

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 934

By: Brecheen

6 AS INTRODUCED

7 An Act relating to drug courts; amending 22 O.S.
8 2011, Section 471.1, as amended by Section 1, Chapter
222, O.S.L. 2016 (22 O.S. Supp. 2017, Section 471.1),
9 which relates to drug court programs; making certain
allowances; directing the Administrative Office of
10 the Courts to promulgate rules, procedures and forms;
requiring Department of Mental Health to provide
11 substance abuse assessments; amending 22 O.S. 2011,
Section 991a, as last amended by Section 1, Chapter
313, O.S.L. 2017 (22 O.S. Supp. 2017, Section 991a),
12 which relates to sentencing powers of the courts;
allowing the courts to recommend program within
13 misdemeanor drug court under certain considerations;
allowing for the consideration of an offender into
14 the program; providing for consideration of sanctions
as part of treatment plan; providing for the
15 consideration of electronic monitoring supervision;
defining term; providing that offender is liable for
16 certain expenses; directing certain reimbursement;
requiring certain continuation of treatment;
17 requiring evaluation of providers; requiring certain
provider to be certified; directing certain
18 utilization; and providing an effective date.

19
20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 22 O.S. 2011, Section 471.1, as
22 amended by Section 1, Chapter 222, O.S.L. 2016 (22 O.S. Supp. 2017,
23 Section 471.1), is amended to read as follows:
24

1 Section 471.1 A. For purposes of ~~this act~~ the Oklahoma Drug
2 Court Act, "drug court", "drug court program" or "program" means an
3 immediate and highly structured judicial intervention process for
4 substance abuse treatment of eligible offenders which expedites the
5 criminal case, and requires successful completion of the plea
6 agreement.

7 B. Each district court of this state is authorized to establish
8 a drug court program pursuant to the provisions of this act, subject
9 to availability of funds. Juvenile drug courts may be established
10 based upon the provisions of this act; provided, however, juveniles
11 shall not be held, processed, or treated in any manner which
12 violates any provision of Title 10A of the Oklahoma Statutes.

13 C. Drug court programs shall not apply to any violent criminal
14 offense. Eligible offenses may further be restricted by the rules
15 of the specific drug court program. Nothing in this act shall be
16 construed to require a drug court to consider every offender with a
17 treatable condition or addiction, regardless of the fact that the
18 controlling offense is eligible for consideration in the program.
19 Traditional prosecution shall be required where an offender is
20 determined not appropriate for the drug court program.

21 D. Drug court programs shall require a separate judicial
22 processing system differing in practice and design from the
23 traditional adversarial criminal prosecution and trial systems.
24 Whenever possible, a drug court team shall be designated consisting

1 of a judge to administer the program, a district attorney, a defense
2 attorney, and other persons designated by the drug court team who
3 shall have appropriate understanding of the goals of the program and
4 of the appropriate treatment methods for the various conditions.
5 The assignment of any person to the drug court team shall not
6 preclude the assigned person from performing other duties required
7 in the course of their office or employment. The chief judge of the
8 judicial district, or if the district has more than one chief judge
9 than the presiding judge of the Administrative Judicial District,
10 shall designate one or more judges to administer the drug court
11 program. The assignment of any judge to a drug court program or the
12 designation of a drug court docket shall not mandate the assignment
13 of all substance abuse related cases to the drug court docket or the
14 program; however, nothing in this act shall be construed to preclude
15 the assignment of all criminal cases relating to substance abuse or
16 drug possession as provided by the rules established for the
17 specific drug court program.

18 E. When a drug court program is established, the arresting
19 officer shall file the criminal case record for potentially eligible
20 offenders with the district attorney within four (4) days of the
21 arrest. The district attorney shall file an information in the case
22 within twenty-four (24) hours of receipt of the criminal case record
23 when the offender appears eligible for consideration for the
24 program. The information may be amended as necessary when an

1 offender is denied admittance into the drug court program or for
2 other purposes as provided in Section 304 of this title. Any person
3 arrested upon a warrant for his or her arrest shall not be eligible
4 for the drug court program without the approval of the district
5 attorney. Any criminal case which has been filed and processed in
6 the traditional manner shall be cross-referenced to a drug court
7 case file by the court clerk, if the case is subsequently assigned
8 to the drug court program. The originating criminal case file shall
9 remain open to public inspection. The judge shall determine what
10 information or pleadings are to be retained in the drug court case
11 file, which shall be closed to public inspection.

12 F. The court may request assistance from the Department of
13 Mental Health and Substance Abuse Services which shall be the
14 primary agency to assist in developing and implementing a drug court
15 program or from any state or local agency in obtaining the necessary
16 treatment services which will assure maximum opportunity for
17 successful treatment, education, and rehabilitation for offenders
18 admitted to the program. All participating state and local agencies
19 are directed to coordinate with each other and cooperate in
20 assisting the district court in establishing a drug court program.

21 G. Each drug court program shall ensure, but not be limited to:

22 1. Strong linkage between participating agencies;

23 2. Access by all participating parties of a case to information
24 on the progress of the offender;

- 1 3. Vigilant supervision and monitoring procedures;
- 2 4. Random substance abuse testing;
- 3 5. Provisions for noncompliance, modification of the treatment
- 4 plan, and revocation proceedings;
- 5 6. Availability of residential treatment facilities and
- 6 outpatient services;
- 7 7. Payment of court costs, treatment costs, supervision fees,
- 8 and program user fees by the offender;
- 9 8. Methods for measuring application of disciplinary sanctions,
- 10 including provisions for:
 - 11 a. increased supervision,
 - 12 b. urinalysis testing,
 - 13 c. intensive treatment,
 - 14 d. short-term confinement not to exceed five (5) days,
 - 15 e. recycling the offender into the program after a
 - 16 disciplinary action for a minimum violation of the
 - 17 treatment plan,
 - 18 f. reinstating the offender into the program after a
 - 19 disciplinary action for a major violation of the
 - 20 treatment plan, and
 - 21 g. revocation from the program; and
- 22 9. Methods for measuring performance-based effectiveness of
- 23 each individual treatment provider's services.
- 24

1 H. All drug court programs shall be required to keep reliable
2 data on recidivism, relapse, restarts, sanctions imposed, and
3 incentives given.

4 I. ~~Nothing~~ Subject to the availability of funds, nothing in
5 this section shall prohibit any county from establishing a drug
6 court for misdemeanor offenses. Such misdemeanor drug courts shall
7 follow the rules and regulations of felony drug courts except that
8 the penalty for revocation shall not exceed one (1) year in the
9 county jail or the maximum penalty for the misdemeanor allowed by
10 statute, whichever is less. The Administrative Office of the Courts
11 shall promulgate rules, procedures and forms for misdemeanor drug
12 courts that are established to operate in conjunction with an
13 existing felony drug court program. The Department of Mental Health
14 and Substance Abuse Services shall provide technical assistance and
15 substance abuse assessments to the counties that establish
16 misdemeanor drug courts.

17 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991a, as
18 last amended by Section 1, Chapter 313, O.S.L. 2017 (22 O.S. Supp.
19 2017, Section 991a), is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the governing authority of the program to offset the cost of participation by the defendant. Provided, each victim/offender reconciliation program shall be required to obtain a written consent form voluntarily signed by the victim and defendant that specifies the methods to be used to resolve the issues, the obligations and rights of each person, and the confidentiality of the proceedings. Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability and have rights of confidentiality as provided in Section 1805 of Title 12 of the Oklahoma Statutes,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 However, unless under the supervision of the district attorney,
16 the offender shall be required to pay Forty Dollars (\$40.00) per
17 month to the district attorney during the first two (2) years of
18 probation to compensate the district attorney for the costs incurred
19 during the prosecution of the offender and for the additional work
20 of verifying the compliance of the offender with the rules and
21 conditions of his or her probation. The district attorney may waive
22 any part of this requirement in the best interests of justice. The
23 court shall not waive, suspend, defer or dismiss the costs of
24 prosecution in its entirety. However, if the court determines that

1 a reduction in the fine, costs and costs of prosecution is
2 warranted, the court shall equally apply the same percentage
3 reduction to the fine, costs and costs of prosecution owed by the
4 offender;

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

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

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

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

1 to be deposited in the Court Clerk Revolving Fund to cover
2 administrative costs and shall remit the remainder to the Oklahoma
3 State Bureau of Investigation to be deposited in the OSBI Revolving
4 Fund established by Section 150.19a of Title 74 of the Oklahoma
5 Statutes;

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

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

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

- 1 b. to attend a victims impact panel program, as defined
2 in subsection H of this section, and to pay a fee of
3 not more than Sixty Dollars (\$60.00) as set by the
4 governing authority of the program and approved by the
5 court, to the program to offset the cost of
6 participation by the defendant, if in the opinion of
7 the court the defendant has the ability to pay such
8 fee,
- 9 c. to both participate in the alcohol and drug substance
10 abuse course or treatment program, pursuant to
11 subparagraph a of this paragraph and attend a victims
12 impact panel program, pursuant to subparagraph b of
13 this paragraph,
- 14 d. to install, at the expense of the person, an ignition
15 interlock device approved by the Board of Tests for
16 Alcohol and Drug Influence, upon every motor vehicle
17 operated by such person and to require that a notation
18 of this restriction be affixed to the person's driver
19 license at the time of reinstatement of the license.
20 The restriction shall remain on the driver license for
21 such period as the court shall determine. The
22 restriction may be modified or removed by order of the
23 court and notice of the order shall be given to the
24 Department of Public Safety. Upon the expiration of

1 the period for the restriction, the Department of
2 Public Safety shall remove the restriction without
3 further court order. Failure to comply with the order
4 to install an ignition interlock device or operating
5 any vehicle without such device during the period of
6 restriction shall be a violation of the sentence and
7 may be punished as deemed proper by the sentencing
8 court, or

9 e. beginning January 1, 1993, to submit to electronically
10 monitored home detention administered and supervised
11 by the Department of Corrections, and to pay to the
12 Department a monitoring fee, not to exceed Seventy-
13 five Dollars (\$75.00) a month, to the Department of
14 Corrections, if in the opinion of the court the
15 defendant has the ability to pay such fee. Any fees
16 collected pursuant to this subparagraph shall be
17 deposited in the Department of Corrections Revolving
18 Fund. Any order by the court for the payment of the
19 monitoring fee, if willfully disobeyed, may be
20 enforced as an indirect contempt of court;

21 8. In addition to the other sentencing powers of the court, in
22 the case of a person convicted of prostitution pursuant to Section
23 1029 of Title 21 of the Oklahoma Statutes, require such person to
24 receive counseling for the behavior which may have caused such

1 person to engage in prostitution activities. Such person may be
2 required to receive counseling in areas including but not limited to
3 alcohol and substance abuse, sexual behavior problems, or domestic
4 abuse or child abuse problems;

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

12 10. In addition to the other sentencing powers of the court,
13 the court, in the case of a sex offender sentenced after November 1,
14 1989, and required by law to register pursuant to the Sex Offenders
15 Registration Act, shall require the person to participate in a
16 treatment program designed specifically for the treatment of sex
17 offenders, if available. The treatment program will include
18 polygraph examinations specifically designed for use with sex
19 offenders for the purpose of supervision and treatment compliance,
20 provided the examination is administered by a certified licensed
21 polygraph examiner. The treatment program must be approved by the
22 Department of Corrections or the Department of Mental Health and
23 Substance Abuse Services. Such treatment shall be at the expense of
24 the defendant based on the defendant's ability to pay;

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

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

13 13. In addition to the other sentencing powers of the court, a
14 sex offender who is habitual or aggravated as defined by Section 584
15 of Title 57 of the Oklahoma Statutes and who is required to register
16 as a sex offender pursuant to the Oklahoma Sex Offenders
17 Registration Act shall be supervised by the Department of
18 Corrections for the duration of the registration period and shall be
19 assigned to a global position monitoring device by the Department of
20 Corrections for the duration of the registration period. The cost
21 of such monitoring device shall be reimbursed by the offender;

22 14. In addition to the other sentencing powers of the court, in
23 the case of a sex offender who is required by law to register
24 pursuant to the Sex Offenders Registration Act, the court may

1 prohibit the person from accessing or using any Internet social
2 networking ~~web site~~ website that has the potential or likelihood of
3 allowing the sex offender to have contact with any child who is
4 under the age of eighteen (18) years; ~~or~~

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

13 16. In addition to the other sentencing powers of the court, in
14 the case of an offender being convicted of a misdemeanor drug
15 offense, the court may recommend to the drug court team the offender
16 is eligible for a twelve-month program within misdemeanor drug
17 court. At the initial hearing for consideration of an offender for
18 a misdemeanor drug court program, the district attorney shall
19 determine whether or not the offender has approval to be considered
20 for the program, whether the offender has been admitted to a drug
21 court program within the preceding five (5) years and if any
22 statutory preclusion, other prohibition, or program limitation
23 exists and is applicable to considering the offender for the
24 program. The district attorney may object to the consideration of

1 an offender for the misdemeanor drug court program at the initial
2 hearing. Upon an objection by the district attorney, the court
3 shall deny consideration of the offender for participation in the
4 misdemeanor drug court program and the criminal case shall proceed
5 in the traditional manner. The misdemeanor drug court program may
6 include progressive sanctions that shall be recognized as part of
7 the offender's treatment plan. Approved sanctions shall include,
8 but not be limited to:

- 9 a. real-time electronic monitoring that may be used in
10 conjunction with daily reporting requirements,
- 11 b. community service,
- 12 c. increased substance abuse testing,
- 13 d. confinement in the home of the offender or other
14 suitable location, or permission for a pre-approved
15 schedule with mobility, or
- 16 e. participation in a county work release program as
17 provided in Section 533 of Title 19 of the Oklahoma
18 Statutes.

19 Upon a recommendation by the drug court team, the offender may
20 be supervised by electronic monitoring administered by the county
21 sheriff or the court designee. Provided, the sheriff or court
22 designee has the capacity to electronically monitor the offender
23 twenty-four (24) hours per day, seven (7) days per week with real-
24 time monitoring that shall immediately notify the sheriff or

1 designee of the court of a violation of the confinement order. A
2 sheriff or designee of the court may contract for such electronic
3 monitoring with a private vendor. The private vendor shall have the
4 capacity to electronically monitor offenders twenty-four (24) hours
5 a day, seven (7) days a week with real-time monitoring that utilizes
6 two separate monitoring technologies with automatic rollover
7 capabilities for redundancy, and that immediately notifies the
8 sheriff or designee of the sheriff of a violation of the terms of
9 confinement. The court shall designate the specific locations of
10 confinement and the rules of confinement. The court may revoke the
11 order for electronic monitoring at any time for a violation of the
12 order. As used in this paragraph, "electronic monitoring" means
13 confinement of the offender within a specified location or locations
14 with supervision by means of an electronic device which is designed
15 to detect if the offender is in the court-ordered location at the
16 required time and record any violations of the confinement order.
17 While the offender is electronically confined within a specified
18 location or locations the offender shall be responsible for his or
19 her living expenses, including medical care and treatment expenses.
20 The county shall bear no liability for such living and medical care
21 and treatment expenses of the offender. If the offender is unable
22 to assume such responsibility, the offender shall not be eligible
23 for electronic monitoring.
24

1 If the offender is confined in a specific location or locations
2 under electronic supervision as ordered by the court pursuant to
3 this paragraph, the state shall reimburse the sheriff or the court
4 designee the actual per-day monitoring fee for each offender during
5 such period of monitoring. The proceeds of this reimbursement shall
6 be used to defray expenses relating to monitoring offenders who are
7 on electronic monitoring.

8 When the court sanctions an offender to confinement in the
9 county jail or supervision by electronic monitoring, the offender
10 shall continue to receive treatment and counseling from treatment
11 providers certified by the Department of Mental Health and Substance
12 Abuse Services as required under the provisions of the Oklahoma Drug
13 Court Act.

14 In addition to certification, participating treatment providers
15 shall be selected and evaluated for performance-based effectiveness
16 annually by the Department of Mental Health and Substance Abuse
17 Services.

18 Private supervision providers who are performing any type of
19 supervision services pursuant to the provisions of this paragraph
20 shall be certified by the Council on Law Enforcement Education and
21 Training.

22 Offenders participating in the misdemeanor drug court program
23 who are in need of employment counseling and assistance shall
24

1 utilize the local area workforce development centers that are
2 located throughout the state.

3 B. Notwithstanding any other provision of law, any person who
4 is found guilty of a violation of any provision of Section 761 or
5 11-902 of Title 47 of the Oklahoma Statutes or any person pleading
6 guilty or nolo contendere for a violation of any provision of such
7 sections shall be ordered to participate in, prior to sentencing, an
8 alcohol and drug assessment and evaluation by an assessment agency
9 or assessment personnel certified by the Department of Mental Health
10 and Substance Abuse Services for the purpose of evaluating the
11 receptivity to treatment and prognosis of the person. The court
12 shall order the person to reimburse the agency or assessor for the
13 evaluation. The fee shall be the amount provided in subsection C of
14 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation
15 shall be conducted at a certified assessment agency, the office of a
16 certified assessor or at another location as ordered by the court.
17 The agency or assessor shall, within seventy-two (72) hours from the
18 time the person is assessed, submit a written report to the court
19 for the purpose of assisting the court in its final sentencing
20 determination. No person, agency or facility operating an alcohol
21 and drug substance abuse evaluation program certified by the
22 Department of Mental Health and Substance Abuse Services shall
23 solicit or refer any person evaluated pursuant to this subsection
24 for any treatment program or alcohol and drug substance abuse

1 service in which such person, agency or facility has a vested
2 interest; however, this provision shall not be construed to prohibit
3 the court from ordering participation in or any person from
4 voluntarily utilizing a treatment program or alcohol and drug
5 substance abuse service offered by such person, agency or facility.
6 If a person is sentenced to the custody of the Department of
7 Corrections and the court has received a written evaluation report
8 pursuant to this subsection, the report shall be furnished to the
9 Department of Corrections with the judgment and sentence. Any
10 evaluation report submitted to the court pursuant to this subsection
11 shall be handled in a manner which will keep such report
12 confidential from the general public's review. Nothing contained in
13 this subsection shall be construed to prohibit the court from
14 ordering judgment and sentence in the event the defendant fails or
15 refuses to comply with an order of the court to obtain the
16 evaluation required by this subsection.

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

1 Oklahoma Statutes, except as otherwise provided in this subsection.
2 In the case of a person being sentenced for their second or
3 subsequent felony conviction for violation of Section 11-902 of
4 Title 47 of the Oklahoma Statutes, the court may sentence the person
5 pursuant to the provisions of paragraph 1 of subsection A of this
6 section if the court orders the person to submit to electronically
7 monitored home detention administered and supervised by the
8 Department of Corrections pursuant to subparagraph e of paragraph 7
9 of subsection A of this section. Provided, the court may waive
10 these prohibitions upon written application of the district
11 attorney. Both the application and the waiver shall be made part of
12 the record of the case.

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

16 E. Probation, for purposes of subsection A of this section, is
17 a procedure by which a defendant found guilty of a crime, whether
18 upon a verdict or plea of guilty or upon a plea of nolo contendere,
19 is released by the court subject to conditions imposed by the court
20 and subject to supervision by the Department of Corrections, a
21 private supervision provider or other person designated by the
22 court. Such supervision shall be initiated upon an order of
23 probation from the court, and shall not exceed two (2) years, unless
24 a petition alleging a violation of any condition of deferred

1 judgment or seeking revocation of the suspended sentence is filed
2 during the supervision, or as otherwise provided by law. In the
3 case of a person convicted of a sex offense, supervision shall begin
4 immediately upon release from incarceration or if parole is granted
5 and shall not be limited to two (2) years. Provided further, any
6 supervision provided for in this section may be extended for a
7 period not to exceed the expiration of the maximum term or terms of
8 the sentence upon a determination by the court or the Division of
9 Probation and Parole of the Department of Corrections that the best
10 interests of the public and the release will be served by an
11 extended period of supervision.

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

18 G. 1. The Department of Corrections is hereby authorized,
19 subject to funds available through appropriation by the Legislature,
20 to contract with counties for the administration of county Community
21 Service Sentencing Programs.

22 2. Any offender eligible to participate in the Program pursuant
23 to this section shall be eligible to participate in a county
24 Program; provided, participation in county-funded Programs shall not

1 be limited to offenders who would otherwise be sentenced to
2 confinement with the Department of Corrections.

3 3. The Department shall establish criteria and specifications
4 for contracts with counties for such Programs. A county may apply
5 to the Department for a contract for a county-funded Program for a
6 specific period of time. The Department shall be responsible for
7 ensuring that any contracting county complies in full with
8 specifications and requirements of the contract. The contract shall
9 set appropriate compensation to the county for services to the
10 Department.

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

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

22 H. As used in this section:

23 1. "Ignition interlock device" means a device that, without
24 tampering or intervention by another person, would prevent the

1 defendant from operating a motor vehicle if the defendant has a
2 blood or breath alcohol concentration of two-hundredths (0.02) or
3 greater;

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

9 3. "Victims impact panel program" means a program conducted by
10 a corporation registered with the Secretary of State in Oklahoma for
11 the purpose of operating a victims impact panel program. The
12 program shall include live presentations from presenters who will
13 share personal stories with participants about how alcohol, drug
14 abuse, the operation of a motor vehicle while using an electronic
15 communication device or the illegal conduct of others has personally
16 impacted the lives of the presenters. A victims impact panel
17 program shall be attended by persons who have committed the offense
18 of driving, operating or being in actual physical control of a motor
19 vehicle while under the influence of alcohol or other intoxicating
20 substance, operating a motor vehicle while the ability of the person
21 to operate such vehicle was impaired due to the consumption of
22 alcohol or any other substance or operating a motor vehicle while
23 using an electronic device. Persons attending a victims impact
24 panel program shall be required to pay a fee of not more than Sixty

1 Dollars (\$60.00) to the provider of the program. A certificate of
2 completion shall be issued to the person upon satisfying the
3 attendance and fee requirements of the victims impact panel program.
4 The certificate of completion shall contain the business
5 identification number of the program provider. A victims impact
6 panel program shall not be provided by any certified assessment
7 agency or certified assessor unless the assessment agency or
8 certified assessor has been granted an exemption by the Commissioner
9 of the Department of Mental Health and Substance Abuse Services.
10 The provider of the victims impact panel program shall carry general
11 liability insurance and maintain an accurate accounting of all
12 business transactions and funds received in relation to the victims
13 impact panel program. The provider of the victims impact panel
14 program shall annually provide to the Administrative Office of the
15 Courts the following:

- 16 a. proof of registration with the Oklahoma Secretary of
17 State,
- 18 b. proof of general liability insurance,
- 19 c. end-of-year financial statements prepared by a
20 certified public accountant, and
- 21 d. a copy of federal income tax returns filed with the
22 Internal Revenue Service.

23 I. A person convicted of a felony offense or receiving any form
24 of probation for an offense in which registration is required

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

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

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

24

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

22 K. When sentencing a person who has been convicted of a crime
23 that would subject that person to the provisions of the Sex
24 Offenders Registration Act, neither the court nor the district

1 attorney shall be allowed to waive or exempt such person from the
2 registration requirements of the Sex Offenders Registration Act.

3 SECTION 3. This act shall become effective November 1, 2018.

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