

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1743

By: Wright

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6
7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22
9 O.S. 2011, Section 991a, which relates to sentencing
10 powers of the court; modifying certain fee amount;
11 providing definition for victims impact panel
12 program; amending 22 O.S. 2011, Section 991c, which
13 relates to deferred sentencing; providing statutory
14 reference; modifying certain fee amount; amending 47
15 O.S. 2011, Section 11-902, as amended by Section 13,
16 Chapter 11, O.S.L. 2012 (47 O.S. Supp. 2012, Section
17 11-902), which relates to persons under the influence
18 of alcohol or other intoxicating substance; providing
19 statutory reference; modifying certain fee amount;
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY 22 O.S. 2011, Section 991a, is
23 amended to read as follows:

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

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

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

23 c. to engage in a term of community service without
24 compensation, according to a schedule consistent with

1 the employment and family responsibilities of the
2 person convicted,

3 d. to pay a reasonable sum into any trust fund,
4 established pursuant to the provisions of Sections 176
5 through 180.4 of Title 60 of the Oklahoma Statutes,
6 and which provides restitution payments by convicted
7 defendants to victims of crimes committed within this
8 state wherein such victim has incurred a financial
9 loss,

10 e. to confinement in the county jail for a period not to
11 exceed six (6) months,

12 f. to confinement as provided by law together with a term
13 of post-imprisonment community supervision for not
14 less than three (3) years of the total term allowed by
15 law for imprisonment, with or without restitution;
16 provided, however, the authority of this provision is
17 limited to Section 843.5 of Title 21 of the Oklahoma
18 Statutes when the offense involved sexual abuse or
19 sexual exploitation; Sections 681, 741 and 843.1 of
20 Title 21 of the Oklahoma Statutes when the offense
21 involved sexual abuse or sexual exploitation; and
22 Sections 865 et seq., 885, 886, 888, 891, 1021,
23 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
24 1123 of Title 21 of the Oklahoma Statutes,

1 g. to repay the reward or part of the reward paid by a
2 local certified crime stoppers program and the
3 Oklahoma Reward System. In determining whether the
4 defendant shall repay the reward or part of the
5 reward, the court shall consider the ability of the
6 defendant to make the payment, the financial hardship
7 on the defendant to make the required payment, and the
8 importance of the information to the prosecution of
9 the defendant as provided by the arresting officer or
10 the district attorney with due regard for the
11 confidentiality of the records of the local certified
12 crime stoppers program and the Oklahoma Reward System.
13 The court shall assess this repayment against the
14 defendant as a cost of prosecution. The term
15 "certified" means crime stoppers organizations that
16 annually meet the certification standards for crime
17 stoppers programs established by the Oklahoma Crime
18 Stoppers Association to the extent those standards do
19 not conflict with state statutes. The term "court"
20 refers to all municipal and district courts within
21 this state. The "Oklahoma Reward System" means the
22 reward program established by Section 150.18 of Title
23 74 of the Oklahoma Statutes,
24

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

12 i. to reimburse the Oklahoma State Bureau of
13 Investigation and any authorized law enforcement
14 agency for all costs incurred by that agency for
15 cleaning up an illegal drug laboratory site for which
16 the defendant pleaded guilty, nolo contendere or was
17 convicted. The court clerk shall collect the amount
18 and may retain five percent (5%) of such monies to be
19 deposited in the Court Clerk Revolving Fund to cover
20 administrative costs and shall remit the remainder to
21 the Oklahoma State Bureau of Investigation to be
22 deposited in the OSBI Revolving Fund established by
23 Section 150.19a of Title 74 of the Oklahoma Statutes
24

1 or to the general fund wherein the other law
2 enforcement agency is located,

3 j. to pay a reasonable sum to the Crime Victims
4 Compensation Board, created by Section 142.2 et seq.
5 of Title 21 of the Oklahoma Statutes, for the benefit
6 of crime victims,

7 k. to reimburse the court fund for amounts paid to court-
8 appointed attorneys for representing the defendant in
9 the case in which the person is being sentenced,

10 l. to participate in an assessment and evaluation by an
11 assessment agency or assessment personnel certified by
12 the Department of Mental Health and Substance Abuse
13 Services pursuant to Section 3-460 of Title 43A of the
14 Oklahoma Statutes and, as determined by the
15 assessment, participate in an alcohol and drug
16 substance abuse course or treatment program or both,
17 pursuant to Sections 3-452 and 3-453 of Title 43A of
18 the Oklahoma Statutes, or as ordered by the court,

19 m. to be placed in a victims impact panel program, as
20 defined in subsection H of this section, or
21 victim/offender reconciliation program and payment of
22 a fee to the program of not less than Fifteen Dollars
23 (\$15.00) nor more than ~~Fifty Dollars (\$50.00)~~ Sixty
24 Dollars (\$60.00) as set by the governing authority of

1 the program to offset the cost of participation by the
2 defendant. Provided, each victim/offender
3 reconciliation program shall be required to obtain a
4 written consent form voluntarily signed by the victim
5 and defendant that specifies the methods to be used to
6 resolve the issues, the obligations and rights of each
7 person, and the confidentiality of the proceedings.

8 Volunteer mediators and employees of a victim/offender
9 reconciliation program shall be immune from liability
10 and have rights of confidentiality as provided in
11 Section 1805 of Title 12 of the Oklahoma Statutes,

12 n. to install, at the expense of the defendant, an
13 ignition interlock device approved by the Board of
14 Tests for Alcohol and Drug Influence. The device
15 shall be installed upon every motor vehicle operated
16 by the defendant, and the court shall require that a
17 notation of this restriction be affixed to the
18 defendant's driver license. The restriction shall
19 remain on the driver license not exceeding two (2)
20 years to be determined by the court. The restriction
21 may be modified or removed only by order of the court
22 and notice of any modification order shall be given to
23 the Department of Public Safety. Upon the expiration
24 of the period for the restriction, the Department of

1 Public Safety shall remove the restriction without
2 further court order. Failure to comply with the order
3 to install an ignition interlock device or operating
4 any vehicle without a device during the period of
5 restriction shall be a violation of the sentence and
6 may be punished as deemed proper by the sentencing
7 court. As used in this paragraph, "ignition interlock
8 device" means a device that, without tampering or
9 intervention by another person, would prevent the
10 defendant from operating a motor vehicle if the
11 defendant has a blood or breath alcohol concentration
12 of two-hundredths (0.02) or greater,

- 13 o. to be confined by electronic monitoring administered
14 and supervised by the Department of Corrections or a
15 community sentence provider, and payment of a
16 monitoring fee to the supervising authority, not to
17 exceed Three Hundred Dollars (\$300.00) per month. Any
18 fees collected pursuant to this paragraph shall be
19 deposited with the appropriate supervising authority.
20 Any willful violation of an order of the court for the
21 payment of the monitoring fee shall be a violation of
22 the sentence and may be punished as deemed proper by
23 the sentencing court. As used in this paragraph,
24 "electronic monitoring" means confinement of the

1 defendant within a specified location or locations
2 with supervision by means of an electronic device
3 approved by the Department of Corrections which is
4 designed to detect if the defendant is in the court-
5 ordered location at the required times and which
6 records violations for investigation by a qualified
7 supervisory agency or person,

8 p. to perform one or more courses of treatment, education
9 or rehabilitation for any conditions, behaviors,
10 deficiencies or disorders which may contribute to
11 criminal conduct, including but not limited to alcohol
12 and substance abuse, mental health, emotional health,
13 physical health, propensity for violence, antisocial
14 behavior, personality or attitudes, deviant sexual
15 behavior, child development, parenting assistance, job
16 skills, vocational-technical skills, domestic
17 relations, literacy, education, or any other
18 identifiable deficiency which may be treated
19 appropriately in the community and for which a
20 certified provider or a program recognized by the
21 court as having significant positive impact exists in
22 the community. Any treatment, education or
23 rehabilitation provider required to be certified
24

- 1 pursuant to law or rule shall be certified by the
2 appropriate state agency or a national organization,
- 3 q. to submit to periodic testing for alcohol,
4 intoxicating substance, or controlled dangerous
5 substances by a qualified laboratory,
- 6 r. to pay a fee, costs for treatment, education,
7 supervision, participation in a program, or any
8 combination thereof as determined by the court, based
9 upon the defendant's ability to pay the fees or costs,
- 10 s. to be supervised by a Department of Corrections
11 employee, a private supervision provider, or other
12 person designated by the court,
- 13 t. to obtain positive behavior modeling by a trained
14 mentor,
- 15 u. to serve a term of confinement in a restrictive
16 housing facility available in the community,
- 17 v. to serve a term of confinement in the county jail at
18 night or during weekends pursuant to Section 991a-2 of
19 this title or for work release,
- 20 w. to obtain employment or participate in employment-
21 related activities,
- 22 x. to participate in mandatory day reporting to
23 facilities or persons for services, payments, duties
24

1 or person-to-person contacts as specified by the
2 court,

3 y. to pay day fines not to exceed fifty percent (50%) of
4 the net wages earned. For purposes of this paragraph,
5 "day fine" means the offender is ordered to pay an
6 amount calculated as a percentage of net daily wages
7 earned. The day fine shall be paid to the local
8 community sentencing system as reparation to the
9 community. Day fines shall be used to support the
10 local system,

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

13 aa. to repair or restore property damaged by the
14 defendant's conduct, if the court determines the
15 defendant possesses sufficient skill to repair or
16 restore the property and the victim consents to the
17 repairing or restoring of the property,

18 bb. to restore damaged property in kind or payment of out-
19 of-pocket expenses to the victim, if the court is able
20 to determine the actual out-of-pocket expenses
21 suffered by the victim,

22 cc. to attend a victim-offender reconciliation program if
23 the victim agrees to participate and the offender is
24 deemed appropriate for participation,

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

10 ee. in the case of a sex offender sentenced after November
11 1, 1989, and required by law to register pursuant to
12 the Sex Offender Registration Act, the court shall
13 require the person to comply with sex offender
14 specific rules and conditions of supervision
15 established by the Department of Corrections and
16 require the person to participate in a treatment
17 program designed for the treatment of sex offenders
18 during the period of time while the offender is
19 subject to supervision by the Department of
20 Corrections. The treatment program shall include
21 polygraph examinations specifically designed for use
22 with sex offenders for purposes of supervision and
23 treatment compliance, and shall be administered not
24 less than each six (6) months during the period of

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

8 ff. in addition to other sentencing powers of the court,
9 the court in the case of a defendant being sentenced
10 for a felony conviction for a violation of Section 2-
11 402 of Title 63 of the Oklahoma Statutes which
12 involves marijuana may require the person to
13 participate in a drug court program, if available. If
14 a drug court program is not available, the defendant
15 may be required to participate in a community
16 sanctions program, if available,

17 gg. in the case of a person convicted of any false or
18 bogus check violation, as defined in Section 1541.4 of
19 Title 21 of the Oklahoma Statutes, impose a fee of
20 Twenty-five Dollars (\$25.00) to the victim for each
21 check, and impose a bogus check fee to be paid to the
22 district attorney. The bogus check fee paid to the
23 district attorney shall be equal to the amount
24 assessed as court costs plus Twenty-five Dollars

1 (\$25.00) for each check upon filing of the case in
2 district court. This money shall be deposited in the
3 Bogus Check Restitution Program Fund as established in
4 subsection B of Section 114 of this title.

5 Additionally, the court may require the offender to
6 pay restitution and bogus check fees on any other
7 bogus check or checks that have been submitted to the
8 District Attorney Bogus Check Restitution Program, and

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

10 However, any such order for restitution, community service,
11 payment to a local certified crime stoppers program, payment to the
12 Oklahoma Reward System, or confinement in the county jail, or a
13 combination thereof, shall be made in conjunction with probation and
14 shall be made a condition of the suspended sentence;

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

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

21 4. Order the defendant to reimburse the Oklahoma State Bureau
22 of Investigation for costs incurred by that agency during its
23 investigation of the crime for which the defendant pleaded guilty,
24 nolo contendere or was convicted, including compensation for

1 laboratory, technical, or investigation services performed by the
2 Bureau if, in the opinion of the court, the defendant is able to pay
3 without imposing manifest hardship on the defendant, and if the
4 costs incurred by the Bureau during the investigation of the
5 defendant's case may be determined with reasonable certainty;

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

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

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

- 1 a. to participate in an alcohol and drug assessment and
2 evaluation by an assessment agency or assessment
3 personnel certified by the Department of Mental Health
4 and Substance Abuse Services pursuant to Section 3-460
5 of Title 43A of the Oklahoma Statutes and, as
6 determined by the assessment, participate in an
7 alcohol and drug substance abuse course or treatment
8 program or both, pursuant to Sections 3-452 and 3-453
9 of Title 43A of the Oklahoma Statutes,
- 10 b. to attend a victims impact panel program, as defined
11 in subsection H of this section, if such a program is
12 offered in the county where the judgment is rendered,
13 and to pay a fee, of not less than Fifteen Dollars
14 (\$15.00) nor more than ~~Fifty Dollars (\$50.00)~~ Sixty
15 Dollars (\$60.00) as set by the governing authority of
16 the program and approved by the court, to the program
17 to offset the cost of participation by the defendant,
18 if in the opinion of the court the defendant has the
19 ability to pay such fee,
- 20 c. to both participate in the alcohol and drug substance
21 abuse course or treatment program, pursuant to
22 subparagraph a of this paragraph and attend a victims
23 impact panel program, pursuant to subparagraph b of
24 this paragraph,

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

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

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

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

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

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

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

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

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

24

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

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

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

1 B. Notwithstanding any other provision of law, any person who
2 is found guilty of a violation of any provision of Section 761 or
3 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
4 guilty or nolo contendere for a violation of any provision of such
5 sections shall be ordered to participate in, prior to sentencing, an
6 alcohol and drug assessment and evaluation by an assessment agency
7 or assessment personnel certified by the Department of Mental Health
8 and Substance Abuse Services for the purpose of evaluating the
9 receptivity to treatment and prognosis of the person. The court
10 shall order the person to reimburse the agency or assessor for the
11 evaluation. The fee shall be the amount provided in subsection C of
12 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
13 shall be conducted at a certified assessment agency, the office of a
14 certified assessor or at another location as ordered by the court.
15 The agency or assessor shall, within seventy-two (72) hours from the
16 time the person is assessed, submit a written report to the court
17 for the purpose of assisting the court in its final sentencing
18 determination. No person, agency or facility operating an alcohol
19 and drug substance abuse evaluation program certified by the
20 Department of Mental Health and Substance Abuse Services shall
21 solicit or refer any person evaluated pursuant to this subsection
22 for any treatment program or alcohol and drug substance abuse
23 service in which such person, agency or facility has a vested
24 interest; however, this provision shall not be construed to prohibit

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

15 C. When sentencing a person convicted of a crime, the court
16 shall first consider a program of restitution for the victim, as
17 well as imposition of a fine or incarceration of the offender. The
18 provisions of paragraph 1 of subsection A of this section shall not
19 apply to defendants being sentenced upon their third or subsequent
20 to their third conviction of a felony or, beginning January 1, 1993,
21 to defendants being sentenced for their second or subsequent felony
22 conviction for violation of Section 11-902 of Title 47 of the
23 Oklahoma Statutes, except as otherwise provided in this subsection.
24 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~~ victims impact statements if submitted to
13 the 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
24 two (2) years. Provided further, any supervision provided for in

1 this section may be extended for a period not to exceed the
2 expiration of the maximum term or terms of the sentence upon a
3 determination by the Division of Probation and Parole of the
4 Department of Corrections that the best interests of the public and
5 the release will be served by an extended period of supervision.

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

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

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

21 3. The Department shall establish criteria and specifications
22 for contracts with counties for such Programs. A county may apply
23 to the Department for a contract for a county-funded Program for a
24 specific period of time. The Department shall be responsible for

1 ensuring that any contracting county complies in full with
2 specifications and requirements of the contract. The contract shall
3 set appropriate compensation to the county for services to the
4 Department.

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

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

16 H. As used in this section:

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

22 2. "Electronically monitored home detention" means
23 incarceration of the defendant within a specified location or
24 locations with monitoring by means of a device approved by the

1 Department of Corrections that detects if the person leaves the
2 confines of any specified location; and

3 3. "Victims impact panel program" means a meeting with at least
4 one live presenter who will share personal stories with participants
5 about how alcohol, drug abuse and the illegal conduct of others has
6 personally impacted the life of the presenter. A victims impact
7 panel program shall be attended by persons who have committed the
8 offense of driving, operating or being in actual physical control of
9 a motor vehicle while under the influence of alcohol or other
10 intoxicating substance. Persons attending a victims impact panel
11 program shall be required to pay a fee of not less than Fifteen
12 Dollars (\$15.00) nor more than Sixty Dollars (\$60.00) to the
13 provider of the program. A certificate of completion shall be
14 issued to the person upon satisfying the attendance and fee
15 requirements of the victims impact panel program. A victims impact
16 panel program shall not be provided by any certified assessment
17 agency or certified assessor. The provider of the victims impact
18 panel program shall carry general liability insurance and maintain
19 an accurate accounting of all business transactions and funds
20 received in relation to the victims impact panel program.

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

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

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

12 Any person who is incarcerated in the custody of the Department
13 of Corrections after July 1, 1996, and who has not been released
14 before January 1, 2006, shall provide a blood or saliva sample prior
15 to release. Every person subject to DNA testing after January 1,
16 2006, whose sentence does not include a term of confinement with the
17 Department of Corrections shall submit a blood or saliva sample.
18 Every person subject to DNA testing who is sentenced to unsupervised
19 probation or otherwise not supervised by the Department of
20 Corrections shall submit for blood or saliva testing to the sheriff
21 of the sentencing county.

22 J. Samples of blood or saliva for DNA testing required by
23 subsection I of this section shall be taken by employees or
24 contractors of the Department of Corrections, peace officers, or the

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

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

24

1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991c, is
2 amended to read as follows:

3 Section 991c. A. Upon a verdict or plea of guilty or upon a
4 plea of nolo contendere, but before a judgment of guilt, the court
5 may, without entering a judgment of guilt and with the consent of
6 the defendant, defer further proceedings upon the specific
7 conditions prescribed by the court not to exceed a ten-year period.
8 The court shall first consider restitution among the various
9 conditions it may prescribe. The court may also consider ordering
10 the defendant to:

- 11 1. Pay court costs;
- 12 2. Pay an assessment in lieu of any fine authorized by law for
13 the offense;
- 14 3. Pay any other assessment or cost authorized by law;
- 15 4. Engage in a term of community service without compensation,
16 according to a schedule consistent with the employment and family
17 responsibilities of the defendant;
- 18 5. County jail confinement for a period not to exceed ninety
19 (90) days or the maximum amount of jail time provided for the
20 offense, if it is less than ninety (90) days;
- 21 6. Pay an amount as reimbursement for reasonable attorney fees,
22 to be paid into the court fund, if a court-appointed attorney has
23 been provided to defendant;

24

1 7. Be supervised in the community for a period not to exceed
2 two (2) years. As a condition of any supervision, the defendant
3 shall be required to pay a supervision fee of Forty Dollars (\$40.00)
4 per month. The supervision fee shall be waived in whole or part by
5 the supervisory agency when the accused is indigent. No person
6 shall be denied supervision based solely on the inability of the
7 person to pay a fee;

8 8. Pay into the court fund a monthly amount not exceeding Forty
9 Dollars (\$40.00) per month during any period during which the
10 proceedings are deferred when the defendant is not to be supervised
11 in the community. The total amount to be paid into the court fund
12 shall be established by the court and shall not exceed the amount of
13 the maximum fine authorized by law for the offense;

14 9. Make other reparations to the community or victim as
15 required and deemed appropriate by the court;

16 10. Order any conditions which can be imposed for a suspended
17 sentence pursuant to paragraph 1 of subsection A of Section 991a of
18 this title; or

19 11. Any combination of the above provisions.

20 B. In addition to any conditions of supervision provided for in
21 subsection A of this section, the court shall, in the case of a
22 person before the court for the offense of operating or being in
23 control of a motor vehicle while the person was under the influence
24 of alcohol, other intoxicating substance, or a combination of

1 alcohol and another intoxicating substance, or who is before the
2 court for the offense of operating a motor vehicle while the ability
3 of the person to operate such vehicle was impaired due to the
4 consumption of alcohol, require the person to participate in an
5 alcohol and drug substance abuse evaluation program offered by a
6 facility or qualified practitioner certified by the Department of
7 Mental Health and Substance Abuse Services for the purpose of
8 evaluating the receptivity to treatment and prognosis of the person.
9 The court shall order the person to reimburse the facility or
10 qualified practitioner for the evaluation. The Department of Mental
11 Health and Substance Abuse Services shall establish a fee schedule,
12 based upon the ability of a person to pay, provided the fee for an
13 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
14 evaluation shall be conducted at a certified facility, the office of
15 a qualified practitioner or at another location as ordered by the
16 court. The facility or qualified practitioner shall, within
17 seventy-two (72) hours from the time the person is assessed, submit
18 a written report to the court for the purpose of assisting the court
19 in its determination of conditions for deferred sentence. No
20 person, agency or facility operating an alcohol and drug substance
21 abuse evaluation program certified by the Department of Mental
22 Health and Substance Abuse Services shall solicit or refer any
23 person evaluated pursuant to this subsection for any treatment
24 program or alcohol and drug substance abuse service in which the

1 person, agency or facility has a vested interest; however, this
2 provision shall not be construed to prohibit the court from ordering
3 participation in or any person from voluntarily utilizing a
4 treatment program or alcohol and drug substance abuse service
5 offered by such person, agency or facility. Any evaluation report
6 submitted to the court pursuant to this subsection shall be handled
7 in a manner which will keep the report confidential from review by
8 the general public. Nothing contained in this subsection shall be
9 construed to prohibit the court from ordering judgment and sentence
10 in the event the defendant fails or refuses to comply with an order
11 of the court to obtain the evaluation required by this subsection.
12 As used in this subsection, "qualified practitioner" means a person
13 with at least a bachelor's degree in substance abuse treatment,
14 mental health or a related health care field and at least two (2)
15 years of experience in providing alcohol abuse treatment, other drug
16 abuse treatment, or both alcohol and other drug abuse treatment who
17 is certified each year by the Department of Mental Health and
18 Substance Abuse Services to provide these assessments. However, any
19 person who does not meet the requirements for a qualified
20 practitioner as defined herein, but who has been previously
21 certified by the Department of Mental Health and Substance Abuse
22 Services to provide alcohol or drug treatment or assessments, shall
23 be considered a qualified practitioner provided all education,
24 experience and certification requirements stated herein are met by

1 September 1, 1995. The court may also require the person to
2 participate in one or both of the following:

3 1. An alcohol and drug substance abuse course, pursuant to
4 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

5 2. A victims impact panel program, as defined in subsection H
6 of Section 991a of this title, if such a program is offered in the

7 county where the judgment is rendered. The defendant shall be

8 required to pay a fee, of not less than ~~Five Dollars (\$5.00) nor~~

9 ~~more than Fifteen Dollars (\$15.00)~~ nor more than Sixty Dollars

10 (\$60.00) as set by the governing authority of the program and

11 approved by the court, to the victims impact panel program to offset

12 the cost of participation by the defendant, if in the opinion of the

13 court the defendant has the ability to pay such fee.

14 C. Upon completion of the conditions of the deferred judgment,

15 and upon a finding by the court that the conditions have been met

16 and all fines, fees, and monetary assessments have been paid as

17 ordered, the defendant shall be discharged without a court judgment

18 of guilt, and the court shall order the verdict or plea of guilty or

19 plea of nolo contendere to be expunged from the record and the

20 charge shall be dismissed with prejudice to any further action. The

21 procedure to expunge the record of the defendant shall be as

22 follows:

23 1. All references to the name of the defendant shall be deleted

24 from the docket sheet;

1 2. The public index of the filing of the charge shall be
2 expunged by deletion, mark-out or obliteration;

3 3. Upon expungement, the court clerk shall keep a separate
4 confidential index of case numbers and names of defendants which
5 have been obliterated pursuant to the provisions of this section;

6 4. No information concerning the confidential file shall be
7 revealed or released, except upon written order of a judge of the
8 district court or upon written request by the named defendant to the
9 court clerk for the purpose of updating the criminal history record
10 of the defendant with the Oklahoma State Bureau of Investigation;
11 and

12 5. Defendants qualifying under Section 18 of this title may
13 petition the court to have the filing of the indictment and the
14 dismissal expunged from the public index and docket sheet. This
15 section shall not be mutually exclusive of Section 18 of this title.

16 D. Upon order of the court, the provisions of subsection C of
17 this section shall be retroactive.

18 E. Upon violation of any condition of the deferred judgment,
19 the court may enter a judgment of guilt and proceed as provided in
20 Section 991a of this title or may modify any condition imposed.
21 Provided, however, if the deferred judgment is for a felony offense,
22 and the defendant commits another felony offense, the defendant
23 shall not be allowed bail pending appeal.

1 F. The deferred judgment procedure described in this section
2 shall apply only to defendants who have not been previously
3 convicted of a felony offense and have not received a deferred
4 judgment for a felony offense within the ten (10) years previous to
5 the commission of the pending offense.

6 Provided, the court may waive this prohibition upon written
7 application of the district attorney. Both the application and the
8 waiver shall be made a part of the record of the case.

9 G. The deferred judgment procedure described in this section
10 shall not apply to defendants found guilty or who plead guilty or
11 nolo contendere to a sex offense required by law to register
12 pursuant to the Sex Offenders Registration Act.

13 H. Defendants who are supervised by the Department of
14 Corrections pursuant to this section shall be subject to the
15 intermediate sanction process as established in subsection B of
16 Section 991b of this title.

17 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-902, as
18 amended by Section 13, Chapter 11, O.S.L. 2012 (47 O.S. Supp. 2012,
19 Section 11-902), is amended to read as follows:

20 Section 11-902. A. It is unlawful and punishable as provided
21 in this section for any person to drive, operate, or be in actual
22 physical control of a motor vehicle within this state, whether upon
23 public roads, highways, streets, turnpikes, other public places or
24

1 upon any private road, street, alley or lane which provides access
2 to one or more single or multi-family dwellings, who:

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

7 2. Is under the influence of alcohol;

8 3. Is under the influence of any intoxicating substance other
9 than alcohol which may render such person incapable of safely
10 driving or operating a motor vehicle; or

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

14 B. The fact that any person charged with a violation of this
15 section is or has been lawfully entitled to use alcohol or a
16 controlled dangerous substance or any other intoxicating substance
17 shall not constitute a defense against any charge of violating this
18 section.

19 C. 1. Any person who is convicted of a violation of the
20 provisions of this section shall be guilty of a misdemeanor for the
21 first offense and shall:

22 a. participate in an assessment and evaluation pursuant to
23 subsection G of this section and shall follow all
24 recommendations made in the assessment and evaluation,

1 b. be punished by imprisonment in jail for not less than ten
2 (10) days nor more than one (1) year, and

3 c. be fined not more than One Thousand Dollars (\$1,000.00).

4 2. Any person who, during the period of any court-imposed
5 probationary term or within ten (10) years of the date following the
6 completion of the execution of any sentence or deferred judgment for
7 a violation of this section or a violation pursuant to the
8 provisions of any law of this state or another state prohibiting the
9 offenses provided in subsection A of this section, Section 11-904 of
10 this title or paragraph 4 of subsection A of Section 852.1 of Title
11 21 of the Oklahoma Statutes, commits a second offense pursuant to
12 the provisions of this section or has a prior conviction in a
13 municipal criminal court of record for the violation of a municipal
14 ordinance prohibiting the offense provided for in subsection A of
15 this section and within ten (10) years of the date following the
16 completion of the execution of such sentence or deferred judgment
17 commits a second offense pursuant to the provisions of this section
18 shall, upon conviction, be guilty of a felony and shall participate
19 in an assessment and evaluation pursuant to subsection G of this
20 section and shall be sentenced to:

21 a. follow all recommendations made in the assessment and
22 evaluation for treatment at the defendant's expense,
23 or

- 1 b. placement in the custody of the Department of
2 Corrections for not less than one (1) year and not to
3 exceed five (5) years and a fine of not more than Two
4 Thousand Five Hundred Dollars (\$2,500.00), or
5 c. treatment, imprisonment and a fine within the
6 limitations prescribed in subparagraphs a and b of
7 this paragraph.

8 However, if the treatment in subsection G of this section does
9 not include residential or inpatient treatment for a period of not
10 less than five (5) days, the person shall serve a term of
11 imprisonment of at least five (5) days.

12 3. Any person who is convicted of a second felony offense
13 pursuant to the provisions of this section or a violation pursuant
14 to the provisions of any law of this state or another state
15 prohibiting the offenses provided for in subsection A of this
16 section, Section 11-904 of this title or paragraph 4 of subsection A
17 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
18 participate in an assessment and evaluation pursuant to subsection G
19 of this section and shall be sentenced to:

- 20 a. follow all recommendations made in the assessment and
21 evaluation for treatment at the defendant's expense,
22 two hundred forty (240) hours of community service and
23 use of an ignition interlock device, as provided by
24

- 1 subparagraph n of paragraph 1 of subsection A of
2 Section 991a of Title 22 of the Oklahoma Statutes, or
3 b. placement in the custody of the Department of
4 Corrections for not less than one (1) year and not to
5 exceed ten (10) years and a fine of not more than Five
6 Thousand Dollars (\$5,000.00), or
7 c. treatment, imprisonment and a fine within the
8 limitations prescribed in subparagraphs a and b of
9 this paragraph.

10 However, if the treatment in subsection G of this section does
11 not include residential or inpatient treatment for a period of not
12 less than ten (10) days, the person shall serve a term of
13 imprisonment of at least ten (10) days.

14 4. Any person who is convicted of a third or subsequent felony
15 offense pursuant to the provisions of this section or a violation
16 pursuant to the provisions of any law of this state or another state
17 prohibiting the offenses provided for in subsection A of this
18 section, Section 11-904 of this title or paragraph 4 of subsection A
19 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
20 participate in an assessment and evaluation pursuant to subsection G
21 of this section and shall be sentenced to:

- 22 a. follow all recommendations made in the assessment and
23 evaluation for treatment at the defendant's expense,
24 followed by not less than one (1) year of supervision

1 and periodic testing at the defendant's expense, four
2 hundred eighty (480) hours of community service, and
3 use of an ignition interlock device, as provided by
4 subparagraph n of paragraph 1 of subsection A of
5 Section 991a of Title 22 of the Oklahoma Statutes, for
6 a minimum of thirty (30) days, or

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

11 c. treatment, imprisonment and a fine within the
12 limitations prescribed in subparagraphs a and b of
13 this paragraph.

14 However, if the person does not undergo residential or inpatient
15 treatment pursuant to subsection G of this section the person shall
16 serve a term of imprisonment of at least ten (10) days.

17 5. Any person who, after a previous conviction of a violation
18 of murder in the second degree or manslaughter in the first degree
19 in which the death was caused as a result of driving under the
20 influence of alcohol or other intoxicating substance, is convicted
21 of a violation of this section shall be guilty of a felony and shall
22 be punished by imprisonment in the custody of the Department of
23 Corrections for not less than five (5) years and not to exceed
24

1 twenty (20) years, and a fine of not more than Ten Thousand Dollars
2 (\$10,000.00).

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 pursuant to subsection G
20 of this section and shall comply with all recommendations for
21 treatment. Such person shall be sentenced to:

22 1. Not less than one (1) year of supervision and periodic
23 testing at the defendant's expense; and
24

1 2. An ignition interlock device or devices, as provided by
2 subparagraph n of paragraph 1 of subsection A of Section 991a of
3 Title 22 of the Oklahoma Statutes, for a minimum of ninety (90)
4 days.

5 Nothing in this subsection shall preclude the defendant from
6 being charged or punished as provided in paragraph 1, 2, 3, 4 or 5
7 of subsection C of this section. Any person who is convicted
8 pursuant to the provisions of this subsection shall be guilty of a
9 misdemeanor for a first offense and shall be punished as provided in
10 paragraph 1 of subsection C of this section. Any person who, during
11 the period of any court-imposed probationary term or within ten (10)
12 years of the completion of the execution of any sentence or deferred
13 judgment, commits a second violation of this subsection shall, upon
14 conviction, be guilty of a felony and shall be punished as provided
15 in paragraph 2 of subsection C of this section. Any person who
16 commits a second felony offense pursuant to this subsection shall,
17 upon conviction, be guilty of a felony and shall be punished as
18 provided in paragraph 3 of subsection C of this section. Any person
19 who commits a third or subsequent felony offense pursuant to the
20 provisions of this subsection shall, upon conviction, be guilty of a
21 felony and shall be punished as provided in paragraph 4 of
22 subsection C of this section.

23 E. When a person is sentenced to imprisonment in the custody of
24 the Department of Corrections, the person shall be processed through

1 the Lexington Assessment and Reception Center or at a place
2 determined by the Director of the Department of Corrections. The
3 Department of Corrections shall classify and assign the person to
4 one or more of the following:

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

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

10 F. The Department of Public Safety is hereby authorized to
11 reinstate any suspended or revoked driving privilege when the person
12 meets the statutory requirements which affect the existing driving
13 privilege.

14 G. Any person who is found guilty of a violation of the
15 provisions of this section shall be ordered to participate in an
16 alcohol and drug substance abuse evaluation and assessment program
17 offered by a certified assessment agency or certified assessor for
18 the purpose of evaluating and assessing the receptivity to treatment
19 and prognosis of the person and shall, at the expense of the
20 defendant, follow all recommendations made in the assessment and
21 evaluation for treatment. The court shall order the person to
22 reimburse the agency or assessor for the evaluation and assessment.
23 The fee for an evaluation and assessment shall be the amount
24 provided in subsection C of Section 3-460 of Title 43A of the

1 Oklahoma Statutes. The evaluation and assessment shall be conducted
2 at a certified assessment agency, the office of a certified assessor
3 or at another location as ordered by the court. The agency or
4 assessor shall, within seventy-two (72) hours from the time the
5 person is evaluated and assessed, submit a written report to the
6 court for the purpose of assisting the court in its sentencing
7 determination. The court shall, as a condition of any sentence
8 imposed, including deferred and suspended sentences, require the
9 person to participate in and successfully complete all
10 recommendations from the evaluation, such as an alcohol and
11 substance abuse treatment program pursuant to Section 3-452 of Title
12 43A of the Oklahoma Statutes. 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, as defined in subsection H of Section
2 991a of Title 22 of the Oklahoma Statutes, if such a program is
3 offered in the county where the judgment is rendered, and to pay a
4 fee, of not less than Fifteen Dollars (\$15.00) nor more than ~~Twenty-~~
5 ~~five Dollars (\$25.00)~~ Sixty Dollars (\$60.00) as set by the governing
6 authority of the program and approved by the court, to the program
7 to offset the cost of participation by the defendant, if in the
8 opinion of the court the defendant has the ability to pay such fee.

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

13 J. Any person who is found guilty of a violation of the
14 provisions of this section who has been sentenced by the court to
15 perform any type of community service shall not be permitted to pay
16 a fine in lieu of performing the community service.

17 K. When a person is found guilty of a violation of the
18 provisions of this section, the court shall order, in addition to
19 any other penalty, the defendant to pay a one-hundred-dollar
20 assessment to be deposited in the Drug Abuse Education and Treatment
21 Revolving Fund created in Section 2-503.2 of Title 63 of the
22 Oklahoma Statutes, upon collection.

23 L. 1. When a person is eighteen (18) years of age or older,
24 and is the driver, operator, or person in physical control of a

1 vehicle, and is convicted of violating any provision of this section
2 while transporting or having in the motor vehicle any child less
3 than eighteen (18) years of age, the fine shall be enhanced to
4 double the amount of the fine imposed for the underlying driving
5 under the influence (DUI) violation which shall be in addition to
6 any other penalties allowed by this section.

7 2. Nothing in this subsection shall prohibit the prosecution of
8 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
9 Statutes who is in violation of any provision of this section or
10 Section 11-904 of this title.

11 M. Any plea of guilty, nolo contendere or finding of guilt for
12 a violation of this section or a violation pursuant to the
13 provisions of any law of this state or another state prohibiting the
14 offenses provided for in subsection A of this section, Section 11-
15 904 of this title, or paragraph 4 of subsection A of Section 852.1
16 of Title 21 of the Oklahoma Statutes, shall constitute a conviction
17 of the offense for the purpose of this section for a period of ten
18 (10) years following the completion of any court-imposed
19 probationary term.

20 N. If qualified by knowledge, skill, experience, training or
21 education, a witness shall be allowed to testify in the form of an
22 opinion or otherwise solely on the issue of impairment, but not on
23 the issue of specific alcohol concentration level, relating to the
24 following:

1 1. The results of any standardized field sobriety test
2 including, but not limited to, the horizontal gaze nystagmus (HGN)
3 test administered by a person who has completed training in
4 standardized field sobriety testing; or

5 2. Whether a person was under the influence of one or more
6 impairing substances and the category of such impairing substance or
7 substances. A witness who has received training and holds a current
8 certification as a drug recognition expert shall be qualified to
9 give the testimony in any case in which such testimony may be
10 relevant.

11 SECTION 4. This act shall become effective November 1, 2013.

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