

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1743

By: Wright of the House

and

Sykes of the Senate

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10 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

4 c. to engage in a term of community service without
5 compensation, according to a schedule consistent with
6 the employment and family responsibilities of the
7 person convicted,

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

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

17 f. to confinement as provided by law together with a term
18 of post-imprisonment community supervision for not
19 less than three (3) years of the total term allowed by
20 law for imprisonment, with or without restitution;
21 provided, however, the authority of this provision is
22 limited to Section 843.5 of Title 21 of the Oklahoma
23 Statutes when the offense involved sexual abuse or
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1 sexual exploitation; Sections 681, 741 and 843.1 of
2 Title 21 of the Oklahoma Statutes when the offense
3 involved sexual abuse or sexual exploitation; and
4 Sections 865 et seq., 885, 886, 888, 891, 1021,
5 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
6 1123 of Title 21 of the Oklahoma Statutes,

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

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

18 i. to reimburse the Oklahoma State Bureau of
19 Investigation and any authorized law enforcement
20 agency for all costs incurred by that agency for
21 cleaning up an illegal drug laboratory site for which
22 the defendant pleaded guilty, nolo contendere or was
23 convicted. The court clerk shall collect the amount

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1 and may retain five percent (5%) of such monies to be
2 deposited in the Court Clerk Revolving Fund to cover
3 administrative costs and shall remit the remainder to
4 the Oklahoma State Bureau of Investigation to be
5 deposited in the OSBI Revolving Fund established by
6 Section 150.19a of Title 74 of the Oklahoma Statutes
7 or to the general fund wherein the other law
8 enforcement agency is located,

9 j. to pay a reasonable sum to the Crime Victims
10 Compensation Board, created by Section 142.2 et seq.
11 of Title 21 of the Oklahoma Statutes, for the benefit
12 of crime victims,

13 k. to reimburse the court fund for amounts paid to court-
14 appointed attorneys for representing the defendant in
15 the case in which the person is being sentenced,

16 l. to participate in an assessment and evaluation by an
17 assessment agency or assessment personnel certified by
18 the Department of Mental Health and Substance Abuse
19 Services pursuant to Section 3-460 of Title 43A of the
20 Oklahoma Statutes and, as determined by the
21 assessment, participate in an alcohol and drug
22 substance abuse course or treatment program or both,
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1 pursuant to Sections 3-452 and 3-453 of Title 43A of
2 the Oklahoma Statutes, or as ordered by the court,
3 m. to be placed in a victims impact panel program, as
4 defined in subsection H of this section, or
5 victim/offender reconciliation program and payment of
6 a fee to the program of not less than Fifteen Dollars
7 (\$15.00) nor more than ~~Fifty Dollars (\$50.00)~~ Sixty
8 Dollars (\$60.00) as set by the governing authority of
9 the program to offset the cost of participation by the
10 defendant. Provided, each victim/offender
11 reconciliation program shall be required to obtain a
12 written consent form voluntarily signed by the victim
13 and defendant that specifies the methods to be used to
14 resolve the issues, the obligations and rights of each
15 person, and the confidentiality of the proceedings.
16 Volunteer mediators and employees of a victim/offender
17 reconciliation program shall be immune from liability
18 and have rights of confidentiality as provided in
19 Section 1805 of Title 12 of the Oklahoma Statutes,
20 n. to install, at the expense of the defendant, an
21 ignition interlock device approved by the Board of
22 Tests for Alcohol and Drug Influence. The device
23 shall be installed upon every motor vehicle operated
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1 by the defendant, and the court shall require that a
2 notation of this restriction be affixed to the
3 defendant's driver license. The restriction shall
4 remain on the driver license not exceeding two (2)
5 years to be determined by the court. The restriction
6 may be modified or removed only by order of the court
7 and notice of any modification order shall be given to
8 the Department of Public Safety. Upon the expiration
9 of the period for the restriction, the Department of
10 Public Safety shall remove the restriction without
11 further court order. Failure to comply with the order
12 to install an ignition interlock device or operating
13 any vehicle without a device during the period of
14 restriction shall be a violation of the sentence and
15 may be punished as deemed proper by the sentencing
16 court. As used in this paragraph, "ignition interlock
17 device" means a device that, without tampering or
18 intervention by another person, would prevent the
19 defendant from operating a motor vehicle if the
20 defendant has a blood or breath alcohol concentration
21 of two-hundredths (0.02) or greater,

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

18 p. to perform one or more courses of treatment, education
19 or rehabilitation for any conditions, behaviors,
20 deficiencies or disorders which may contribute to
21 criminal conduct, including but not limited to alcohol
22 and substance abuse, mental health, emotional health,
23 physical health, propensity for violence, antisocial
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1 behavior, personality or attitudes, deviant sexual
2 behavior, child development, parenting assistance, job
3 skills, vocational-technical skills, domestic
4 relations, literacy, education, or any other
5 identifiable deficiency which may be treated
6 appropriately in the community and for which a
7 certified provider or a program recognized by the
8 court as having significant positive impact exists in
9 the community. Any treatment, education or
10 rehabilitation provider required to be certified
11 pursuant to law or rule shall be certified by the
12 appropriate state agency or a national organization,
13 q. to submit to periodic testing for alcohol,
14 intoxicating substance, or controlled dangerous
15 substances by a qualified laboratory,
16 r. to pay a fee, costs for treatment, education,
17 supervision, participation in a program, or any
18 combination thereof as determined by the court, based
19 upon the defendant's ability to pay the fees or costs,
20 s. to be supervised by a Department of Corrections
21 employee, a private supervision provider, or other
22 person designated by the court,
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- 1 t. to obtain positive behavior modeling by a trained
2 mentor,
- 3 u. to serve a term of confinement in a restrictive
4 housing facility available in the community,
- 5 v. to serve a term of confinement in the county jail at
6 night or during weekends pursuant to Section 991a-2 of
7 this title or for work release,
- 8 w. to obtain employment or participate in employment-
9 related activities,
- 10 x. to participate in mandatory day reporting to
11 facilities or persons for services, payments, duties
12 or person-to-person contacts as specified by the
13 court,
- 14 y. to pay day fines not to exceed fifty percent (50%) of
15 the net wages earned. For purposes of this paragraph,
16 "day fine" means the offender is ordered to pay an
17 amount calculated as a percentage of net daily wages
18 earned. The day fine shall be paid to the local
19 community sentencing system as reparation to the
20 community. Day fines shall be used to support the
21 local system,
- 22 z. to submit to blood or saliva testing as required by
23 subsection I of this section,
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- 1 aa. to repair or restore property damaged by the
2 defendant's conduct, if the court determines the
3 defendant possesses sufficient skill to repair or
4 restore the property and the victim consents to the
5 repairing or restoring of the property,
6 bb. to restore damaged property in kind or payment of out-
7 of-pocket expenses to the victim, if the court is able
8 to determine the actual out-of-pocket expenses
9 suffered by the victim,
10 cc. to attend a victim-offender reconciliation program if
11 the victim agrees to participate and the offender is
12 deemed appropriate for participation,
13 dd. in the case of a person convicted of prostitution
14 pursuant to Section 1029 of Title 21 of the Oklahoma
15 Statutes, require such person to receive counseling
16 for the behavior which may have caused such person to
17 engage in prostitution activities. Such person may be
18 required to receive counseling in areas including but
19 not limited to alcohol and substance abuse, sexual
20 behavior problems, or domestic abuse or child abuse
21 problems,
22 ee. in the case of a sex offender sentenced after November
23 1, 1989, and required by law to register pursuant to
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1 the Sex Offender Registration Act, the court shall
2 require the person to comply with sex offender
3 specific rules and conditions of supervision
4 established by the Department of Corrections and
5 require the person to participate in a treatment
6 program designed for the treatment of sex offenders
7 during the period of time while the offender is
8 subject to supervision by the Department of
9 Corrections. The treatment program shall include
10 polygraph examinations specifically designed for use
11 with sex offenders for purposes of supervision and
12 treatment compliance, and shall be administered not
13 less than each six (6) months during the period of
14 supervision. The examination shall be administered by
15 a certified licensed polygraph examiner. The
16 treatment program must be approved by the Department
17 of Corrections or the Department of Mental Health and
18 Substance Abuse Services. Such treatment shall be at
19 the expense of the defendant based on the defendant's
20 ability to pay,

21 ff. in addition to other sentencing powers of the court,
22 the court in the case of a defendant being sentenced
23 for a felony conviction for a violation of Section 2-

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1 402 of Title 63 of the Oklahoma Statutes which
2 involves marijuana may require the person to
3 participate in a drug court program, if available. If
4 a drug court program is not available, the defendant
5 may be required to participate in a community
6 sanctions program, if available,

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

19 Additionally, the court may require the offender to
20 pay restitution and bogus check fees on any other
21 bogus check or checks that have been submitted to the
22 District Attorney Bogus Check Restitution Program, and

23 hh. any other provision specifically ordered by the court.
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1 However, any such order for restitution, community service,
2 payment to a local certified crime stoppers program, payment to the
3 Oklahoma Reward System, or confinement in the county jail, or a
4 combination thereof, shall be made in conjunction with probation and
5 shall be made a condition of the suspended sentence;

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

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

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

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

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

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

17 a. to participate in an alcohol and drug assessment and
18 evaluation by an assessment agency or assessment
19 personnel certified by the Department of Mental Health
20 and Substance Abuse Services pursuant to Section 3-460
21 of Title 43A of the Oklahoma Statutes and, as
22 determined by the assessment, participate in an
23 alcohol and drug substance abuse course or treatment

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

1 program or both, pursuant to Sections 3-452 and 3-453
2 of Title 43A of the Oklahoma Statutes,

3 b. to attend a victims impact panel program, as defined
4 in subsection H of this section, if such a program is
5 offered in the county where the judgment is rendered,
6 and to pay a fee, of not less than Fifteen Dollars
7 (\$15.00) nor more than ~~Fifty Dollars (\$50.00)~~ Sixty
8 Dollars (\$60.00) as set by the governing authority of
9 the program and approved by the court, to the program
10 to offset the cost of participation by the defendant,
11 if in the opinion of the court the defendant has the
12 ability to pay such fee,

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

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

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

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

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

20 13. In addition to the other sentencing powers of the court, a
21 sex offender who is habitual or aggravated as defined by Section 584
22 of Title 57 of the Oklahoma Statutes and who is required to register
23 as a sex offender pursuant to the Oklahoma Sex Offenders

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

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

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

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

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

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

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

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

13 E. Probation, for purposes of subsection A of this section, is
14 a procedure by which a defendant found guilty of a crime, whether
15 upon a verdict or plea of guilty or upon a plea of nolo contendere,
16 is released by the court subject to conditions imposed by the court
17 and subject to the supervision of the Department of Corrections.
18 Such supervision shall be initiated upon an order of probation from
19 the court, and shall not exceed two (2) years, except as otherwise
20 provided by law. In the case of a person convicted of a sex
21 offense, supervision shall begin immediately upon release from
22 incarceration or if parole is granted and shall not be limited to
23 two (2) years. Provided further, any supervision provided for in
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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
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1 specific period of time. The Department shall be responsible for
2 ensuring that any contracting county complies in full with
3 specifications and requirements of the contract. The contract shall
4 set appropriate compensation to the county for services to the
5 Department.

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

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

17 H. As used in this section:

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

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

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

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

1 I. A person convicted of a felony offense or receiving any form
2 of probation for an offense in which registration is required
3 pursuant to the Sex Offenders Registration Act, shall submit to
4 deoxyribonucleic acid DNA testing for law enforcement identification
5 purposes in accordance with Section 150.27 of Title 74 of the
6 Oklahoma Statutes and the rules promulgated by the Oklahoma State
7 Bureau of Investigation for the OSBI Combined DNA Index System
8 (CODIS) Database. Subject to the availability of funds, any person
9 convicted of a misdemeanor offense of assault and battery, domestic
10 abuse, stalking, possession of a controlled substance prohibited
11 under Schedule IV of the Uniform Controlled Dangerous Substances
12 Act, outraging public decency, resisting arrest, escape or
13 attempting to escape, eluding a police officer, peeping tom,
14 pointing a firearm, unlawful carry of a firearm, illegal transport
15 of a firearm, discharging of a firearm, threatening an act of
16 violence, breaking and entering a dwelling place, destruction of
17 property, negligent homicide, or causing a personal injury accident
18 while driving under the influence of any intoxicating substance, or
19 any alien unlawfully present under federal immigration law, upon
20 arrest, shall submit to deoxyribonucleic acid DNA testing for law
21 enforcement identification purposes in accordance with Section
22 150.27 of Title 74 of the Oklahoma Statutes and the rules
23 promulgated by the Oklahoma State Bureau of Investigation for the
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1 OSBI Combined DNA Index System (CODIS) Database. Any defendant
2 sentenced to probation shall be required to submit to testing within
3 thirty (30) days of sentencing either to the Department of
4 Corrections or to the county sheriff or other peace officer as
5 directed by the court. Defendants who are sentenced to a term of
6 incarceration shall submit to testing in accordance with Section
7 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who
8 enter the custody of the Department of Corrections or to the county
9 sheriff, for those defendants sentenced to incarceration in a county
10 jail. Convicted individuals who have previously submitted to DNA
11 testing under this section and for whom a valid sample is on file in
12 the OSBI Combined DNA Index System (CODIS) Database at the time of
13 sentencing shall not be required to submit to additional testing.
14 Except as required by the Sex Offenders Registration Act, a deferred
15 judgment does not require submission to deoxyribonucleic acid
16 testing.

17 Any person who is incarcerated in the custody of the Department
18 of Corrections after July 1, 1996, and who has not been released
19 before January 1, 2006, shall provide a blood or saliva sample prior
20 to release. Every person subject to DNA testing after January 1,
21 2006, whose sentence does not include a term of confinement with the
22 Department of Corrections shall submit a blood or saliva sample.
23 Every person subject to DNA testing who is sentenced to unsupervised
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1 probation or otherwise not supervised by the Department of
2 Corrections shall submit for blood or saliva testing to the sheriff
3 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
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~~Strike thru~~ language denotes deletion from present Statutes.

1 account or the service fee account of the collection agency or
2 department.

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

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

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

- 18 1. Pay court costs;
- 19 2. Pay an assessment in lieu of any fine authorized by law for
20 the offense;
- 21 3. Pay any other assessment or cost authorized by law;

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1 4. Engage in a term of community service without compensation,
2 according to a schedule consistent with the employment and family
3 responsibilities of the defendant;

4 5. County jail confinement for a period not to exceed ninety
5 (90) days or the maximum amount of jail time provided for the
6 offense, if it is less than ninety (90) days;

7 6. Pay an amount as reimbursement for reasonable attorney fees,
8 to be paid into the court fund, if a court-appointed attorney has
9 been provided to defendant;

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

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

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

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

6 11. Any combination of the above provisions.

7 B. In addition to any conditions of supervision provided for in
8 subsection A of this section, the court shall, in the case of a
9 person before the court for the offense of operating or being in
10 control of a motor vehicle while the person was under the influence
11 of alcohol, other intoxicating substance, or a combination of
12 alcohol and another intoxicating substance, or who is before the
13 court for the offense of operating a motor vehicle while the ability
14 of the person to operate such vehicle was impaired due to the
15 consumption of alcohol, require the person to participate in an
16 alcohol and drug substance abuse evaluation program offered by a
17 facility or qualified practitioner certified by the Department of
18 Mental Health and Substance Abuse Services for the purpose of
19 evaluating the receptivity to treatment and prognosis of the person.
20 The court shall order the person to reimburse the facility or
21 qualified practitioner for the evaluation. The Department of Mental
22 Health and Substance Abuse Services shall establish a fee schedule,
23 based upon the ability of a person to pay, provided the fee for an
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1 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
2 evaluation shall be conducted at a certified facility, the office of
3 a qualified practitioner or at another location as ordered by the
4 court. The facility or qualified practitioner shall, within
5 seventy-two (72) hours from the time the person is assessed, submit
6 a written report to the court for the purpose of assisting the court
7 in its determination of conditions for deferred sentence. No
8 person, agency or facility operating an alcohol and drug substance
9 abuse evaluation program certified by the Department of Mental
10 Health and Substance Abuse Services shall solicit or refer any
11 person evaluated pursuant to this subsection for any treatment
12 program or alcohol and drug substance abuse service in which the
13 person, agency or facility has a vested interest; however, this
14 provision shall not be construed to prohibit the court from ordering
15 participation in or any person from voluntarily utilizing a
16 treatment program or alcohol and drug substance abuse service
17 offered by such person, agency or facility. Any evaluation report
18 submitted to the court pursuant to this subsection shall be handled
19 in a manner which will keep the report confidential from review by
20 the general public. Nothing contained in this subsection shall be
21 construed to prohibit the court from ordering judgment and sentence
22 in the event the defendant fails or refuses to comply with an order
23 of the court to obtain the evaluation required by this subsection.

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1 As used in this subsection, "qualified practitioner" means a person
2 with at least a bachelor's degree in substance abuse treatment,
3 mental health or a related health care field and at least two (2)
4 years of experience in providing alcohol abuse treatment, other drug
5 abuse treatment, or both alcohol and other drug abuse treatment who
6 is certified each year by the Department of Mental Health and
7 Substance Abuse Services to provide these assessments. However, any
8 person who does not meet the requirements for a qualified
9 practitioner as defined herein, but who has been previously
10 certified by the Department of Mental Health and Substance Abuse
11 Services to provide alcohol or drug treatment or assessments, shall
12 be considered a qualified practitioner provided all education,
13 experience and certification requirements stated herein are met by
14 September 1, 1995. The court may also require the person to
15 participate in one or both of the following:

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

18 2. A victims impact panel program, as defined in subsection H
19 of Section 991a of this title, if such a program is offered in the
20 county where the judgment is rendered. The defendant shall be
21 required to pay a fee, of not less than ~~Five Dollars (\$5.00) nor~~
22 ~~more than~~ Fifteen Dollars (\$15.00) nor more than Sixty Dollars
23 (\$60.00) as set by the governing authority of the program and

1 approved by the court, to the victims impact panel program to offset
2 the cost of participation by the defendant, if in the opinion of the
3 court the defendant has the ability to pay such fee.

4 C. Upon completion of the conditions of the deferred judgment,
5 and upon a finding by the court that the conditions have been met
6 and all fines, fees, and monetary assessments have been paid as
7 ordered, the defendant shall be discharged without a court judgment
8 of guilt, and the court shall order the verdict or plea of guilty or
9 plea of nolo contendere to be expunged from the record and the
10 charge shall be dismissed with prejudice to any further action. The
11 procedure to expunge the record of the defendant shall be as
12 follows:

13 1. All references to the name of the defendant shall be deleted
14 from the docket sheet;

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

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

20 4. No information concerning the confidential file shall be
21 revealed or released, except upon written order of a judge of the
22 district court or upon written request by the named defendant to the
23 court clerk for the purpose of updating the criminal history record
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1 of the defendant with the Oklahoma State Bureau of Investigation;
2 and

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

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

9 E. Upon violation of any condition of the deferred judgment,
10 the court may enter a judgment of guilt and proceed as provided in
11 Section 991a of this title or may modify any condition imposed.
12 Provided, however, if the deferred judgment is for a felony offense,
13 and the defendant commits another felony offense, the defendant
14 shall not be allowed bail pending appeal.

15 F. The deferred judgment procedure described in this section
16 shall apply only to defendants who have not been previously
17 convicted of a felony offense and have not received a deferred
18 judgment for a felony offense within the ten (10) years previous to
19 the commission of the pending offense.

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

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

5 H. Defendants who are supervised by the Department of
6 Corrections pursuant to this section shall be subject to the
7 intermediate sanction process as established in subsection B of
8 Section 991b of this title.

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

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

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

22 2. Is under the influence of alcohol;

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

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

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

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

- 15 a. participate in an assessment and evaluation pursuant to
16 subsection G of this section and shall follow all
17 recommendations made in the assessment and evaluation,
18 b. be punished by imprisonment in jail for not less than ten
19 (10) days nor more than one (1) year, and
20 c. be fined not more than One Thousand Dollars (\$1,000.00).

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

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

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

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

- 16 a. follow all recommendations made in the assessment and
17 evaluation for treatment at the defendant's expense,
18 two hundred forty (240) hours of community service and
19 use of an ignition interlock device, as provided by
20 subparagraph n of paragraph 1 of subsection A of
21 Section 991a of Title 22 of the Oklahoma Statutes, or
22 b. placement in the custody of the Department of
23 Corrections for not less than one (1) year and not to
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1 exceed ten (10) years and a fine of not more than Five
2 Thousand Dollars (\$5,000.00), or

3 c. treatment, imprisonment and a fine within the
4 limitations prescribed in subparagraphs a and b of
5 this paragraph.

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

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

18 a. follow all recommendations made in the assessment and
19 evaluation for treatment at the defendant's expense,
20 followed by not less than one (1) year of supervision
21 and periodic testing at the defendant's expense, four
22 hundred eighty (480) hours of community service, and
23 use of an ignition interlock device, as provided by
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1 subparagraph n of paragraph 1 of subsection A of
2 Section 991a of Title 22 of the Oklahoma Statutes, for
3 a minimum of thirty (30) days, or

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

8 c. treatment, imprisonment and a fine within the
9 limitations prescribed in subparagraphs a and b of
10 this paragraph.

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

14 5. Any person who, after a previous conviction of a violation
15 of murder in the second degree or manslaughter in the first degree
16 in which the death was caused as a result of driving under the
17 influence of alcohol or other intoxicating substance, is convicted
18 of a violation of this section shall be guilty of a felony and shall
19 be punished by imprisonment in the custody of the Department of
20 Corrections for not less than five (5) years and not to exceed
21 twenty (20) years, and a fine of not more than Ten Thousand Dollars
22 (\$10,000.00).

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

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

12 D. Any person who is convicted of a violation of driving under
13 the influence with a blood or breath alcohol concentration of
14 fifteen-hundredths (0.15) or more pursuant to this section shall be
15 deemed guilty of aggravated driving under the influence. A person
16 convicted of aggravated driving under the influence shall
17 participate in an assessment and evaluation pursuant to subsection G
18 of this section and shall comply with all recommendations for
19 treatment. Such person shall be sentenced to:

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

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

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

21 E. When a person is sentenced to imprisonment in the custody of
22 the Department of Corrections, the person shall be processed through
23 the Lexington Assessment and Reception Center or at a place
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1 determined by the Director of the Department of Corrections. The
2 Department of Corrections shall classify and assign the person to
3 one or more of the following:

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

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

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

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

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

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1 H. Any person who is found guilty of a violation of the
2 provisions of this section may be required by the court to attend a
3 victims impact panel program, as defined in subsection H of Section
4 991a of Title 22 of the Oklahoma Statutes, if such a program is
5 offered in the county where the judgment is rendered, and to pay a
6 fee, of not less than Fifteen Dollars (\$15.00) nor more than ~~Twenty-~~
7 ~~five Dollars (\$25.00)~~ Sixty Dollars (\$60.00) as set by the governing
8 authority of the program and approved by the court, to the program
9 to offset the cost of participation by the defendant, if in the
10 opinion of the court the defendant has the ability to pay such fee.

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

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

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

3 L. 1. When a person is eighteen (18) years of age or older,
4 and is the driver, operator, or person in physical control of a
5 vehicle, and is convicted of violating any provision of this section
6 while transporting or having in the motor vehicle any child less
7 than eighteen (18) years of age, the fine shall be enhanced to
8 double the amount of the fine imposed for the underlying driving
9 under the influence (DUI) violation which shall be in addition to
10 any other penalties allowed by this section.

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

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

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1 N. If qualified by knowledge, skill, experience, training or
2 education, a witness shall be allowed to testify in the form of an
3 opinion or otherwise solely on the issue of impairment, but not on
4 the issue of specific alcohol concentration level, relating to the
5 following:

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

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

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

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18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2013 - DO
19 PASS, As Amended and Coauthored.

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