

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2479

By: Peterson

AS INTRODUCED

An Act relating to drugs; amending 21 O.S. 2011, Section 51.1, which relates to second and subsequent offenses after conviction; providing penalties for subsequent felony offenses; amending 22 O.S. 2011, Section 991a, as last amended by Section 1, Chapter 157, O.S.L. 2014 (22 O.S. Supp. 2015, Section 991a), which relates to sentencing powers of the court; providing sentencing option for persons convicted of certain prohibited acts; amending 63 O.S. 2011, Section 2-402, as amended by Section 10, Chapter 228, O.S.L. 2012 (63 O.S. Supp. 2015, Section 2-402), which relates to the Uniform Controlled Dangerous Substances Act; modifying penalties for certain prohibited acts; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 51.1, is amended to read as follows:

Section 51.1 A. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program and Section ~~3~~ 51.1a of this ~~act~~ title, every person who, having been convicted of any offense punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections, commits any crime after such

conviction, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable therefor as follows:

1. If the offense for which the person is subsequently convicted is an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes and the offense is punishable by imprisonment in the State Penitentiary for a term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term in the range of ten (10) years to life imprisonment.

2. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for any term exceeding five (5) years, such person is punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term in the range of twice the minimum term for a first-time offender to life imprisonment. If the subsequent felony offense does not carry a minimum sentence as a first-time offender, such person is punishable by imprisonment in the ~~State Penitentiary~~ custody of the Department of Corrections for a term in the range of two (2) years to life imprisonment. If the subsequent felony offense is prosecuted pursuant to subsection B of Section 2-402 of Title 63 of the Oklahoma Statutes, such person is punishable by imprisonment in the

1 custody of the Department of Corrections for a term not exceeding
2 twenty-five (25) years.

3 3. If such subsequent offense is such that upon a first
4 conviction the offender would be punishable by imprisonment in the
5 ~~State Penitentiary~~ custody of the Department of Corrections for five
6 (5) years, or any less term, then the person convicted of such
7 subsequent offense is punishable by imprisonment in the ~~State~~
8 ~~Penitentiary~~ custody of the Department of Corrections for a term not
9 exceeding ten (10) years.

10 4. If such subsequent conviction is for petit larceny, the
11 person convicted of such subsequent offense is punishable by
12 imprisonment in the ~~State Penitentiary~~ custody of the Department of
13 Corrections for a term not exceeding five (5) years.

14 B. Every person who, having been twice convicted of felony
15 offenses, commits a subsequent felony offense which is an offense
16 enumerated in Section 571 of Title 57 of the Oklahoma Statutes,
17 within ten (10) years of the date following the completion of the
18 execution of the sentence, and against whom the District Attorney
19 seeks to enhance punishment pursuant to this section of law, is
20 punishable by imprisonment in the ~~State Penitentiary~~ custody of the
21 Department of Corrections for a term in the range of twenty (20)
22 years to life imprisonment. Felony offenses relied upon shall not
23 have arisen out of the same transaction or occurrence or series of
24 events closely related in time and location. Nothing in this

1 section shall abrogate or affect the punishment by death in all
2 crimes now or hereafter made punishable by death.

3 C. Every person who, having been twice convicted of felony
4 offenses, commits a subsequent felony offense within ten (10) years
5 of the date following the completion of the execution of the
6 sentence, and against whom the District Attorney seeks to enhance
7 punishment pursuant to this section of law, is punishable by
8 imprisonment in the ~~State Penitentiary~~ custody of the Department of
9 Corrections for a term in the range of three times the minimum term
10 for a first-time offender to life imprisonment. If the subsequent
11 felony offense does not carry a minimum sentence as a first-time
12 offender, the person is punishable by imprisonment in the ~~State~~
13 ~~Penitentiary~~ custody of the Department of Corrections for a term in
14 the range of four (4) years to life imprisonment. If the subsequent
15 felony offense is prosecuted pursuant to subsection B of Section 2-
16 402 of Title 63 of the Oklahoma Statutes, such person is punishable
17 by imprisonment in the custody of the Department of Corrections for
18 a term not exceeding twenty-five (25) years.

19 D. Felony offenses relied upon shall not have arisen out of the
20 same transaction or occurrence or series of events closely related
21 in time and location. Nothing in this section shall abrogate or
22 affect the punishment by death in all crimes now or hereafter made
23 punishable by death.
24

1 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991a, as
2 last amended by Section 1, Chapter 157, O.S.L. 2014 (22 O.S. Supp.
3 2015, Section 991a), is amended to read as follows:

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

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

- 12 a. to provide restitution to the victim as provided by
13 Section 991f et seq. of this title or according to a
14 schedule of payments established by the sentencing
15 court, together with interest upon any pecuniary sum
16 at the rate of twelve percent (12%) per annum, if the
17 defendant agrees to pay such restitution or, in the
18 opinion of the court, if the defendant is able to pay
19 such restitution without imposing manifest hardship on
20 the defendant or the immediate family and if the
21 extent of the damage to the victim is determinable
22 with reasonable certainty,
- 23 b. to reimburse any state agency for amounts paid by the
24 state agency for hospital and medical expenses

1 incurred by the victim or victims, as a result of the
2 criminal act for which such person was convicted,
3 which reimbursement shall be made directly to the
4 state agency, with interest accruing thereon at the
5 rate of twelve percent (12%) per annum,

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

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

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

19 f. to confinement as provided by law together with a term
20 of post-imprisonment community supervision for not
21 less than three (3) years of the total term allowed by
22 law for imprisonment, with or without restitution;
23 provided, however, the authority of this provision is
24 limited to Section 843.5 of Title 21 of the Oklahoma

1 Statutes when the offense involved sexual abuse or
2 sexual exploitation; Sections 681, 741 and 843.1 of
3 Title 21 of the Oklahoma Statutes when the offense
4 involved sexual abuse or sexual exploitation; and
5 Sections 865 et seq., 885, 886, 888, 891, 1021,
6 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
7 1123 of Title 21 of the Oklahoma Statutes,

8 g. to repay the reward or part of the reward paid by a
9 local certified crime stoppers program and the
10 Oklahoma Reward System. In determining whether the
11 defendant shall repay the reward or part of the
12 reward, the court shall consider the ability of the
13 defendant to make the payment, the financial hardship
14 on the defendant to make the required payment, and the
15 importance of the information to the prosecution of
16 the defendant as provided by the arresting officer or
17 the district attorney with due regard for the
18 confidentiality of the records of the local certified
19 crime stoppers program and the Oklahoma Reward System.
20 The court shall assess this repayment against the
21 defendant as a cost of prosecution. The term
22 "certified" means crime stoppers organizations that
23 annually meet the certification standards for crime
24 stoppers programs established by the Oklahoma Crime

1 Stoppers Association to the extent those standards do
2 not conflict with state statutes. The term "court"
3 refers to all municipal and district courts within
4 this state. The "Oklahoma Reward System" means the
5 reward program established by Section 150.18 of Title
6 74 of the Oklahoma Statutes,

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

18 i. to reimburse the Oklahoma State Bureau of
19 Investigation and any authorized law enforcement
20 agency for all costs incurred by that agency for
21 cleaning up an illegal drug laboratory site for which
22 the defendant pleaded guilty, nolo contendere or was
23 convicted. The court clerk shall collect the amount
24 and may retain five percent (5%) of such monies to be

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

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

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

15 l. to participate in an assessment and evaluation by an
16 assessment agency or assessment personnel certified by
17 the Department of Mental Health and Substance Abuse
18 Services pursuant to Section 3-460 of Title 43A of the
19 Oklahoma Statutes and, as determined by the
20 assessment, participate in an alcohol and drug
21 substance abuse course or treatment program or both,
22 pursuant to Sections 3-452 and 3-453 of Title 43A of
23 the Oklahoma Statutes, or as ordered by the court,
24

1 m. to be placed in a victims impact panel program, as
2 defined in subsection H of this section, or
3 victim/offender reconciliation program and payment of
4 a fee to the program of not less than Fifteen Dollars
5 (\$15.00) nor more than Sixty Dollars (\$60.00) as set
6 by the governing authority of the program to offset
7 the cost of participation by the defendant. Provided,
8 each victim/offender reconciliation program shall be
9 required to obtain a written consent form voluntarily
10 signed by the victim and defendant that specifies the
11 methods to be used to resolve the issues, the
12 obligations and rights of each person, and the
13 confidentiality of the proceedings. Volunteer
14 mediators and employees of a victim/offender
15 reconciliation program shall be immune from liability
16 and have rights of confidentiality as provided in
17 Section 1805 of Title 12 of the Oklahoma Statutes,
18 n. to install, at the expense of the defendant, an
19 ignition interlock device approved by the Board of
20 Tests for Alcohol and Drug Influence. The device
21 shall be installed upon every motor vehicle operated
22 by the defendant, and the court shall require that a
23 notation of this restriction be affixed to the
24 defendant's driver license. The restriction shall

1 remain on the driver license not exceeding two (2)
2 years to be determined by the court. The restriction
3 may be modified or removed only by order of the court
4 and notice of any modification order shall be given to
5 the Department of Public Safety. Upon the expiration
6 of the period for the restriction, the Department of
7 Public Safety shall remove the restriction without
8 further court order. Failure to comply with the order
9 to install an ignition interlock device or operating
10 any vehicle without a device during the period of
11 restriction shall be a violation of the sentence and
12 may be punished as deemed proper by the sentencing
13 court. As used in this paragraph, "ignition interlock
14 device" means a device that, without tampering or
15 intervention by another person, would prevent the
16 defendant from operating a motor vehicle if the
17 defendant has a blood or breath alcohol concentration
18 of two-hundredths (0.02) or greater,

- 19 o. to be confined by electronic monitoring administered
20 and supervised by the Department of Corrections or a
21 community sentence provider, and payment of a
22 monitoring fee to the supervising authority, not to
23 exceed Three Hundred Dollars (\$300.00) per month. Any
24 fees collected pursuant to this paragraph shall be

1 deposited with the appropriate supervising authority.
2 Any willful violation of an order of the court for the
3 payment of the monitoring fee shall be a violation of
4 the sentence and may be punished as deemed proper by
5 the sentencing court. As used in this paragraph,
6 "electronic monitoring" means confinement of the
7 defendant within a specified location or locations
8 with supervision by means of an electronic device
9 approved by the Department of Corrections which is
10 designed to detect if the defendant is in the court-
11 ordered location at the required times and which
12 records violations for investigation by a qualified
13 supervisory agency or person,

14 p. to perform one or more courses of treatment, education
15 or rehabilitation for any conditions, behaviors,
16 deficiencies or disorders which may contribute to
17 criminal conduct, including but not limited to alcohol
18 and substance abuse, mental health, emotional health,
19 physical health, propensity for violence, antisocial
20 behavior, personality or attitudes, deviant sexual
21 behavior, child development, parenting assistance, job
22 skills, vocational-technical skills, domestic
23 relations, literacy, education, or any other
24 identifiable deficiency which may be treated

1 appropriately in the community and for which a
2 certified provider or a program recognized by the
3 court as having significant positive impact exists in
4 the community. Any treatment, education or
5 rehabilitation provider required to be certified
6 pursuant to law or rule shall be certified by the
7 appropriate state agency or a national organization,

8 q. to submit to periodic testing for alcohol,
9 intoxicating substance, or controlled dangerous
10 substances by a qualified laboratory,

11 r. to pay a fee, costs for treatment, education,
12 supervision, participation in a program, or any
13 combination thereof as determined by the court, based
14 upon the defendant's ability to pay the fees or costs,

15 s. to be supervised by a Department of Corrections
16 employee, a private supervision provider, or other
17 person designated by the court,

18 t. to obtain positive behavior modeling by a trained
19 mentor,

20 u. to serve a term of confinement in a restrictive
21 housing facility available in the community,

22 v. to serve a term of confinement in the county jail at
23 night or during weekends pursuant to Section 991a-2 of
24 this title or for work release,

- 1 w. to obtain employment or participate in employment-
2 related activities,
- 3 x. to participate in mandatory day reporting to
4 facilities or persons for services, payments, duties
5 or person-to-person contacts as specified by the
6 court,
- 7 y. to pay day fines not to exceed fifty percent (50%) of
8 the net wages earned. For purposes of this paragraph,
9 "day fine" means the offender is ordered to pay an
10 amount calculated as a percentage of net daily wages
11 earned. The day fine shall be paid to the local
12 community sentencing system as reparation to the
13 community. Day fines shall be used to support the
14 local system,
- 15 z. to submit to blood or saliva testing as required by
16 subsection I of this section,
- 17 aa. to repair or restore property damaged by the
18 defendant's conduct, if the court determines the
19 defendant possesses sufficient skill to repair or
20 restore the property and the victim consents to the
21 repairing or restoring of the property,
- 22 bb. to restore damaged property in kind or payment of out-
23 of-pocket expenses to the victim, if the court is able
24

1 to determine the actual out-of-pocket expenses
2 suffered by the victim,

3 cc. to attend a victim-offender reconciliation program if
4 the victim agrees to participate and the offender is
5 deemed appropriate for participation,

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

15 ee. in the case of a sex offender sentenced after November
16 1, 1989, and required by law to register pursuant to
17 the Sex Offender Registration Act, the court shall
18 require the person to comply with sex offender
19 specific rules and conditions of supervision
20 established by the Department of Corrections and
21 require the person to participate in a treatment
22 program designed for the treatment of sex offenders
23 during the period of time while the offender is
24 subject to supervision by the Department of

1 Corrections. The treatment program shall include
2 polygraph examinations specifically designed for use
3 with sex offenders for purposes of supervision and
4 treatment compliance, and shall be administered not
5 less than each six (6) months during the period of
6 supervision. The examination shall be administered by
7 a certified licensed polygraph examiner. The
8 treatment program must be approved by the Department
9 of Corrections or the Department of Mental Health and
10 Substance Abuse Services. Such treatment shall be at
11 the expense of the defendant based on the defendant's
12 ability to pay,

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

22 gg. in the case of a person convicted of any false or
23 bogus check violation, as defined in Section 1541.4 of
24 Title 21 of the Oklahoma Statutes, impose a fee of

1 Twenty-five Dollars (\$25.00) to the victim for each
2 check, and impose a bogus check fee to be paid to the
3 district attorney. The bogus check fee paid to the
4 district attorney shall be equal to the amount
5 assessed as court costs plus Twenty-five Dollars
6 (\$25.00) for each check upon filing of the case in
7 district court. This money shall be deposited in the
8 Bogus Check Restitution Program Fund as established in
9 subsection B of Section 114 of this title.

10 Additionally, the court may require the offender to
11 pay restitution and bogus check fees on any other
12 bogus check or checks that have been submitted to the
13 District Attorney Bogus Check Restitution Program, and
14 hh. any other provision specifically ordered by the court.

15 However, any such order for restitution, community service,
16 payment to a local certified crime stoppers program, payment to the
17 Oklahoma Reward System, or confinement in the county jail, or a
18 combination thereof, shall be made in conjunction with probation and
19 shall be made a condition of the suspended sentence.

20 However, unless under the supervision of the district attorney,
21 the offender shall be required to pay Forty Dollars (\$40.00) per
22 month to the district attorney during the first two (2) years of
23 probation to compensate the district attorney for the costs incurred
24 during the prosecution of the offender and for the additional work

1 of verifying the compliance of the offender with the rules and
2 conditions of his or her probation. The district attorney may waive
3 any part of this requirement in the best interests of justice. The
4 court shall not waive, suspend, defer or dismiss the costs of
5 prosecution in its entirety. However, if the court determines that
6 a reduction in the fine, costs and costs of prosecution is
7 warranted, the court shall equally apply the same percentage
8 reduction to the fine, costs and costs of prosecution owed by the
9 offender;

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

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

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

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

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

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

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

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

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

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

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

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

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

1 monitoring fee, if willfully disobeyed, may be
2 enforced as an indirect contempt of court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of subsection A of this section. In the case of a person being
2 sentenced for their second or subsequent felony conviction for a
3 violation of Section 2-402 of Title 63 of the Oklahoma Statutes, the
4 court may sentence the person pursuant to the provisions of
5 paragraph 1 of subsection A of this section. Provided, the court
6 may waive these prohibitions upon written application of the
7 district attorney. Both the application and the waiver shall be
8 made part of the record of the case.

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

12 E. Probation, for purposes of subsection A of this section, is
13 a procedure by which a defendant found guilty of a crime, whether
14 upon a verdict or plea of guilty or upon a plea of nolo contendere,
15 is released by the court subject to conditions imposed by the court
16 and subject to supervision by the Department of Corrections, a
17 private supervision provider or other person designated by the
18 court. Such supervision shall be initiated upon an order of
19 probation from the court, and shall not exceed two (2) years, unless
20 a petition alleging a violation of any condition of deferred
21 judgment or seeking revocation of the suspended sentence is filed
22 during the supervision, or as otherwise provided by law. In the
23 case of a person convicted of a sex offense, supervision shall begin
24 immediately upon release from incarceration or if parole is granted

1 and shall not be limited to two (2) years. Provided further, any
2 supervision provided for in this section may be extended for a
3 period not to exceed the expiration of the maximum term or terms of
4 the sentence upon a determination by the court or the Division of
5 Probation and Parole of the Department of Corrections that the best
6 interests of the public and the release will be served by an
7 extended period of supervision.

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

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

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

23 3. The Department shall establish criteria and specifications
24 for contracts with counties for such Programs. A county may apply

1 to the Department for a contract for a county-funded Program for a
2 specific period of time. The Department shall be responsible for
3 ensuring that any contracting county complies in full with
4 specifications and requirements of the contract. The contract shall
5 set appropriate compensation to the county for services to the
6 Department.

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

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

18 H. As used in this section:

19 1. "Ignition interlock device" means a device that, without
20 tampering or intervention by another person, would prevent the
21 defendant from operating a motor vehicle if the defendant has a
22 blood or breath alcohol concentration of two-hundredths (0.02) or
23 greater;
24

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

6 3. "Victims impact panel program" means a meeting with at least
7 one live presenter who will share personal stories with participants
8 about how alcohol, drug abuse and the illegal conduct of others has
9 personally impacted the life of the presenter. A victims impact
10 panel program shall be attended by persons who have committed the
11 offense of driving, operating or being in actual physical control of
12 a motor vehicle while under the influence of alcohol or other
13 intoxicating substance. Persons attending a victims impact panel
14 program shall be required to pay a fee of not less than Fifteen
15 Dollars (\$15.00) nor more than Sixty Dollars (\$60.00) to the
16 provider of the program. A certificate of completion shall be
17 issued to the person upon satisfying the attendance and fee
18 requirements of the victims impact panel program. A victims impact
19 panel program shall not be provided by any certified assessment
20 agency or certified assessor. The provider of the victims impact
21 panel program shall carry general liability insurance and maintain
22 an accurate accounting of all business transactions and funds
23 received in relation to the victims impact panel program.
24

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

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

16 Any person who is incarcerated in the custody of the Department
17 of Corrections after July 1, 1996, and who has not been released
18 before January 1, 2006, shall provide a blood or saliva sample prior
19 to release. Every person subject to DNA testing after January 1,
20 2006, whose sentence does not include a term of confinement with the
21 Department of Corrections shall submit a blood or saliva sample.
22 Every person subject to DNA testing who is sentenced to unsupervised
23 probation or otherwise not supervised by the Department of
24

1 Corrections shall submit for blood or saliva testing to the sheriff
2 of the sentencing county.

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

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

6 SECTION 3. AMENDATORY 63 O.S. 2011, Section 2-402, as
7 amended by Section 10, Chapter 228, O.S.L. 2012 (63 O.S. Supp. 2015,
8 Section 2-402), is amended to read as follows:

9 Section 2-402. A. 1. It shall be unlawful for any person
10 knowingly or intentionally to possess a controlled dangerous
11 substance unless such substance was obtained directly, or pursuant
12 to a valid prescription or order from a practitioner, while acting
13 in the course of his or her professional practice, or except as
14 otherwise authorized by this act.

15 2. It shall be unlawful for any person to purchase any
16 preparation excepted from the provisions of the Uniform Controlled
17 Dangerous Substances Act pursuant to Section 2-313 of this title in
18 an amount or within a time interval other than that permitted by
19 Section 2-313 of this title.

20 3. It shall be unlawful for any person or business to sell,
21 market, advertise or label any product containing ephedrine, its
22 salts, optical isomers, or salts of optical isomers, for the
23 indication of stimulation, mental alertness, weight loss, appetite
24 control, muscle development, energy or other indication which is not

1 approved by the pertinent federal OTC Final Monograph, Tentative
2 Final Monograph, or FDA-approved new drug application or its legal
3 equivalent. In determining compliance with this requirement, the
4 following factors shall be considered:

- 5 a. the packaging of the product,
- 6 b. the name of the product, and
- 7 c. the distribution and promotion of the product,
8 including verbal representations made at the point of
9 sale.

10 B. Any person who violates this section with respect to:

11 1. Any Schedule I or II substance, except marihuana or a
12 substance included in subsection D of Section 2-206 of this title,
13 is guilty of a felony punishable by imprisonment for not ~~less than~~
14 ~~two (2) years nor~~ more than ten (10) years and by a fine not
15 exceeding Five Thousand Dollars (\$5,000.00). A second or subsequent
16 violation of this section with respect to Schedule I or II
17 substance, except marijuana or a substance included in subsection D
18 of Section 2-206 of this title, is a felony punishable by
19 imprisonment for not ~~less than four (4) years nor~~ more than twenty
20 (20) years and by a fine not exceeding Ten Thousand Dollars
21 (\$10,000.00);

22 2. Any Schedule III, IV or V substance, marihuana, a substance
23 included in subsection D of Section 2-206 of this title, or any
24 preparation excepted from the provisions of the Uniform Controlled

1 Dangerous Substances Act is guilty of a misdemeanor punishable by
2 confinement for not more than one (1) year and by a fine not
3 exceeding One Thousand Dollars (\$1,000.00);

4 3. Any Schedule III, IV or V substance, marijuana, a substance
5 included in subsection D of Section 2-206 of this title, or any
6 preparation excepted from the provisions of the Uniform Controlled
7 Dangerous Substances Act and who, during the period of any court-
8 imposed probationary term or within ten (10) years of the date
9 following the completion of the execution of any sentence or
10 deferred judgment for a violation of this section, commits a second
11 or subsequent violation of this section shall, upon conviction, be
12 guilty of a felony punishable by imprisonment in the custody of the
13 Department of Corrections for not ~~less than two (2) years nor~~ more
14 than ten (10) years and by a fine not exceeding Five Thousand
15 Dollars (\$5,000.00); or

16 4. Any Schedule III, IV or V substance, marijuana, a substance
17 included in subsection D of Section 2-206 of this title, or any
18 preparation excepted from the provisions of the Uniform Controlled
19 Dangerous Substances Act and who, ten (10) or more years following
20 the date of completion of the execution of any sentence or deferred
21 judgment for a violation of this section, commits a second or
22 subsequent violation of this section shall, upon conviction, be
23 guilty of a felony punishable by imprisonment in the custody of the
24 Department of Corrections for not ~~less than one (1) year nor~~ more

1 than five (5) years and by a fine not exceeding Five Thousand
2 Dollars (\$5,000.00).

3 C. Any person who violates any provision of this section by
4 possessing or purchasing a controlled dangerous substance from any
5 person, in or on, or within one thousand (1,000) feet of the real
6 property comprising a public or private elementary or secondary
7 school, public vocational school, public or private college or
8 university, or other institution of higher education, recreation
9 center or public park, including state parks and recreation areas,
10 or in the presence of any child under twelve (12) years of age,
11 shall be guilty of a felony and punished by:

12 1. For a first offense, a term of imprisonment, or by the
13 imposition of a fine, or by both, not exceeding twice that
14 authorized by the appropriate provision of this section. In
15 addition, the person shall serve a minimum of fifty percent (50%) of
16 the sentence received prior to becoming eligible for state
17 correctional institution earned credits toward the completion of
18 said sentence; or

19 2. For a second or subsequent offense, a term of imprisonment
20 not exceeding three times that authorized by the appropriate
21 provision of this section and the person shall serve a minimum of
22 ninety percent (90%) of the sentence received prior to becoming
23 eligible for state correctional institution earned credits toward
24

1 the completion of said sentence, and imposition of a fine not
2 exceeding Ten Thousand Dollars (\$10,000.00).

3 D. Any person convicted of any offense described in this
4 section shall, in addition to any fine imposed, pay a special
5 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
6 deposited into the Trauma Care Assistance Revolving Fund created in
7 Section 1-2530.9 of this title.

8 SECTION 4. This act shall become effective November 1, 2016.

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