

1 **SENATE FLOOR VERSION**

2 February 21, 2013

3 SENATE BILL NO. 618

By: Jolley of the Senate

4 and

5 Osborn of the House

6
7
8 An Act relating to DNA evidence; amending 22 O.S.
9 2011, Section 991a, which relates to sentencing
10 powers of the court; requiring certain persons to
11 submit to deoxyribonucleic acid (DNA) testing;
12 amending 74 O.S. 2011, Section 150.27a, which relates
13 to the Combined DNA Index System Database; adding
14 definitions; modifying purpose of the Combined DNA
15 Index System; clarifying collection requirements;
16 making software and database structures confidential
17 and exempt from disclosure; clarifying requirements
18 for the disclosure, dissemination or use of DNA
19 information; modifying and adding penalties;
20 providing instances in which disclosure of DNA
21 information shall be permissible; prohibiting
22 electronic connection of CODIS to certain system;
23 prohibiting the invalidation of arrests, pleas or
24 convictions for noncompliance; and providing an
effective date.

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:

Section 991a. A. Except as otherwise provided in the Elderly
and Incapacitated Victim's Protection Program, when a defendant is

1 convicted of a crime and no death sentence is imposed, the court
2 shall either:

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

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

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

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

1 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
2 1123 of Title 21 of the Oklahoma Statutes,

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

1 reward program established by Section 150.18 of Title
2 74 of the Oklahoma Statutes,

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

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

1 Section 150.19a of Title 74 of the Oklahoma Statutes
2 or to the general fund wherein the other law
3 enforcement agency is located,

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

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

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

20 m. to be placed in a victims impact panel program 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) as set
24 by the governing authority of the program to offset

1 the cost of participation by the defendant. Provided,
2 each victim/offender reconciliation program shall be
3 required to obtain a written consent form voluntarily
4 signed by the victim and defendant that specifies the
5 methods to be used to resolve the issues, the
6 obligations and rights of each person, and the
7 confidentiality of the proceedings. Volunteer
8 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, if such a
11 program is offered in the county where the judgment is
12 rendered, and to pay a fee, not less than Fifteen
13 Dollars (\$15.00) nor more than Fifty Dollars (\$50.00)
14 as set by the governing authority of the program and
15 approved by the court, to the program to offset the
16 cost of participation by the defendant, if in the
17 opinion of the court the defendant has the ability to
18 pay such fee,
- 19 c. to both participate in the alcohol and drug substance
20 abuse course or treatment program, pursuant to
21 subparagraph a of this paragraph and attend a victims
22 impact panel program, pursuant to subparagraph b of
23 this paragraph,
- 24

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 impact statements if submitted to the
13 jury, or the judge in the event a jury is waived.

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

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

1 and the rules promulgated by the Oklahoma State Bureau of
2 Investigation for the OSBI Combined DNA Index System (CODIS)
3 Database, or any alien unlawfully present under federal immigration
4 law, upon arrest, shall submit to deoxyribonucleic acid DNA testing
5 for law enforcement identification purposes in accordance with
6 Section ~~150.27~~ 150.27a of Title 74 of the Oklahoma Statutes and the
7 rules promulgated by the Oklahoma State Bureau of Investigation for
8 the OSBI Combined DNA Index System (CODIS) Database. Any defendant
9 sentenced to probation shall be required to submit to testing within
10 thirty (30) days of sentencing either to the Department of
11 Corrections or to the county sheriff or other peace officer as
12 directed by the court. Defendants who are sentenced to a term of
13 incarceration shall submit to testing in accordance with Section
14 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who
15 enter the custody of the Department of Corrections or to the county
16 sheriff, for those defendants sentenced to incarceration in a county
17 jail. Convicted individuals who have previously submitted to DNA
18 testing under this section and for whom a valid sample is on file in
19 the OSBI Combined DNA Index System (CODIS) Database at the time of
20 sentencing shall not be required to submit to additional testing.
21 Except as required by the Sex Offenders Registration Act, a deferred
22 judgment does not require submission to deoxyribonucleic acid
23 testing.

24

1 Any person who is incarcerated in the custody of the Department
2 of Corrections after July 1, 1996, and who has not been released
3 before January 1, 2006, shall provide a blood or saliva sample prior
4 to release. Every person subject to DNA testing after January 1,
5 2006, whose sentence does not include a term of confinement with the
6 Department of Corrections shall submit a blood or saliva sample.
7 Every person subject to DNA testing who is sentenced to unsupervised
8 probation or otherwise not supervised by the Department of
9 Corrections shall submit for blood or saliva testing to the sheriff
10 of the sentencing county.

11 J. Samples of blood or saliva for DNA testing required by
12 subsection I of this section shall be taken by employees or
13 contractors of the Department of Corrections, peace officers, or the
14 county sheriff or employees or contractors of the sheriff's office.
15 The individuals shall be properly trained to collect blood or saliva
16 samples. Persons collecting blood or saliva for DNA testing
17 pursuant to this section shall be immune from civil liabilities
18 arising from this activity. All collectors of DNA samples shall
19 ensure the collection of samples are mailed to the Oklahoma State
20 Bureau of Investigation within ten (10) days of the time the subject
21 appears for testing or within ten (10) days of the date the subject
22 comes into physical custody to serve a term of incarceration. All
23 collectors of DNA samples shall use sample kits provided by the OSBI
24 and procedures promulgated by the OSBI. Persons subject to DNA

1 testing who are not received at the Lexington Assessment and
2 Reception Center shall be required to pay a fee of Fifteen Dollars
3 (\$15.00) to the agency collecting the sample for submission to the
4 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
5 pursuant to this subsection shall be deposited in the revolving
6 account or the service fee account of the collection agency or
7 department.

8 K. When sentencing a person who has been convicted of a crime
9 that would subject that person to the provisions of the Sex
10 Offenders Registration Act, neither the court nor the district
11 attorney shall be allowed to waive or exempt such person from the
12 registration requirements of the Sex Offenders Registration Act.

13 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, is
14 amended to read as follows:

15 Section 150.27a. A. As used in this section:

16 1. "Biological sample" means biological material collected from
17 an individual or from evidence collected at a crime scene which
18 undergoes DNA analysis;

19 2. "Candidate match" means when any two DNA profiles contained
20 in CODIS share the specified number of loci. A candidate match is
21 not admissible in court;

22 3. "CODIS" means the Combined DNA Index System which is a
23 combination of the National DNA Index System (NDIS) and the State
24 DNA Index System (SDIS). The systems are operated using CODIS

1 software. The CODIS software is used to generate investigative
2 leads;

3 4. "CODIS record" means the information entered into CODIS by
4 the OSBI. A CODIS record contains the DNA profile and the specimen
5 identification number. The CODIS record does not contain any name,
6 address, date of birth, race, any personal identification
7 information, or any number or numbers other than the specimen
8 identification number and numbers corresponding to loci included in
9 a DNA profile;

10 5. "Database" refers to the CODIS, NDIS, SDIS and the LIMS
11 separately or collectively and includes all related data, samples,
12 specimens, records and software;

13 6. "DNA" means deoxyribonucleic acid;

14 7. "DNA laboratory" means the CODIS Unit of the OSBI Forensic
15 Science Center;

16 8. "DNA profile" means a pattern obtained by a scientific
17 process on a biological sample that reflects the unique DNA sequence
18 in a living organism or an evidentiary sample;

19 9. "Legally obtained known reference sample" means a biological
20 sample whose identity or type is established. A legally obtained
21 known reference sample is admissible in court;

22 10. "LIMS" means the Laboratory Information Management System
23 maintained by the OSBI;

24

1 11. "LIMS record" means the information submitted with a
2 biological sample to the DNA laboratory which is stored in the LIMS.
3 A LIMS record contains the specimen ID number and the personal
4 identification information. A LIMS record does not contain any DNA
5 profiles;

6 12. "Locus" means the position that a given gene occupies on a
7 chromosome or a site on the DNA that is analyzed for forensic
8 identification;

9 13. "Loci" is the plural of locus;

10 14. "NDIS" means the National DNA Index System, which is a
11 component of the CODIS, and is maintained by the Federal Bureau of
12 Investigation;

13 15. "Offender" means a person who has been convicted of a crime
14 which is specified in subsection I of Section 991a of Title 22 of
15 the Oklahoma Statutes or subsection C of this section and who is
16 required by law to submit a biological sample for DNA analysis and
17 inclusion in the database;

18 16. "OSBI" means the Oklahoma State Bureau of Investigation;

19 17. "SDIS" means the State DNA Index System, which is a
20 component of the CODIS, and is maintained by the OSBI;

21 18. "Secure area" means a locked space including, but not
22 limited to, a cabinet, vault or room with access restricted to
23 authorized personnel of the OSBI; and

1 19. "Specimen ID number" means the number which is used to
2 identify a biological sample received by the DNA laboratory. The
3 specimen ID number shall be generated by the OSBI.

4 B. There is hereby established within the Oklahoma State Bureau
5 of Investigation the ~~OSBI~~ Combined DNA Index System (CODIS) Database
6 for the purpose of ~~collecting and storing blood or saliva samples~~
7 and ~~DNA profiles~~, generating investigative leads in crimes where
8 biological evidence is recovered from the crime scene and for the
9 identification of missing persons in which biological evidence is
10 recovered. CODIS uses specialized computer software to maintain and
11 electronically compare DNA profiles contained in CODIS records in
12 order to link crime scenes to each other and to offenders or to
13 identify missing persons. CODIS records and the DNA profiles they
14 contain are created by OSBI by analyzing and typing of the genetic
15 markers contained in or derived from DNA, ~~and~~ found in biological
16 samples submitted by law enforcement agencies. The OSBI is
17 responsible for maintaining the CODIS records and biological samples
18 of ~~DNA~~ of in a secure area.

19 C. Biological samples are required by law to be collected from
20 individuals convicted of any felony offense, of individuals required
21 to register pursuant to the Sex Offenders Registration Act, and
22 subject to the availability of funds, ~~of~~ may be collected at the
23 initial court appearance from individuals ~~convicted of~~ arrested for
24 a felony offense or arrested for a misdemeanor offense of assault

1 and battery, domestic abuse, stalking, possession of a controlled
2 substance prohibited under Schedule IV of the Uniform Controlled
3 Dangerous Substances Act, outraging public decency, resisting
4 arrest, escape or attempting to escape, eluding a police officer,
5 peeping tom, pointing a firearm, unlawful carry of a firearm,
6 illegal transport of a firearm, discharging of a firearm,
7 threatening an act of violence, breaking and entering a dwelling
8 place, destruction of property, negligent homicide, or causing a
9 personal injury accident while driving under the influence of any
10 intoxicating substance, or, upon arrest, any alien unlawfully
11 present under federal immigration law. ~~The purpose of this database~~
12 ~~is the detection or exclusion of individuals who are subjects of the~~
13 ~~investigation or prosecution of sex-related crimes, violent crimes,~~
14 ~~or other crimes in which biological evidence is recovered, and such~~
15 ~~information shall be used for no other purpose~~ Biological samples
16 collected pursuant to this section shall be submitted by the agency
17 collecting the sample to the DNA laboratory according to rules
18 promulgated by the OSBI.

19 ~~B. D.~~ Any DNA specimen biological sample taken in good faith
20 pursuant to this section by ~~the Department of Corrections, its~~
21 ~~employees or contractors, or the county sheriff, its employees or~~
22 ~~contractors,~~ any law enforcement or criminal justice agency and
23 submitted to the OSBI may be ~~included,~~ analyzed and maintained, and
24 ~~kept~~ by the OSBI in a the database ~~for criminal investigative~~

1 ~~purposes~~ despite the specimen having not been taken in strict
2 compliance with the provisions of this section or Section 991a of
3 Title 22 of the Oklahoma Statutes.

4 ~~C.~~ E. Upon the request to OSBI by the federal or state
5 authority having custody of the person, any individual who was
6 convicted of violating laws of another state or the federal
7 government, but is currently incarcerated or residing in Oklahoma,
8 shall submit ~~to DNA profiling~~ a biological sample for entry of the
9 data into the ~~OSBI DNA Offender Database~~ database. This provision
10 shall only apply when such federal or state conviction carries a
11 requirement of sex offender registration and/or DNA profiling. The
12 person to be profiled shall pay a fee of One Hundred Fifty Dollars
13 (\$150.00) to the OSBI.

14 ~~D.~~ F. The ~~OSBI Combined DNA Index System (CODIS) Database~~
15 database is specifically exempt from any statute requiring
16 disclosure of information to the public. The information contained
17 in the database is privileged from discovery and inadmissible as
18 evidence in any civil court proceeding. The information in the
19 database is confidential and shall not be released to the public.
20 In order to maintain the computer system security of the database,
21 the computer software and database structures used by the DNA
22 laboratory to implement this section are confidential and
23 specifically exempt from any statute requiring disclosure of
24 information to the public.

1 G. Nothing in this section shall preclude law enforcement
2 personnel from including in the criminal history file of a person or
3 offender that is maintained by a federal, state, county or municipal
4 law enforcement or criminal justice agency, the fact that the DNA
5 samples required by this section have or have not been collected
6 from that person.

7 H. Any person charged with the custody and dissemination of
8 information from the database shall not ~~divulge or disclose,~~
9 disseminate, or use any such information except to federal, state,
10 county or municipal law enforcement or criminal justice agencies as
11 provided for in this section.

12 1. Any person violating the provisions of this section shall,
13 upon conviction shall, be deemed guilty of a misdemeanor punishable
14 by imprisonment in the county jail for not more than one (1) year
15 and a fine of not more than Five Thousand Dollars (\$5,000.00).

16 ~~E.~~ 2. Any person who knowingly discloses, disseminates or uses
17 a biological sample, OSBI Combined DNA Index System (CODIS) or DNA
18 profile of an offender collected pursuant to this section for any
19 purpose prohibited by this section or not provided for in this
20 section, or who knowingly discloses a biological sample, OSBI
21 Combined DNA Index System (CODIS) or DNA profile developed pursuant
22 to this section to an unauthorized individual or agency, for any
23 purpose prohibited by this section or not provided for in this
24 section shall, upon conviction, be deemed guilty of a misdemeanor

1 punishable by imprisonment in the county jail for not less than six
2 (6) months nor more than one (1) year, and a fine of not less than
3 Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred
4 Thousand Dollars (\$100,000.00).

5 3. Any person who, for the purpose of financial gain, knowingly
6 discloses, disseminates or uses a biological sample, database record
7 or DNA profile of an offender collected pursuant to this section for
8 any purpose prohibited by this section or not provided for in this
9 section, or who knowingly discloses a biological sample, database
10 record or DNA profile developed pursuant to this section to an
11 unauthorized individual or agency, for any purpose prohibited by
12 this section or not provided for in this section shall, in addition
13 to the penalty provided for in paragraph 2 of this subsection, be
14 punished by a fine in an amount three times that of any financial
15 gain received or One Hundred Thousand Dollars (\$100,000.00),
16 whichever is greater.

17 4. Each sample, record or profile disclosed, disseminated or
18 used in violation of this section shall constitute a separate
19 offense.

20 5. The OSBI employee who discloses information in violation of
21 this section shall be absolutely immune from civil liability under
22 this or any other law.

23 I. 1. It is not a violation of this section for a law
24 enforcement agency in its discretion to publicly disclose the fact

1 of a candidate match, or the name of the person identified by the
2 candidate match when the match is the basis of the investigation,
3 arrest, or prosecution of a particular person, or the identification
4 of a missing person.

5 2. It is not a violation of this section to furnish the
6 biological samples, CODIS record or LIMS record of the offender to
7 the legal counsel of the offender for criminal defense purposes in
8 compliance with discovery requirements.

9 3. It is not a violation of this section for law enforcement to
10 release the biological samples, CODIS record or LIMS record
11 developed pursuant to this section to a jury or grand jury, in a
12 document filed with a court, or as part of a judicial proceeding.
13 Furthermore, it is not a violation of this section for a CODIS
14 record or LIMS record to become part of the public transcript or
15 record of proceedings when disclosure is necessary because the
16 information pertains to the basis of an investigation, arrest,
17 prosecution, or exclusion of a particular person related to a case.

18 4. It is not a violation of this section to include a CODIS
19 record or LIMS record obtained from the file of an offender in a
20 transcript or record of a judicial proceeding, or in any other
21 public record when the inclusion of the information in the public
22 record is authorized by a court or provision of the Oklahoma
23 Statutes.

24

1 5. It is not a violation of this section for the DNA
2 laboratory, an organization retained as an agent of the OSBI, or a
3 local public laboratory to use anonymous biological samples, CODIS
4 records or LIMS records or anonymous criminal history information
5 obtained pursuant to this section for forensic training or research,
6 statistical analysis of populations, for quality assurance or
7 quality control purposes.

8 J. The OSBI shall promulgate rules concerning the collection,
9 storing, expungement and dissemination of ~~information~~ database
10 records and biological samples ~~for the OSBI Combined DNA Index~~
11 ~~System (CODIS) Database~~ pursuant to this section. The OSBI shall
12 determine the type of equipment, collection procedures, and
13 reporting documentation to be used by ~~the Department of Corrections~~
14 ~~or a county sheriff's office in~~ law enforcement or criminal justice
15 agencies submitting ~~DNA~~ biological samples to the OSBI in accordance
16 with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI
17 shall provide training to designated employees of ~~the Department of~~
18 ~~Corrections and a county sheriff's office~~ law enforcement or
19 criminal justice agencies in the proper methods of performing the
20 duties required by this section.

21 ~~F.~~ K. ~~The OSBI Combined DNA Index System (CODIS) Database~~
22 database may include secondary databases and indexes including, but
23 not limited to:

24

1 1. Forensic index database consisting of unknown evidence
2 samples;

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

5 3. Convicted offender index database authorized pursuant to
6 subsection A C of this section; and

7 4. Missing persons and unidentified remains index or database
8 consisting of DNA profiles from unidentified remains and relatives
9 of missing persons.

10 ~~G.~~ L. Any person convicted of a felony offense who is in
11 custody shall provide a ~~blood or saliva~~ biological sample ~~prior to~~
12 ~~release.~~ Subject to the availability of funds, any person ~~convicted~~
13 ~~of~~ arrested for a felony offense or arrested for a misdemeanor
14 offense of assault and battery, domestic abuse, stalking, possession
15 of a controlled substance prohibited under Schedule IV of the
16 Uniform Controlled Dangerous Substances Act, outraging public
17 decency, resisting arrest, escape or attempting to escape, eluding a
18 police officer, peeping tom, pointing a firearm, unlawful carry of a
19 firearm, illegal transport of a firearm, discharging of a firearm,
20 threatening an act of violence, breaking and entering a dwelling
21 place, destruction of property, negligent homicide, or causing a
22 personal injury incident while driving under the influence of any
23 intoxicating substance ~~who is in custody~~ shall provide a ~~blood or~~
24 ~~saliva~~ biological sample ~~prior to release~~ at the initial court

1 appearance of the person. Every person who is convicted of a felony
2 offense whose sentence does not include a term of incarceration
3 shall provide a ~~blood or saliva~~ biological sample as a condition of
4 sentence. ~~Subject to the availability of funds, every person who is~~
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~~
15 ~~whose sentence does not include a term of incarceration shall~~
16 ~~provide a blood or saliva sample as a condition of sentence.~~

17 M. The CODIS shall not be connected electronically or otherwise
18 linked to the LIMS and access to the systems shall be restricted to
19 a secure area.

20 N. The failure of the OSBI or other law enforcement or criminal
21 justice agency to comply with any provision of this section shall
22 not invalidate an arrest, plea, conviction, or disposition.

23
24

1 SECTION 3. This act shall become effective November 1, 2013.

2 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY
3 February 21, 2013 - DO PASS
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