2009, Section 991a), is amended to read as follows:

23 Section 991a. A. Except as otherwise provided in the Elderly
24 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

1 convicted defendant at the time of sentencing or at any time during
2 the suspended sentence to do one or more of the following:

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

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

21 c. to engage in a term of community service without
22 compensation, according to a schedule consistent with
23 the employment and family responsibilities of the
24 person convicted,

- 1 d. to pay a reasonable sum into any trust fund,
2 established pursuant to the provisions of Sections 176
3 through 180.4 of Title 60 of the Oklahoma Statutes,
4 and which provides restitution payments by convicted
5 defendants to victims of crimes committed within this
6 state wherein such victim has incurred a financial
7 loss,
- 8 e. to confinement in the county jail for a period not to
9 exceed six (6) months,
- 10 f. to confinement as provided by law together with a term
11 of post-imprisonment community supervision for not
12 less than three (3) years of the total term allowed by
13 law for imprisonment, with or without restitution;
14 provided, however, the authority of this provision is
15 limited to Section 843.5 of Title 21 of the Oklahoma
16 Statutes when the offense involved sexual abuse or
17 sexual exploitation; Sections 681, 741 and 843.1 of
18 Title 21 of the Oklahoma Statutes when the offense
19 involved sexual abuse or sexual exploitation; and
20 Sections 865 et seq., 885, 886, 888, 891, 1021,
21 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
22 1123 of Title 21 of the Oklahoma Statutes,
- 23 g. to repay the reward or part of the reward paid by a
24 certified local crimestoppers program and the Oklahoma

1 Reward System. In determining whether the defendant
2 shall repay the reward or part of the reward, the
3 court shall consider the ability of the defendant to
4 make the payment, the financial hardship on the
5 defendant to make the required payment, and the
6 importance of the information to the prosecution of
7 the defendant as provided by the arresting officer or
8 the district attorney with due regard for the
9 confidentiality of the records of the certified local
10 crimestoppers program and the Oklahoma Reward System.
11 The court shall assess this repayment against the
12 defendant as a cost of prosecution. "Certified local
13 crimestoppers program" means a crimestoppers program
14 certified by the Office of the Attorney General
15 pursuant to Section 991g of this title. The "Oklahoma
16 Reward System" means the reward program established by
17 Section 150.18 of Title 74 of the Oklahoma Statutes,

18 h. to reimburse the Oklahoma State Bureau of
19 Investigation for costs incurred by that agency during
20 its investigation of the crime for which the defendant
21 pleaded guilty, nolo contendere or was convicted,
22 including compensation for laboratory, technical, or
23 investigation services performed by the Bureau if, in
24 the opinion of the court, the defendant is able to pay

1 without imposing manifest hardship on the defendant,
2 and if the costs incurred by the Bureau during the
3 investigation of the defendant's case may be
4 determined with reasonable certainty,

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

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

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

1 device" means a device that, without tampering or
2 intervention by another person, would prevent the
3 defendant from operating a motor vehicle if the
4 defendant has a blood or breath alcohol concentration
5 of two-hundredths (0.02) or greater,

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

1 community. Day fines shall be used to support the
2 local system,

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

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

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

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

17 dd. in the case of a person convicted of prostitution
18 pursuant to Section 1029 of Title 21 of the Oklahoma
19 Statutes, require such person to receive counseling
20 for the behavior which may have caused such person to
21 engage in prostitution activities. Such person may be
22 required to receive counseling in areas including but
23 not limited to alcohol and substance abuse, sexual
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1 behavior problems, or domestic abuse or child abuse
2 problems,

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

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

10 gg. in the case of a person convicted of any false or
11 bogus check violation, as defined in Section 1541.4 of
12 Title 21 of the Oklahoma Statutes, impose a fee of
13 Twenty-five Dollars (\$25.00) to the victim for each
14 check, and impose a bogus check fee to be paid to the
15 district attorney. The bogus check fee paid to the
16 district attorney shall be equal to the amount
17 assessed as court costs plus Twenty-five Dollars
18 (\$25.00) for each check upon filing of the case in
19 district court. This money shall be deposited in the
20 Bogus Check Restitution Program Fund as established in
21 subsection B of Section 114 of this title.
22 Additionally, the court may require the offender to
23 pay restitution and bogus check fees on any other
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1 bogus check or checks that have been submitted to the
2 District Attorney Bogus 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
24 of Title 43A of the Oklahoma Statutes and, as

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

5 b. to attend a victims impact panel program, if such a
6 program is offered in the county where the judgment is
7 rendered, and to pay a fee, not less than Fifteen
8 Dollars (\$15.00) nor more than ~~Fifty Dollars (\$50.00)~~
9 Seventy-five Dollars (\$75.00) as set by the governing
10 authority of the program and approved by the court, to
11 the program to offset the cost of participation by the
12 defendant, if in the opinion of the court the
13 defendant has the ability to pay such fee,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 H. As used in this section:

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

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

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

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

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

1 | unsupervised probation or otherwise not supervised by the Department
2 | of Corrections shall submit for blood or saliva testing to the
3 | sheriff of the sentencing county.

4 | J. Samples of blood or saliva for DNA testing required by
5 | subsection I of this section shall be taken by employees or
6 | contractors of the Department of Corrections, peace officers, or the
7 | county sheriff or employees or contractors of the sheriff's office.
8 | The individuals shall be properly trained to collect blood or saliva
9 | samples. Persons collecting blood or saliva for DNA testing
10 | pursuant to this section shall be immune from civil liabilities
11 | arising from this activity. All collectors of DNA samples shall
12 | ensure the collection of samples are mailed to the Oklahoma State
13 | Bureau of Investigation within ten (10) days of the time the subject
14 | appears for testing or within ten (10) days of the date the subject
15 | comes into physical custody to serve a term of incarceration. All
16 | collectors of DNA samples shall use sample kits provided by the OSBI
17 | and procedures promulgated by the OSBI. Persons subject to DNA
18 | testing who are not received at the Lexington Assessment and
19 | Reception Center shall be required to pay a fee of Fifteen Dollars
20 | (\$15.00) to the agency collecting the sample for submission to the
21 | OSBI Combined DNA Index System (CODIS) Database. Any fees collected
22 | pursuant to this subsection shall be deposited in the revolving
23 | account or the service fee account of the collection agency or
24 | 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 47 O.S. 2001, Section 11-902, as
7 last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp.
8 2009, Section 11-902), is amended to read as follows:

9 Section 11-902. A. It is unlawful and punishable as provided
10 in this section for any person to drive, operate, or be in actual
11 physical control of a motor vehicle within this state, whether upon
12 public roads, highways, streets, turnpikes, other public places or
13 upon any private road, street, alley or lane which provides access
14 to one or more single or multi-family dwellings, who:

15 1. Has a blood or breath alcohol concentration, as defined in
16 Section 756 of this title, of eight-hundredths (0.08) or more at the
17 time of a test of such person's blood or breath administered within
18 two (2) hours after the arrest of such person;

19 2. Is under the influence of alcohol;

20 3. Is under the influence of any intoxicating substance other
21 than alcohol which may render such person incapable of safely
22 driving or operating a motor vehicle; or
23
24

1 4. Is under the combined influence of alcohol and any other
2 intoxicating substance which may render such person incapable of
3 safely driving or operating a motor vehicle.

4 B. The fact that any person charged with a violation of this
5 section is or has been lawfully entitled to use alcohol or a
6 controlled dangerous substance or any other intoxicating substance
7 shall not constitute a defense against any charge of violating this
8 section.

9 C. 1. Any person who is convicted of a violation of the
10 provisions of this section shall be deemed guilty of a misdemeanor
11 for the first offense and shall participate in an assessment and
12 evaluation by an assessment agency or assessment personnel certified
13 by the Department of Mental Health and Substance Abuse Services
14 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and
15 shall follow all recommendations made in the assessment and
16 evaluation and be punished by imprisonment in jail for not less than
17 ten (10) days nor more than one (1) year. Any person convicted of a
18 violation for a first offense shall be fined not more than One
19 Thousand Dollars (\$1,000.00).

20 2. Any person who, within ten (10) years after a previous
21 conviction of a violation of this section or a violation pursuant to
22 the provisions of any law of another state prohibiting the offense
23 provided in subsection A of this section, is convicted of a second
24 offense pursuant to the provisions of this section or has a prior

1 conviction in a municipal criminal court of record for the violation
2 of a municipal ordinance prohibiting the offense provided for in
3 subsection A of this section and within ten (10) years of such
4 municipal conviction is convicted pursuant to the provision of this
5 section shall be deemed guilty of a felony and shall participate in
6 an assessment and evaluation by an assessment agency or assessment
7 personnel certified by the Department of Mental Health and Substance
8 Abuse Services pursuant to Section 3-460 of Title 43A of the
9 Oklahoma Statutes and shall be sentenced to:

- 10 a. follow all recommendations made in the assessment and
11 evaluation for treatment at the defendant's expense,
12 or
- 13 b. placement in the custody of the Department of
14 Corrections for not less than one (1) year and not to
15 exceed five (5) years and a fine of not more than Two
16 Thousand Five Hundred Dollars (\$2,500.00), or
- 17 c. treatment, imprisonment and a fine within the
18 limitations prescribed in subparagraphs a and b of
19 this paragraph.

20 However, if the treatment in subparagraph a of this paragraph
21 does not include residential or inpatient treatment for a period of
22 not less than five (5) days, the person shall serve a term of
23 imprisonment of at least five (5) days.

24

1 3. Any person who is convicted of a second felony offense
2 pursuant to the provisions of this section shall participate in an
3 assessment and evaluation by an assessment agency or assessment
4 personnel certified by the Department of Mental Health and Substance
5 Abuse Services pursuant to Section 3-460 of Title 43A of the
6 Oklahoma Statutes and shall be sentenced to:

- 7 a. follow all recommendations made in the assessment and
8 evaluation for treatment at the defendant's expense,
9 two hundred forty (240) hours of community service and
10 use of an ignition interlock device, or
- 11 b. placement in the custody of the Department of
12 Corrections for not less than one (1) year and not to
13 exceed ten (10) years and a fine of not more than Five
14 Thousand Dollars (\$5,000.00), or
- 15 c. treatment, imprisonment and a fine within the
16 limitations prescribed in subparagraphs a and b of
17 this paragraph.

18 However, if the treatment in subparagraph a of this paragraph
19 does not include residential or inpatient treatment for a period of
20 not less than ten (10) days, the person shall serve a term of
21 imprisonment of at least ten (10) days.

22 4. Any person who is convicted of a third or subsequent felony
23 offense pursuant to the provisions of this section shall participate
24 in an assessment and evaluation by an assessment agency or

1 assessment personnel certified by the Department of Mental Health
2 and Substance Abuse Services pursuant to Section 3-460 of Title 43A
3 of the Oklahoma Statutes and shall be sentenced to:

4 a. follow all recommendations made in the assessment and
5 evaluation for treatment at the defendant's expense,
6 followed by not less than one (1) year of supervision
7 and periodic testing at the defendant's expense, four
8 hundred eighty (480) hours of community service, and
9 use of an ignition interlock device for a minimum of
10 thirty (30) days, or

11 b. placement in the custody of the Department of
12 Corrections for not less than one (1) year and not to
13 exceed twenty (20) years and a fine of not more than
14 Five Thousand Dollars (\$5,000.00), or

15 c. treatment, imprisonment and a fine within the
16 limitations prescribed in subparagraphs a and b of
17 this paragraph.

18 However, if the person does not undergo residential or inpatient
19 treatment pursuant to subparagraph a of this paragraph the person
20 shall serve a term of imprisonment of at least ten (10) days.

21 5. Any person who, within ten (10) years after a previous
22 conviction of a violation of murder in the second degree or
23 manslaughter in the first degree in which the death was caused as a
24 result of driving under the influence of alcohol or other

1 intoxicating substance, is convicted of a violation of this section
2 shall be deemed guilty of a felony.

3 6. Provided, however, a conviction from another state shall not
4 be used to enhance punishment pursuant to the provisions of this
5 subsection if that conviction is based on a blood or breath alcohol
6 concentration of less than eight-hundredths (0.08).

7 7. In any case in which a defendant is charged with a second or
8 subsequent driving under the influence of alcohol or other
9 intoxicating substance offense within any municipality with a
10 municipal court other than a court of record, the charge shall be
11 presented to the county's district attorney and filed with the
12 district court of the county within which the municipality is
13 located.

14 D. Any person who is convicted of a violation of driving under
15 the influence with a blood or breath alcohol concentration of
16 fifteen-hundredths (0.15) or more pursuant to this section shall be
17 deemed guilty of aggravated driving under the influence. A person
18 convicted of aggravated driving under the influence shall
19 participate in an assessment and evaluation by an assessment agency
20 or assessment personnel certified by the Department of Mental Health
21 and Substance Abuse Services pursuant to Section 3-460 of Title 43A
22 of the Oklahoma Statutes and shall comply with all recommendations
23 for treatment. Such person shall be sentenced to not less than one
24 (1) year of supervision and periodic testing at the defendant's

1 expense, four hundred eighty (480) hours of community service, and
2 an ignition interlock device for a minimum of thirty (30) days.
3 Nothing in this subsection shall preclude the defendant from being
4 charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of
5 subsection C of this section.

6 E. When a person is sentenced to imprisonment in the custody of
7 the Department of Corrections, the person shall be processed through
8 the Lexington Assessment and Reception Center or at a place
9 determined by the Director of the Department of Corrections. The
10 Department of Corrections shall classify and assign the person to
11 one or more of the following:

12 1. The Department of Mental Health and Substance Abuse Services
13 pursuant to paragraph 1 of subsection A of Section 612 of Title 57
14 of the Oklahoma Statutes; or

15 2. A correctional facility operated by the Department of
16 Corrections with assignment to substance abuse treatment.

17 F. The Department of Public Safety is hereby authorized to
18 reinstate any suspended or revoked driving privilege when the person
19 meets the statutory requirements which affect the existing driving
20 privilege.

21 G. Any person who is found guilty of a violation of the
22 provisions of this section shall be ordered to participate in, prior
23 to sentencing, an alcohol and drug substance abuse evaluation and
24 assessment program offered by a certified assessment agency or

1 certified assessor for the purpose of evaluating and assessing the
2 receptivity to treatment and prognosis of the person. The court
3 shall order the person to reimburse the agency or assessor for the
4 evaluation and assessment. The fee for an evaluation and assessment
5 shall be the amount provided in subsection C of Section 3-460 of
6 Title 43A of the Oklahoma Statutes. The evaluation and assessment
7 shall be conducted at a certified assessment agency, the office of a
8 certified assessor or at another location as ordered by the court.
9 The agency or assessor shall, within seventy-two (72) hours from the
10 time the person is evaluated and assessed, submit a written report
11 to the court for the purpose of assisting the court in its final
12 sentencing determination. If such report indicates that the
13 evaluation and assessment shows that the defendant would benefit
14 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
15 course or a treatment program or both, the court shall, as a
16 condition of any sentence imposed, including deferred and suspended
17 sentences, require the person to follow all recommendations
18 identified by the evaluation and assessment and ordered by the
19 court. No person, agency or facility operating an evaluation and
20 assessment program certified by the Department of Mental Health and
21 Substance Abuse Services shall solicit or refer any person evaluated
22 and assessed pursuant to this section for any treatment program or
23 substance abuse service in which such person, agency or facility has
24 a vested interest; however, this provision shall not be construed to

1 prohibit the court from ordering participation in or any person from
2 voluntarily utilizing a treatment program or substance abuse service
3 offered by such person, agency or facility. If a person is
4 sentenced to imprisonment in the custody of the Department of
5 Corrections and the court has received a written evaluation report
6 pursuant to the provisions of this subsection, the report shall be
7 furnished to the Department of Corrections with the judgment and
8 sentence. Any evaluation and assessment report submitted to the
9 court pursuant to the provisions of this subsection shall be handled
10 in a manner which will keep such report confidential from the
11 general public's review. Nothing contained in this subsection shall
12 be construed to prohibit the court from ordering judgment and
13 sentence in the event the defendant fails or refuses to comply with
14 an order of the court to obtain the evaluation and assessment
15 required by this subsection. If the defendant fails or refuses to
16 comply with an order of the court to obtain the evaluation and
17 assessment, the Department of Public Safety shall not reinstate
18 driving privileges until the defendant has complied in full with
19 such order. Nothing contained in this subsection shall be construed
20 to prohibit the court from ordering judgment and sentence and any
21 other sanction authorized by law for failure or refusal to comply
22 with an order of the court.

23 H. Any person who is found guilty of a violation of the
24 provisions of this section may be required by the court to attend a

1 victims impact panel program, if such a program is offered in the
2 county where the judgment is rendered, and to pay a fee, not less
3 than Fifteen Dollars (\$15.00) nor more than ~~Twenty-five Dollars~~
4 ~~(\$25.00)~~ Seventy-five Dollars (\$75.00) as set by the governing
5 authority of the program and approved by the court, to the program
6 to offset the cost of participation by the defendant, if in the
7 opinion of the court the defendant has the ability to pay such fee.

8 I. Any person who is found guilty of a felony violation of the
9 provisions of this section may be required to submit to electronic
10 monitoring as authorized and defined by Section 991a of Title 22 of
11 the Oklahoma Statutes.

12 J. Any person who, within ten (10) years after a previous
13 conviction of a violation of this section or a violation pursuant to
14 the provisions of law of another state prohibiting the offense
15 provided in subsection A of this section or a violation of a
16 municipal ordinance prohibiting the offense provided in subsection A
17 of this section, pleads guilty or nolo contendere or is convicted of
18 a violation of this section shall not be required to undergo the
19 alcohol and drug substance evaluation program required by subsection
20 G of this section. The court shall, as a condition of any sentence
21 imposed, including deferred and suspended sentences, require the
22 person to participate in and successfully complete all
23 recommendations from the evaluation, such as an alcohol and drug

24

1 substance abuse treatment program pursuant to Section 3-452 of Title
2 43A of the Oklahoma Statutes.

3 K. Any person who is found guilty of a violation of the
4 provisions of this section who has been sentenced by the court to
5 perform any type of community service shall not be permitted to pay
6 a fine in lieu of performing the community service.

7 L. When a person is found guilty of a violation of the
8 provisions of this section, the court shall order, in addition to
9 any other penalty, the defendant to pay a one-hundred-dollar
10 assessment to be deposited in the Drug Abuse Education and Treatment
11 Revolving Fund created in Section 2-503.2 of Title 63 of the
12 Oklahoma Statutes, upon collection.

13 M. 1. When a person is eighteen (18) years of age or older,
14 and is the driver, operator, or person in physical control of a
15 vehicle, and is convicted of violating any provision of this section
16 while transporting or having in the motor vehicle any child less
17 than eighteen (18) years of age, the fine shall be enhanced to
18 double the amount of the fine imposed for the underlying driving
19 under the influence (DUI) violation which shall be in addition to
20 any other penalties allowed by this section.

21 2. Nothing in this subsection shall prohibit the prosecution of
22 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
23 Statutes who is in violation of any provision of this section.

24

1 SECTION 3. It being immediately necessary for the preservation
2 of the public peace, health and safety, an emergency is hereby
3 declared to exist, by reason whereof this act shall take effect and
4 be in full force from and after its passage and approval.

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