

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3439

By: Bush

6 AS INTRODUCED

7 An Act relating to DNA testing requirements; amending  
8 Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp.  
9 2017, Section 210), which relates to DNA collection  
10 and testing upon arrest; updating statutory  
11 reference; modifying DNA collection and test kit  
12 requirements; providing exception for Rapid DNA  
13 testing; defining term; 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),  
which relates to sentencing powers of the court;  
modifying DNA collection and test kit requirements;  
providing exception for Rapid DNA testing; defining  
term; and providing an effective date.

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

17 SECTION 1. AMENDATORY Section 1, Chapter 181, O.S.L.  
18 2016 (22 O.S. Supp. 2017, Section 210), is amended to read as  
19 follows:

20 Section 210. A. Subject to the availability of funds, a person  
21 eighteen (18) years of age or older who is arrested for the  
22 commission of a felony under the laws of this state or any other  
23 jurisdiction shall, upon being booked into a jail or detention  
24 facility, submit to deoxyribonucleic acid (DNA) testing for law

1 enforcement identification purposes in accordance with Section  
2 150.27a of Title 74 of the Oklahoma Statutes and the rules  
3 promulgated by the Oklahoma State Bureau of Investigation (OSBI) for  
4 the OSBI Combined DNA Index System (CODIS) Database. DNA samples  
5 shall be collected by the arresting authority as qualified pursuant  
6 to subsection B of this section. Convicted or arrested individuals  
7 who have previously submitted to DNA testing pursuant to this  
8 section or Section 991a of ~~Title 22 of the Oklahoma Statutes~~ this  
9 title and for whom a valid sample is on file in the OSBI CODIS  
10 Database shall not be required to submit to additional testing.

11 B. Samples of blood or saliva for DNA testing required by  
12 subsection A of this section shall be taken by peace officers, the  
13 county sheriff or employees or contractors of the county sheriff's  
14 office. The individuals shall be properly trained to collect blood  
15 or saliva samples. Persons collecting blood or saliva for DNA  
16 testing pursuant to this section shall be immune from civil  
17 liabilities arising from this activity. ~~All~~ Except for those  
18 criminal justice agencies using Rapid DNA instruments and resulting  
19 DNA analysis, all collectors of DNA samples shall ensure the  
20 collected samples are mailed or delivered to the OSBI, an accredited  
21 laboratory operating under contract with the OSBI or an accredited  
22 laboratory operated by a municipality or county, for the purpose of  
23 conducting DNA testing within ten (10) days after the DNA sample is  
24 collected from the person. ~~All~~ Except for those criminal justice

1 agencies using Rapid DNA instruments and resulting DNA analysis, all  
2 collectors of DNA samples shall use sample kits provided by one of  
3 the following:

4 1. The OSBI and;

5 2. An accredited laboratory operating under contract with the  
6 OSBI; or

7 3. An accredited laboratory operated by a municipality or  
8 county.

9 Collection procedures promulgated by the OSBI shall be followed  
10 by the collectors of DNA samples. Upon completion of any DNA  
11 testing, the results of the analysis and all data related to the  
12 testing shall be submitted to the OSBI Combined DNA Index System  
13 (CODIS) Database for the purpose of storing and maintaining the  
14 records and samples of the collected DNA.

15 As used in this subsection, the term "Rapid DNA instruments"  
16 means instrumentation that carries out a fully automated process to  
17 derive a DNA analysis from a DNA sample.

18 C. A DNA sample shall not be analyzed and shall be destroyed  
19 unless one of the following conditions has been met:

20 1. The arrest was made upon a valid felony arrest warrant;

21 2. The person has appeared before a judge or magistrate judge  
22 who made a finding that there was probable cause for the arrest; or  
23  
24

1        3. The person posted bond or was released prior to appearing  
2 before a judge or magistrate judge and then failed to appear for a  
3 scheduled hearing.

4        D. All DNA samples, records and identifiable information  
5 generated pursuant to the provisions of this section shall be  
6 automatically expunged from the OSBI Combined DNA Index System  
7 (CODIS) Database under the following circumstances:

8        1. The felony offense for which the person was arrested does  
9 not result in charges either by information or indictment and the  
10 statute of limitations has expired;

11       2. The state voluntarily dismissed the felony charge filed  
12 against the person; or

13       3. The court dismissed the felony charge filed against the  
14 person.

15       The Oklahoma State Bureau of Investigation shall promulgate  
16 rules establishing procedures relating to the automatic expungement  
17 of DNA samples, records and identifiable information collected under  
18 the provisions of this section. Fees related to the expungement of  
19 DNA samples, records and identifiable information shall not be  
20 assessed for persons who qualify for an automatic expungement under  
21 the provisions of this subsection.

22       SECTION 2.        AMENDATORY        22 O.S. 2011, Section 991a, as  
23 last amended by Section 1, Chapter 313, O.S.L. 2017 (22 O.S. Supp.  
24 2017, Section 991a), is amended to read as follows:

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

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

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

20           b. to reimburse any state agency for amounts paid by the  
21           state agency for hospital and medical expenses  
22           incurred by the victim or victims, as a result of the  
23           criminal act for which such person was convicted,  
24           which reimbursement shall be made directly to the

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

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

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

1 this state. The "Oklahoma Reward System" means the  
2 reward program established by Section 150.18 of Title  
3 74 of the Oklahoma Statutes,

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

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



1 deposited in the OSBI Revolving Fund established by  
2 Section 150.19a of Title 74 of the Oklahoma Statutes  
3 or to the general fund wherein the other law  
4 enforcement agency is located,

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

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

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

21 m. to be placed in a victims impact panel program, as  
22 defined in subsection H of this section, or  
23 victim/offender reconciliation program and payment of  
24 a fee to the program of not less than Fifteen Dollars

(\$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

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

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

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

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

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

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 that has the potential or likelihood of allowing  
3 the sex offender to have contact with any child who is under the age  
4 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.

13 B. Notwithstanding any other provision of law, any person who  
14 is found guilty of a violation of any provision of Section 761 or  
15 11-902 of Title 47 of the Oklahoma Statutes or any person pleading  
16 guilty or nolo contendere for a violation of any provision of such  
17 sections shall be ordered to participate in, prior to sentencing, an  
18 alcohol and drug assessment and evaluation by an assessment agency  
19 or assessment personnel certified by the Department of Mental Health  
20 and Substance Abuse Services for the purpose of evaluating the  
21 receptivity to treatment and prognosis of the person. The court  
22 shall order the person to reimburse the agency or assessor for the  
23 evaluation. The fee shall be the amount provided in subsection C of  
24 Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation



1 shall be conducted at a certified assessment agency, the office of a  
2 certified assessor or at another location as ordered by the court.  
3 The agency or assessor shall, within seventy-two (72) hours from the  
4 time the person is assessed, submit a written report to the court  
5 for the purpose of assisting the court in its final sentencing  
6 determination. No person, agency or facility operating an alcohol  
7 and drug substance abuse evaluation program certified by the  
8 Department of Mental Health and Substance Abuse Services shall  
9 solicit or refer any person evaluated pursuant to this subsection  
10 for any treatment program or alcohol and drug substance abuse  
11 service in which such person, agency or facility has a vested  
12 interest; however, this provision shall not be construed to prohibit  
13 the court from ordering participation in or any person from  
14 voluntarily utilizing a treatment program or alcohol and drug  
15 substance abuse service offered by such person, agency or facility.  
16 If a person is sentenced to the custody of the Department of  
17 Corrections and the court has received a written evaluation report  
18 pursuant to this subsection, the report shall be furnished to the  
19 Department of Corrections with the judgment and sentence. Any  
20 evaluation report submitted to the court pursuant to this subsection  
21 shall be handled in a manner which will keep such report  
22 confidential from the general public's review. Nothing contained in  
23 this subsection shall be construed to prohibit the court from  
24 ordering judgment and sentence in the event the defendant fails or

1 refuses to comply with an order of the court to obtain the  
2 evaluation required by this subsection.

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

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

4 E. Probation, for purposes of subsection A of this section, is  
5 a procedure by which a defendant found guilty of a crime, whether  
6 upon a verdict or plea of guilty or upon a plea of nolo contendere,  
7 is released by the court subject to conditions imposed by the court  
8 and subject to supervision by the Department of Corrections, a  
9 private supervision provider or other person designated by the  
10 court. Such supervision shall be initiated upon an order of  
11 probation from the court, and shall not exceed two (2) years, unless  
12 a petition alleging a violation of any condition of deferred  
13 judgment or seeking revocation of the suspended sentence is filed  
14 during the supervision, or as otherwise provided by law. In the  
15 case of a person convicted of a sex offense, supervision shall begin  
16 immediately upon release from incarceration or if parole is granted  
17 and shall not be limited to two (2) years. Provided further, any  
18 supervision provided for in this section may be extended for a  
19 period not to exceed the expiration of the maximum term or terms of  
20 the sentence upon a determination by the court or the Division of  
21 Probation and Parole of the Department of Corrections that the best  
22 interests of the public and the release will be served by an  
23 extended period of supervision.

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

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

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

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

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

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

12       H. As used in this section:

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

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

23       3. "Victims impact panel program" means a program conducted by  
24 a corporation registered with the Secretary of State in Oklahoma for

1 the purpose of operating a victims impact panel program. The  
2 program shall include live presentations from presenters who will  
3 share personal stories with participants about how alcohol, drug  
4 abuse, the operation of a motor vehicle while using an electronic  
5 communication device or the illegal conduct of others has personally  
6 impacted the lives of the presenters. A victims impact panel  
7 program shall be attended by persons who have committed the offense  
8 of driving, operating or being in actual physical control of a motor  
9 vehicle while under the influence of alcohol or other intoxicating  
10 substance, operating a motor vehicle while the ability of the person  
11 to operate such vehicle was impaired due to the consumption of  
12 alcohol or any other substance or operating a motor vehicle while  
13 using an electronic device. Persons attending a victims impact  
14 panel program shall be required to pay a fee of not more than Sixty  
15 Dollars (\$60.00) to the provider of the program. A certificate of  
16 completion shall be issued to the person upon satisfying the  
17 attendance and fee requirements of the victims impact panel program.  
18 The certificate of completion shall contain the business  
19 identification number of the program provider. A victims impact  
20 panel program shall not be provided by any certified assessment  
21 agency or certified assessor unless the assessment agency or  
22 certified assessor has been granted an exemption by the Commissioner  
23 of the Department of Mental Health and Substance Abuse Services.  
24 The provider of the victims impact panel program shall carry general

1 liability insurance and maintain an accurate accounting of all  
2 business transactions and funds received in relation to the victims  
3 impact panel program. The provider of the victims impact panel  
4 program shall annually provide to the Administrative Office of the  
5 Courts the following:

- 6 a. proof of registration with the Oklahoma Secretary of  
7 State,
- 8 b. proof of general liability insurance,
- 9 c. end-of-year financial statements prepared by a  
10 certified public accountant, and
- 11 d. a copy of federal income tax returns filed with the  
12 Internal Revenue Service.

13 I. A person convicted of a felony offense or receiving any form  
14 of probation for an offense in which registration is required  
15 pursuant to the Sex Offenders Registration Act, shall submit to  
16 deoxyribonucleic acid DNA testing for law enforcement identification  
17 purposes in accordance with Section 150.27 of Title 74 of the  
18 Oklahoma Statutes and the rules promulgated by the Oklahoma State  
19 Bureau of Investigation for the OSBI Combined DNA Index System  
20 (CODIS) Database. Subject to the availability of funds, any person  
21 convicted of a misdemeanor offense of assault and battery, domestic  
22 abuse, stalking, possession of a controlled substance prohibited  
23 under Schedule IV of the Uniform Controlled Dangerous Substances  
24 Act, outraging public decency, resisting arrest, escape or

1 attempting to escape, eluding a police officer, peeping tom,  
2 pointing a firearm, unlawful carry of a firearm, illegal transport  
3 of a firearm, discharging of a firearm, threatening an act of  
4 violence, breaking and entering a dwelling place, destruction of  
5 property, negligent homicide, or causing a personal injury accident  
6 while driving under the influence of any intoxicating substance, or  
7 any alien unlawfully present under federal immigration law, upon  
8 arrest, shall submit to deoxyribonucleic acid DNA testing for law  
9 enforcement identification purposes in accordance with Section  
10 150.27 of Title 74 of the Oklahoma Statutes and the rules  
11 promulgated by the Oklahoma State Bureau of Investigation for the  
12 OSBI Combined DNA Index System (CODIS) Database. Any defendant  
13 sentenced to probation shall be required to submit to testing within  
14 thirty (30) days of sentencing either to the Department of  
15 Corrections or to the county sheriff or other peace officer as  
16 directed by the court. Defendants who are sentenced to a term of  
17 incarceration shall submit to testing in accordance with Section  
18 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who  
19 enter the custody of the Department of Corrections or to the county  
20 sheriff, for those defendants sentenced to incarceration in a county  
21 jail. Convicted individuals who have previously submitted to DNA  
22 testing under this section and for whom a valid sample is on file in  
23 the OSBI Combined DNA Index System (CODIS) Database at the time of  
24 sentencing shall not be required to submit to additional testing.



1 Except as required by the Sex Offenders Registration Act, a deferred  
2 judgment does not require submission to deoxyribonucleic acid  
3 testing.

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

14 J. Samples of blood or saliva for DNA testing required by  
15 subsection I of this section shall be taken by employees or  
16 contractors of the Department of Corrections, peace officers, or the  
17 county sheriff or employees or contractors of the sheriff's office.  
18 The individuals shall be properly trained to collect blood or saliva  
19 samples. Persons collecting blood or saliva for DNA testing  
20 pursuant to this section shall be immune from civil liabilities  
21 arising from this activity. All Except for those criminal justice  
22 agencies using Rapid DNA instruments and resulting DNA analysis, all  
23 collectors of DNA samples shall ensure the collection of samples are  
24 mailed or delivered to the Oklahoma State Bureau of Investigation

1 OSBI, an accredited laboratory operating under contract with the  
2 OSBI or an accredited laboratory operated by a municipality or  
3 county, for the purpose of conducting DNA testing within ten (10)  
4 days of the time the subject appears for testing or within ten (10)  
5 days of the date the subject comes into physical custody to serve a  
6 term of incarceration. All Except for those criminal justice  
7 agencies using Rapid DNA instruments and resulting DNA analysis, all  
8 collectors of DNA samples shall use sample kits provided by one of  
9 the following:

10 1. The OSBI and;

11 2. An accredited laboratory operating under contract with the  
12 OSBI; or

13 3. An accredited laboratory operated by a municipality or  
14 county.

15 Collection procedures promulgated by the OSBI shall be followed  
16 by the collectors of DNA samples. Upon completion of any DNA  
17 testing, the results of the analysis and all data related to the  
18 testing shall be submitted to the OSBI Combined DNA Index System  
19 (CODIS) Database for the purpose of storing and maintaining the  
20 records and samples of the collected DNA. Persons subject to DNA

21 testing who are not received at the Lexington Assessment and  
22 Reception Center shall be required to pay a fee of Fifteen Dollars  
23 (\$15.00) to the agency collecting the sample for submission to the  
24 OSBI Combined DNA Index System (CODIS) Database. Any fees collected

1 pursuant to this subsection shall be deposited in the revolving  
2 account or the service fee account of the collection agency or  
3 department.

4 As used in this subsection, the term "Rapid DNA instruments"  
5 means instrumentation that carries out a fully automated process to  
6 derive a DNA analysis from a DNA sample.

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

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

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