

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1743

By: Wright

4  
5  
6 AS INTRODUCED

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

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

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

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

1. Suspend the execution of sentence in whole or in part, with  
or without probation. The court, in addition, may order the

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

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

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

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

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

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

22 h. to reimburse the Oklahoma State Bureau of  
23 Investigation for costs incurred by that agency during  
24 its investigation of the crime for which the defendant

1           pleaded guilty, nolo contendere or was convicted,  
2           including compensation for laboratory, technical, or  
3           investigation services performed by the Bureau if, in  
4           the opinion of the court, the defendant is able to pay  
5           without imposing manifest hardship on the defendant,  
6           and if the costs incurred by the Bureau during the  
7           investigation of the defendant's case may be  
8           determined with reasonable certainty,

- 9           i.   to reimburse the Oklahoma State Bureau of  
10           Investigation and any authorized law enforcement  
11           agency for all costs incurred by that agency for  
12           cleaning up an illegal drug laboratory site for which  
13           the defendant pleaded guilty, nolo contendere or was  
14           convicted. The court clerk shall collect the amount  
15           and may retain five percent (5%) of such monies to be  
16           deposited in the Court Clerk Revolving Fund to cover  
17           administrative costs and shall remit the remainder to  
18           the Oklahoma State Bureau of Investigation to be  
19           deposited in the OSBI Revolving Fund established by  
20           Section 150.19a of Title 74 of the Oklahoma Statutes  
21           or to the general fund wherein the other law  
22           enforcement agency is located,
- 23           j.   to pay a reasonable sum to the Crime Victims  
24           Compensation Board, created by Section 142.2 et seq.

1 of Title 21 of the Oklahoma Statutes, for the benefit  
2 of crime victims,

3 k. to reimburse the court fund for amounts paid to court-  
4 appointed attorneys for representing the defendant in  
5 the case in which the person is being sentenced,

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

15 m. to be placed in a victims impact panel program, as  
16 defined in subsection H of this section, or  
17 victim/offender reconciliation program and payment of  
18 a fee to the program of not ~~less than Fifteen Dollars~~  
19 ~~(\$15.00) nor more than Fifty Dollars (\$50.00)~~ Seventy-  
20 five Dollars (\$75.00) as set by the governing  
21 authority of the program to offset the cost of  
22 participation by the defendant. Provided, each  
23 victim/offender reconciliation program shall be  
24 required to obtain a written consent form voluntarily

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

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

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

1 designed to detect if the defendant is in the court-  
2 ordered location at the required times and which  
3 records violations for investigation by a qualified  
4 supervisory agency or person,

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

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

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

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

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

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

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

23 dd. in the case of a person convicted of prostitution  
24 pursuant to Section 1029 of Title 21 of the Oklahoma

1 Statutes, require such person to receive counseling  
2 for the behavior which may have caused such person to  
3 engage in prostitution activities. Such person may be  
4 required to receive counseling in areas including but  
5 not limited to alcohol and substance abuse, sexual  
6 behavior problems, or domestic abuse or child abuse  
7 problems,

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

1 treatment program must be approved by the Department  
2 of Corrections or the Department of Mental Health and  
3 Substance Abuse Services. Such treatment shall be at  
4 the expense of the defendant based on the defendant's  
5 ability to pay,

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

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

1 Bogus Check Restitution Program Fund as established in  
2 subsection B of Section 114 of this title.

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

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

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

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

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

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

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

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

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

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

23           a. to participate in an alcohol and drug assessment and  
24           evaluation by an assessment agency or assessment

1 personnel certified by the Department of Mental Health  
2 and Substance Abuse Services pursuant to Section 3-460  
3 of Title 43A of the Oklahoma Statutes and, as  
4 determined by the assessment, participate in an  
5 alcohol and drug substance abuse course or treatment  
6 program or both, pursuant to Sections 3-452 and 3-453  
7 of Title 43A of the Oklahoma Statutes,

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

18 c. to both participate in the alcohol and drug substance  
19 abuse course or treatment program, pursuant to  
20 subparagraph a of this paragraph and attend a victims  
21 impact panel program, pursuant to subparagraph b of  
22 this paragraph,

23 d. to install, at the expense of the person, an ignition  
24 interlock device approved by the Board of Tests for

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

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

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

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

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

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

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

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

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

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

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

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

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

22 B. Notwithstanding any other provision of law, any person who  
23 is found guilty of a violation of any provision of Section 761 or  
24 11-902 of Title 47 of the Oklahoma Statutes or any person pleading

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  
24 substance abuse service offered by such person, agency or facility.

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

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

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

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

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

1 Department of Corrections that the best interests of the public and  
2 the release will be served by an extended period of supervision.

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

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

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

18 3. The Department shall establish criteria and specifications  
19 for contracts with counties for such Programs. A county may apply  
20 to the Department for a contract for a county-funded Program for a  
21 specific period of time. The Department shall be responsible for  
22 ensuring that any contracting county complies in full with  
23 specifications and requirements of the contract. The contract shall  
24

1 set appropriate compensation to the county for services to the  
2 Department.

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

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

14 H. As used in this section:

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

20 2. "Electronically monitored home detention" means  
21 incarceration of the defendant within a specified location or  
22 locations with monitoring by means of a device approved by the  
23 Department of Corrections that detects if the person leaves the  
24 confines of any specified location; and

1       3. "Victim impact panel program" means a meeting with at least  
2 one live presenter who will share personal stories with participants  
3 about how alcohol, drug abuse and the illegal conduct of others has  
4 personally impacted the life of the presenter. A victim impact  
5 panel program shall be attended by persons who have committed the  
6 offense of driving, operating or being in actual physical control of  
7 a motor vehicle while under the influence of alcohol or other  
8 intoxicating substance. Persons attending a victim impact panel  
9 program shall be required to pay a fee of not more than Seventy-five  
10 Dollars (\$75.00) to the provider of the program. A certificate of  
11 completion shall be issued to the person upon satisfying the  
12 attendance and fee requirements of the victim impact panel program.  
13 A victim impact panel program shall not be provided by any certified  
14 assessment agency or certified assessor. The provider of the victim  
15 impact panel program shall carry general liability insurance and  
16 maintain an accurate accounting of all business transactions and  
17 funds received in relation to the victim impact panel program.

18       I. A person convicted of a felony offense or receiving any form  
19 of probation for an offense in which registration is required  
20 pursuant to the Sex Offenders Registration Act, shall submit to  
21 deoxyribonucleic acid DNA testing for law enforcement identification  
22 purposes in accordance with Section 150.27 of Title 74 of the  
23 Oklahoma Statutes and the rules promulgated by the Oklahoma State  
24 Bureau of Investigation for the OSBI Combined DNA Index System

1 (CODIS) Database. Subject to the availability of funds, any person  
2 convicted of a misdemeanor offense of assault and battery, domestic  
3 abuse, stalking, possession of a controlled substance prohibited  
4 under Schedule IV of the Uniform Controlled Dangerous Substances  
5 Act, outraging public decency, resisting arrest, escape or  
6 attempting to escape, eluding a police officer, peeping tom,  
7 pointing a firearm, unlawful carry of a firearm, illegal transport  
8 of a firearm, discharging of a firearm, threatening an act of  
9 violence, breaking and entering a dwelling place, destruction of  
10 property, negligent homicide, or causing a personal injury accident  
11 while driving under the influence of any intoxicating substance, or  
12 any alien unlawfully present under federal immigration law, upon  
13 arrest, shall submit to deoxyribonucleic acid DNA testing for law  
14 enforcement identification purposes in accordance with Section  
15 150.27 of Title 74 of the Oklahoma Statutes and the rules  
16 promulgated by the Oklahoma State Bureau of Investigation for the  
17 OSBI Combined DNA Index System (CODIS) Database. Any defendant  
18 sentenced to probation shall be required to submit to testing within  
19 thirty (30) days of sentencing either to the Department of  
20 Corrections or to the county sheriff or other peace officer as  
21 directed by the court. Defendants who are sentenced to a term of  
22 incarceration shall submit to testing in accordance with Section  
23 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who  
24 enter the custody of the Department of Corrections or to the county

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

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

19 J. Samples of blood or saliva for DNA testing required by  
20 subsection I of this section shall be taken by employees or  
21 contractors of the Department of Corrections, peace officers, or the  
22 county sheriff or employees or contractors of the sheriff's office.  
23 The individuals shall be properly trained to collect blood or saliva  
24 samples. Persons collecting blood or saliva for DNA testing

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

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

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

23 Section 991c. A. Upon a verdict or plea of guilty or upon a  
24 plea of nolo contendere, but before a judgment of guilt, the court

1 may, without entering a judgment of guilt and with the consent of  
2 the defendant, defer further proceedings upon the specific  
3 conditions prescribed by the court not to exceed a ten-year period.  
4 The court shall first consider restitution among the various  
5 conditions it may prescribe. The court may also consider ordering  
6 the defendant to:

- 7 1. Pay court costs;
- 8 2. Pay an assessment in lieu of any fine authorized by law for  
9 the offense;
- 10 3. Pay any other assessment or cost authorized by law;
- 11 4. Engage in a term of community service without compensation,  
12 according to a schedule consistent with the employment and family  
13 responsibilities of the defendant;
- 14 5. County jail confinement for a period not to exceed ninety  
15 (90) days or the maximum amount of jail time provided for the  
16 offense, if it is less than ninety (90) days;
- 17 6. Pay an amount as reimbursement for reasonable attorney fees,  
18 to be paid into the court fund, if a court-appointed attorney has  
19 been provided to defendant;
- 20 7. Be supervised in the community for a period not to exceed  
21 two (2) years. As a condition of any supervision, the defendant  
22 shall be required to pay a supervision fee of Forty Dollars (\$40.00)  
23 per month. The supervision fee shall be waived in whole or part by  
24 the supervisory agency when the accused is indigent. No person

1 shall be denied supervision based solely on the inability of the  
2 person to pay a fee;

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

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

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

14 11. Any combination of the above provisions.

15 B. In addition to any conditions of supervision provided for in  
16 subsection A of this section, the court shall, in the case of a  
17 person before the court for the offense of operating or being in  
18 control of a motor vehicle while the person was under the influence  
19 of alcohol, other intoxicating substance, or a combination of  
20 alcohol and another intoxicating substance, or who is before the  
21 court for the offense of operating a motor vehicle while the ability  
22 of the person to operate such vehicle was impaired due to the  
23 consumption of alcohol, require the person to participate in an  
24 alcohol and drug substance abuse evaluation program offered by a

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

1 submitted to the court pursuant to this subsection shall be handled  
2 in a manner which will keep the report confidential from review by  
3 the general public. Nothing contained in this subsection shall be  
4 construed to prohibit the court from ordering judgment and sentence  
5 in the event the defendant fails or refuses to comply with an order  
6 of the court to obtain the evaluation required by this subsection.  
7 As used in this subsection, "qualified practitioner" means a person  
8 with at least a bachelor's degree in substance abuse treatment,  
9 mental health or a related health care field and at least two (2)  
10 years of experience in providing alcohol abuse treatment, other drug  
11 abuse treatment, or both alcohol and other drug abuse treatment who  
12 is certified each year by the Department of Mental Health and  
13 Substance Abuse Services to provide these assessments. However, any  
14 person who does not meet the requirements for a qualified  
15 practitioner as defined herein, but who has been previously  
16 certified by the Department of Mental Health and Substance Abuse  
17 Services to provide alcohol or drug treatment or assessments, shall  
18 be considered a qualified practitioner provided all education,  
19 experience and certification requirements stated herein are met by  
20 September 1, 1995. The court may also require the person to  
21 participate in one or both of the following:

- 22 1. An alcohol and drug substance abuse course, pursuant to  
23 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and  
24

1        2. A victims impact panel program, as defined in subsection H  
2 of Section 991a of this title, if such a program is offered in the  
3 county where the judgment is rendered. The defendant shall be  
4 required to pay a fee, ~~not less than Five Dollars (\$5.00) nor of not~~  
5 ~~more than Fifteen Dollars (\$15.00)~~ Seventy-five Dollars (\$75.00) as  
6 set by the governing authority of the program and approved by the  
7 court, to the victims impact panel program to offset the cost of  
8 participation by the defendant, if in the opinion of the court the  
9 defendant has the ability to pay such fee.

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

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

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

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

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

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

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

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

22          F. The deferred judgment procedure described in this section  
23 shall apply only to defendants who have not been previously  
24 convicted of a felony offense and have not received a deferred

1 judgment for a felony offense within the ten (10) years previous to  
2 the commission of the pending offense.

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

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

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

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

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

23 1. Has a blood or breath alcohol concentration, as defined in  
24 Section 756 of this title, of eight-hundredths (0.08) or more at the

1 time of a test of such person's blood or breath administered within  
2 two (2) hours after the arrest of such person;

3 2. Is under the influence of alcohol;

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

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

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

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

18 a. participate in an assessment and evaluation pursuant to  
19 subsection G of this section and shall follow all  
20 recommendations made in the assessment and evaluation,

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

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

24

1           2. Any person who, during the period of any court-imposed  
2 probationary term or within ten (10) years of the date following the  
3 completion of the execution of any sentence or deferred judgment for  
4 a violation of this section or a violation pursuant to the  
5 provisions of any law of this state or another state prohibiting the  
6 offenses provided in subsection A of this section, Section 11-904 of  
7 this title or paragraph 4 of subsection A of Section 852.1 of Title  
8 21 of the Oklahoma Statutes, commits a second offense pursuant to  
9 the provisions of this section or has a prior conviction in a  
10 municipal criminal court of record for the violation of a municipal  
11 ordinance prohibiting the offense provided for in subsection A of  
12 this section and within ten (10) years of the date following the  
13 completion of the execution of such sentence or deferred judgment  
14 commits a second offense pursuant to the provisions of this section  
15 shall, upon conviction, be guilty of a felony and shall participate  
16 in an assessment and evaluation pursuant to subsection G of this  
17 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                 or
- 21           b. placement in the custody of the Department of  
22                 Corrections for not less than one (1) year and not to  
23                 exceed five (5) years and a fine of not more than Two  
24                 Thousand Five Hundred Dollars (\$2,500.00), or

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  
24

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  
24 subparagraph n of paragraph 1 of subsection A of

1 Section 991a of Title 22 of the Oklahoma Statutes, for  
2 a minimum of thirty (30) days, or

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

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

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

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

22 6. Provided, however, a conviction from another state shall not  
23 be used to enhance punishment pursuant to the provisions of this  
24

1 subsection if that conviction is based on a blood or breath alcohol  
2 concentration of less than eight-hundredths (0.08).

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

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

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

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

24

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

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

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

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

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

10 G. Any person who is found guilty of a violation of the  
11 provisions of this section shall be ordered to participate in an  
12 alcohol and drug substance abuse evaluation and assessment program  
13 offered by a certified assessment agency or certified assessor for  
14 the purpose of evaluating and assessing the receptivity to treatment  
15 and prognosis of the person and shall, at the expense of the  
16 defendant, follow all recommendations made in the assessment and  
17 evaluation for treatment. The court shall order the person to  
18 reimburse the agency or assessor for the evaluation and assessment.  
19 The fee for an evaluation and assessment shall be the amount  
20 provided in subsection C of Section 3-460 of Title 43A of the  
21 Oklahoma Statutes. The evaluation and assessment shall be conducted  
22 at a certified assessment agency, the office of a certified assessor  
23 or at another location as ordered by the court. The agency or  
24 assessor shall, within seventy-two (72) hours from the time the

1 person is evaluated and assessed, submit a written report to the  
2 court for the purpose of assisting the court in its sentencing  
3 determination. The court shall, as a condition of any sentence  
4 imposed, including deferred and suspended sentences, require the  
5 person to participate in and successfully complete all  
6 recommendations from the evaluation, such as an alcohol and  
7 substance abuse treatment program pursuant to Section 3-452 of Title  
8 43A of the Oklahoma Statutes. If such report indicates that the  
9 evaluation and assessment shows that the defendant would benefit  
10 from a ten-hour or twenty-four-hour alcohol and drug substance abuse  
11 course or a treatment program or both, the court shall, as a  
12 condition of any sentence imposed, including deferred and suspended  
13 sentences, require the person to follow all recommendations  
14 identified by the evaluation and assessment and ordered by the  
15 court. No person, agency or facility operating an evaluation and  
16 assessment program certified by the Department of Mental Health and  
17 Substance Abuse Services shall solicit or refer any person evaluated  
18 and assessed pursuant to this section for any treatment program or  
19 substance abuse service in which such person, agency or facility has  
20 a vested interest; however, this provision shall not be construed to  
21 prohibit the court from ordering participation in or any person from  
22 voluntarily utilizing a treatment program or substance abuse service  
23 offered by such person, agency or facility. If a person is  
24 sentenced to imprisonment in the custody of the Department of

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

19 H. Any person who is found guilty of a violation of the  
20 provisions of this section may be required by the court to attend a  
21 victims impact panel program, as defined in subsection H of Section  
22 991a of Title 22 of the Oklahoma Statutes, if such a program is  
23 offered in the county where the judgment is rendered, and to pay a  
24 fee, of not less than Fifteen Dollars (\$15.00) nor more than Twenty-

1 ~~five Dollars (\$25.00)~~ Seventy-five Dollars (\$75.00) as set by the  
2 governing authority of the program and approved by the court, to the  
3 program to offset the cost of participation by the defendant, if in  
4 the opinion of the court the defendant has the ability to pay such  
5 fee.

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

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

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

20 L. 1. When a person is eighteen (18) years of age or older,  
21 and is the driver, operator, or person in physical control of a  
22 vehicle, and is convicted of violating any provision of this section  
23 while transporting or having in the motor vehicle any child less  
24 than eighteen (18) years of age, the fine shall be enhanced to

1 double the amount of the fine imposed for the underlying driving  
2 under the influence (DUI) violation which shall be in addition to  
3 any other penalties allowed by this section.

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

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

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

22 1. The results of any standardized field sobriety test  
23 including, but not limited to, the horizontal gaze nystagmus (HGN)

24

1 test administered by a person who has completed training in  
2 standardized field sobriety testing; or

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

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

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