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STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

HOUSE BILL 2877 By: Sanders of the House

By: Sanders of the House

and

Paxton of the Senate

AS INTRODUCED

An Act relating to victims impact panel programs; amending 22 O.S. 2011, Section 991a, as last amended by Section 10, Chapter 304, O.S.L. 2018 (22 O.S. Supp. 2019, Section 991a), which relates to sentencing powers of the court; changing fee amount for victims impact panel programs; prohibiting certain agencies or providers from having a proprietary or pecuniary interest in victims impact panel programs; directing victims impact panel program providers to submit certain documentation and registration fee to the District Attorneys Council; directing deposit of registration fee into certain revolving fund; amending 22 O.S. 2011, Section 991c, as last amended by Section 4, Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019, Section 991c), which relates to deferred sentences; changing fee amount for victims impact panel program; amending 47 O.S. 2011, Section 11-902, as last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp. 2019, Section 11-902), which relates to driving under the influence of alcohol or other intoxicating substance; requiring persons convicted of driving under the influence to attend a victims impact panel program; changing fee amount for victims impact panel programs; and providing an effective date.

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

2 SECTION 1. AMENDATORY 22 O.S. 2011, Section 991a, as
3 last amended by Section 10, Chapter 304, O.S.L. 2018 (22 O.S. Supp.
4 2019, Section 991a), is amended to read as follows:

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

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

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

- 1 b. to reimburse any state agency for amounts paid by the
2 state agency for hospital and medical expenses
3 incurred by the victim or victims, as a result of the
4 criminal act for which such person was convicted,
5 which reimbursement shall be made directly to the
6 state agency, with interest accruing thereon at the
7 rate of twelve percent (12%) per annum,
- 8 c. to engage in a term of community service without
9 compensation, according to a schedule consistent with
10 the employment and family responsibilities of the
11 person convicted,
- 12 d. to pay a reasonable sum into any trust fund,
13 established pursuant to the provisions of Sections 176
14 through 180.4 of Title 60 of the Oklahoma Statutes,
15 and which provides restitution payments by convicted
16 defendants to victims of crimes committed within this
17 state wherein such victim has incurred a financial
18 loss,
- 19 e. to confinement in the county jail for a period not to
20 exceed six (6) months,
- 21 f. to confinement as provided by law together with a term
22 of post-imprisonment community supervision for not
23 less than three (3) years of the total term allowed by
24 law for imprisonment, with or without restitution;

provided, however, the authority of this provision is limited to Section 843.5 of Title 21 of the Oklahoma Statutes when the offense involved sexual abuse or sexual exploitation; Sections 681, 741 and 843.1 of Title 21 of the Oklahoma Statutes when the offense involved sexual abuse or sexual exploitation; and Sections 865 et seq., 885, 886, 888, 891, 1021, 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and 1123 of Title 21 of the Oklahoma Statutes,

g. to repay the reward or part of the reward paid by a local certified crime stoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the local certified crime stoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. The term "certified" means crime stoppers organizations that

1 annually meet the certification standards for crime
2 stoppers programs established by the Oklahoma Crime
3 Stoppers Association to the extent those standards do
4 not conflict with state statutes. The term "court"
5 refers to all municipal and district courts within
6 this state. The "Oklahoma Reward System" means the
7 reward program established by Section 150.18 of Title
8 74 of the Oklahoma Statutes,

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

20 i. to reimburse the Oklahoma State Bureau of
21 Investigation and any authorized law enforcement
22 agency for all costs incurred by that agency for
23 cleaning up an illegal drug laboratory site for which
24 the defendant pleaded guilty, nolo contendere or was

1 convicted. The court clerk shall collect the amount
2 and may retain five percent (5%) of such monies to be
3 deposited in the Court Clerk Revolving Fund to cover
4 administrative costs and shall remit the remainder to
5 the Oklahoma State Bureau of Investigation to be
6 deposited in the OSBI Revolving Fund established by
7 Section 150.19a of Title 74 of the Oklahoma Statutes
8 or to the general fund wherein the other law
9 enforcement agency is located,

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

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

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

1 pursuant to Sections 3-452 and 3-453 of Title 43A of
2 the Oklahoma Statutes, or as ordered by the court,
3 m. to be placed in a victims impact panel program, as
4 defined in subsection H of this section, or
5 victim/offender reconciliation program and payment of
6 a fee to the program of ~~not less than Fifteen Dollars~~
7 ~~(\$15.00) nor more than Sixty Dollars (\$60.00)~~ Seventy-
8 five Dollars (\$75.00) as set by the governing
9 authority of the program to offset the cost of
10 participation by the defendant. Provided, each
11 victim/offender reconciliation program shall be
12 required to obtain a written consent form voluntarily
13 signed by the victim and defendant that specifies the
14 methods to be used to resolve the issues, the
15 obligations and rights of each person, and the
16 confidentiality of the proceedings. Volunteer
17 mediators and employees of a victim/offender
18 reconciliation program shall be immune from liability
19 and have rights of confidentiality as provided in
20 Section 1805 of Title 12 of the Oklahoma Statutes,
21 n. to install, at the expense of the defendant, an
22 ignition interlock device approved by the Board of
23 Tests for Alcohol and Drug Influence. The device
24 shall be installed upon every motor vehicle operated

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

1 monitoring fee to the supervising authority, not to
2 exceed Three Hundred Dollars (\$300.00) per month. Any
3 fees collected pursuant to this paragraph shall be
4 deposited with the appropriate supervising authority.
5 Any willful violation of an order of the court for the
6 payment of the monitoring fee shall be a violation of
7 the sentence and may be punished as deemed proper by
8 the sentencing court. As used in this paragraph,
9 "electronic monitoring" means confinement of the
10 defendant within a specified location or locations
11 with supervision by means of an electronic device
12 approved by the Department of Corrections which is
13 designed to detect if the defendant is in the court-
14 ordered location at the required times and which
15 records violations for investigation by a qualified
16 supervisory agency or person,

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

1 skills, vocational-technical skills, domestic
2 relations, literacy, education, or any other
3 identifiable deficiency which may be treated
4 appropriately in the community and for which a
5 certified provider or a program recognized by the
6 court as having significant positive impact exists in
7 the community. Any treatment, education or
8 rehabilitation provider required to be certified
9 pursuant to law or rule shall be certified by the
10 appropriate state agency or a national organization,

11 q. to submit to periodic testing for alcohol,
12 intoxicating substance, or controlled dangerous
13 substances by a qualified laboratory,

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

18 s. to be supervised by a Department of Corrections
19 employee, a private supervision provider, or other
20 person designated by the court,

21 t. to obtain positive behavior modeling by a trained
22 mentor,

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

- 1 v. to serve a term of confinement in the county jail at
2 night or during weekends pursuant to Section 991a-2 of
3 this title or for work release,
4 w. to obtain employment or participate in employment-
5 related activities,
6 x. to participate in mandatory day reporting to
7 facilities or persons for services, payments, duties
8 or person-to-person contacts as specified by the
9 court,
10 y. to pay day fines not to exceed fifty percent (50%) of
11 the net wages earned. For purposes of this paragraph,
12 "day fine" means the offender is ordered to pay an
13 amount calculated as a percentage of net daily wages
14 earned. The day fine shall be paid to the local
15 community sentencing system as reparation to the
16 community. Day fines shall be used to support the
17 local system,
18 z. to submit to blood or saliva testing as required by
19 subsection I of this section,
20 aa. to repair or restore property damaged by the
21 defendant's conduct, if the court determines the
22 defendant possesses sufficient skill to repair or
23 restore the property and the victim consents to the
24 repairing or restoring of the property,

- 1 bb. to restore damaged property in kind or payment of out-
2 of-pocket expenses to the victim, if the court is able
3 to determine the actual out-of-pocket expenses
4 suffered by the victim,
- 5 cc. to attend a victim-offender reconciliation program if
6 the victim agrees to participate and the offender is
7 deemed appropriate for participation,
- 8 dd. in the case of a person convicted of prostitution
9 pursuant to Section 1029 of Title 21 of the Oklahoma
10 Statutes, require such person to receive counseling
11 for the behavior which may have caused such person to
12 engage in prostitution activities. Such person may be
13 required to receive counseling in areas including but
14 not limited to alcohol and substance abuse, sexual
15 behavior problems, or domestic abuse or child abuse
16 problems,
- 17 ee. in the case of a sex offender sentenced after November
18 1, 1989, and required by law to register pursuant to
19 the Sex Offender Registration Act, the court shall
20 require the person to comply with sex offender
21 specific rules and conditions of supervision
22 established by the Department of Corrections and
23 require the person to participate in a treatment
24 program designed for the treatment of sex offenders

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

15 ff. in addition to other sentencing powers of the court,
16 the court in the case of a defendant being sentenced
17 for a felony conviction for a violation of Section 2-
18 402 of Title 63 of the Oklahoma Statutes which
19 involves marijuana may require the person to
20 participate in a drug court program, if available. If
21 a drug court program is not available, the defendant
22 may be required to participate in a community
23 sanctions program, if available,
24

1 gg. in the case of a person convicted of any false or
2 bogus check violation, as defined in Section 1541.4 of
3 Title 21 of the Oklahoma Statutes, impose a fee of
4 Twenty-five Dollars (\$25.00) to the victim for each
5 check, and impose a bogus check fee to be paid to the
6 district attorney. The bogus check fee paid to the
7 district attorney shall be equal to the amount
8 assessed as court costs plus Twenty-five Dollars
9 (\$25.00) for each check upon filing of the case in
10 district court. This money shall be deposited in the
11 Bogus Check Restitution Program Fund as established in
12 subsection B of Section 114 of this title.
13 Additionally, the court may require the offender to
14 pay restitution and bogus check fees on any other
15 bogus check or checks that have been submitted to the
16 District Attorney Bogus Check Restitution Program, and
17 hh. any other provision specifically ordered by the court.

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

23 However, unless under the supervision of the district attorney,
24 the offender shall be required to pay Forty Dollars (\$40.00) per

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

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

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

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

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

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

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

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

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

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

8 b. to attend a victims impact panel program, as defined
9 in subsection H of this section, and to pay a fee of
10 ~~not more than Sixty Dollars (\$60.00)~~ Seventy-five
11 Dollars (\$75.00) as set by the governing authority of
12 the program and approved by the court, to the program
13 to offset the cost of participation by the defendant,
14 if in the opinion of the court the defendant has the
15 ability to pay such fee,

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

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

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

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

1 Fund. Any order by the court for the payment of the
2 monitoring fee, if willfully disobeyed, may be
3 enforced as an indirect contempt of court;

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

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

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

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

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

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

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

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

5 14. 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 may
8 prohibit the person from accessing or using any Internet social
9 networking website that has the potential or likelihood of allowing
10 the sex offender to have contact with any child who is under the age
11 of eighteen (18) years; or

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

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

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

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

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

1 Department of Corrections pursuant to subparagraph e of paragraph 7
2 of subsection A of this section. Provided, the court may waive
3 these prohibitions upon written application of the district
4 attorney. Both the application and the waiver shall be made part of
5 the record of the case.

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

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

1 the sentence upon a determination by the court or the Division of
2 Probation and Parole of the Department of Corrections that the best
3 interests of the public and the release will be served by an
4 extended period of supervision.

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

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

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

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

1 specifications and requirements of the contract. The contract shall
2 set appropriate compensation to the county for services to the
3 Department.

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

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

15 H. As used in this section:

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

21 2. "Electronically monitored home detention" means
22 incarceration of the defendant within a specified location or
23 locations with monitoring by means of a device approved by the
24

1 Department of Corrections that detects if the person leaves the
2 confines of any specified location; and

3 3. "Victims impact panel program" means a program conducted by
4 a corporation registered with the Secretary of State in Oklahoma for
5 the sole purpose of operating a victims impact panel program. The
6 program shall include live presentations from presenters who will
7 share personal stories with participants about how alcohol, drug
8 abuse, the operation of a motor vehicle while using an electronic
9 communication device or the illegal conduct of others has personally
10 impacted the lives of the presenters. A victims impact panel
11 program shall be attended by persons who have committed the offense
12 of driving, operating or being in actual physical control of a motor
13 vehicle while under the influence of alcohol or other intoxicating
14 substance, operating a motor vehicle while the ability of the person
15 to operate such vehicle was impaired due to the consumption of
16 alcohol or any other substance or operating a motor vehicle while
17 using an electronic device. Persons attending a victims impact
18 panel program shall be required to pay a fee of ~~not more than Sixty~~
19 ~~Dollars (\$60.00)~~ Seventy-five Dollars (\$75.00) to the provider of
20 the program. A certificate of completion shall be issued to the
21 person upon satisfying the attendance and fee requirements of the
22 victims impact panel program. The certificate of completion shall
23 contain the business identification number of the program provider.
24 A certified assessment agency, certified assessor or provider of an

1 alcohol and drug substance abuse course shall be prohibited from
2 providing a victims impact panel program and shall ~~not be provided~~
3 ~~by any certified assessment agency or certified assessor unless the~~
4 ~~assessment agency or certified assessor has been granted an~~
5 ~~exemption by the Commissioner of the Department of Mental Health and~~
6 ~~Substance Abuse Services~~ further be prohibited from having any
7 proprietary or pecuniary interest in a victims impact panel program.

8 The provider of the victims impact panel program shall carry general
9 liability insurance and maintain an accurate accounting of all
10 business transactions and funds received in relation to the victims
11 impact panel program. ~~The~~ Beginning October 1, 2020, and each
12 October 1 thereafter, the provider of the victims impact panel
13 program shall ~~annually provide to the Administrative Office of the~~
14 ~~Courts~~ District Attorneys Council the following:

15 a. proof of registration with the Oklahoma Secretary of
16 State,

17 b. proof of general liability insurance,

18 c. end-of-year financial statements prepared by a
19 certified public accountant, ~~and~~

20 d. a copy of federal income tax returns filed with the
21 Internal Revenue Service,

22 e. a registration fee of One Thousand Dollars

23 (\$1,000.00). The registration fee shall be deposited

24 in the District Attorneys Council Revolving Fund

1 created in Section 215.28 of Title 19 of the Oklahoma
2 Statutes, and

3 f. a statement certifying that the provider of the
4 victims impact panel program has complied with all of
5 the requirements set forth in this paragraph.

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

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

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

1 Department of Corrections shall submit a blood or saliva sample.
2 Every person subject to DNA testing who is sentenced to unsupervised
3 probation or otherwise not supervised by the Department of
4 Corrections shall submit for blood or saliva testing to the sheriff
5 of the sentencing county.

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

1 account or the service fee account of the collection agency or
2 department.

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

8 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991c, as
9 last amended by Section 4, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
10 2019, Section 991c), is amended to read as follows:

11 Section 991c. A. Upon a verdict or plea of guilty or upon a
12 plea of nolo contendere, but before a judgment of guilt, the court
13 may, without entering a judgment of guilt and with the consent of
14 the defendant, defer further proceedings upon the specific
15 conditions prescribed by the court not to exceed a seven-year
16 period, except as authorized under subsection B of this section.
17 The court shall first consider restitution among the various
18 conditions it may prescribe. The court may also consider ordering
19 the defendant to:

- 20 1. Pay court costs;
- 21 2. Pay an assessment in lieu of any fine authorized by law for
22 the offense;
- 23 3. Pay any other assessment or cost authorized by law;

1 4. Engage in a term of community service without compensation,
2 according to a schedule consistent with the employment and family
3 responsibilities of the defendant;

4 5. County jail confinement for a period not to exceed ninety
5 (90) days or the maximum amount of jail time provided for the
6 offense, if it is less than ninety (90) days;

7 6. Pay an amount as reimbursement for reasonable attorney fees,
8 to be paid into the court fund, if a court-appointed attorney has
9 been provided to defendant;

10 7. Be supervised in the community for a period not to exceed
11 eighteen (18) months, unless a petition alleging violation of any
12 condition of deferred judgment is filed during the period of
13 supervision. As a condition of any supervision, the defendant shall
14 be required to pay a supervision fee of Forty Dollars (\$40.00) per
15 month. The supervision fee shall be waived in whole or part by the
16 supervisory agency when the accused is indigent. No person shall be
17 denied supervision based solely on the inability of the person to
18 pay a fee;

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

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

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

6 11. Any combination of the above provisions.

7 However, unless under the supervision of the district attorney,
8 the offender shall be required to pay Forty Dollars (\$40.00) per
9 month to the district attorney during the first two (2) years of
10 probation to compensate the district attorney for the costs incurred
11 during the prosecution of the offender and for the additional work
12 of verifying the compliance of the offender with the rules and
13 conditions of his or her probation. The district attorney may waive
14 any part of this requirement in the best interests of justice. The
15 court shall not waive, suspend, defer or dismiss the costs of
16 prosecution in its entirety. However, if the court determines that
17 a reduction in the fine, costs and costs of prosecution is
18 warranted, the court shall equally apply the same percentage
19 reduction to the fine, costs and costs of prosecution owed by the
20 offender.

21 B. When the court has ordered restitution as a condition of
22 supervision as provided for in subsection A of this section and that
23 condition has not been satisfied, the court may, at any time prior
24

1 to the termination or expiration of the supervision period, order an
2 extension of supervision for a period not to exceed three (3) years.

3 C. In addition to any conditions of supervision provided for in
4 subsection A of this section, the court shall, in the case of a
5 person before the court for the offense of operating or being in
6 control of a motor vehicle while the person was under the influence
7 of alcohol, other intoxicating substance, or a combination of
8 alcohol and another intoxicating substance, or who is before the
9 court for the offense of operating a motor vehicle while the ability
10 of the person to operate such vehicle was impaired due to the
11 consumption of alcohol, require the person to participate in an
12 alcohol and drug substance abuse evaluation program offered by a
13 facility or qualified practitioner certified by the Department of
14 Mental Health and Substance Abuse Services for the purpose of
15 evaluating the receptivity to treatment and prognosis of the person.
16 The court shall order the person to reimburse the facility or
17 qualified practitioner for the evaluation. The Department of Mental
18 Health and Substance Abuse Services shall establish a fee schedule,
19 based upon the ability of a person to pay, provided the fee for an
20 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
21 evaluation shall be conducted at a certified facility, the office of
22 a qualified practitioner or at another location as ordered by the
23 court. The facility or qualified practitioner shall, within
24 seventy-two (72) hours from the time the person is assessed, submit

1 a written report to the court for the purpose of assisting the court
2 in its determination of conditions for deferred sentence. No
3 person, agency or facility operating an alcohol and drug substance
4 abuse evaluation program certified by the Department of Mental
5 Health and Substance Abuse Services shall solicit or refer any
6 person evaluated pursuant to this subsection for any treatment
7 program or alcohol and drug substance abuse service in which the
8 person, agency or facility has a vested interest; however, this
9 provision shall not be construed to prohibit the court from ordering
10 participation in or any person from voluntarily utilizing a
11 treatment program or alcohol and drug substance abuse service
12 offered by such person, agency or facility. Any evaluation report
13 submitted to the court pursuant to this subsection shall be handled
14 in a manner which will keep the report confidential from review by
15 the general public. Nothing contained in this subsection shall be
16 construed to prohibit the court from ordering judgment and sentence
17 in the event the defendant fails or refuses to comply with an order
18 of the court to obtain the evaluation required by this subsection.
19 As used in this subsection, "qualified practitioner" means a person
20 with at least a bachelor's degree in substance abuse treatment,
21 mental health or a related health care field and at least two (2)
22 years of experience in providing alcohol abuse treatment, other drug
23 abuse treatment, or both alcohol and other drug abuse treatment who
24 is certified each year by the Department of Mental Health and

1 Substance Abuse Services to provide these assessments. However, any
2 person who does not meet the requirements for a qualified
3 practitioner as defined herein, but who has been previously
4 certified by the Department of Mental Health and Substance Abuse
5 Services to provide alcohol or drug treatment or assessments, shall
6 be considered a qualified practitioner provided all education,
7 experience and certification requirements stated herein are met by
8 September 1, 1995. The court may also require the person to
9 participate in one or both of the following:

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

12 2. A victims impact panel program, as defined in subsection H
13 of Section 991a of this title, if such a program is offered in the
14 county where the judgment is rendered. The defendant shall be
15 required to pay a fee of ~~not less than Fifteen Dollars (\$15.00) nor~~
16 ~~more than Sixty Dollars (\$60.00)~~ Seventy-five Dollars (\$75.00) as
17 set by the governing authority of the program and approved by the
18 court to the victims impact panel program to offset the cost of
19 participation by the defendant, if in the opinion of the court the
20 defendant has the ability to pay such fee.

21 D. Upon completion of the conditions of the deferred judgment,
22 and upon a finding by the court that the conditions have been met
23 and all fines, fees, and monetary assessments have been paid as
24 ordered, the defendant shall be discharged without a court judgment

1 of guilt, and the court shall order the verdict or plea of guilty or
2 plea of nolo contendere to be expunged from the record and the
3 charge shall be dismissed with prejudice to any further action. The
4 procedure to expunge the record of the defendant shall be as
5 follows:

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

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

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

13 4. No information concerning the confidential file shall be
14 revealed or released, except upon written order of a judge of the
15 district court or upon written request by the named defendant to the
16 court clerk for the purpose of updating the criminal history record
17 of the defendant with the Oklahoma State Bureau of Investigation;
18 and

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

23 Records expunged pursuant to this subsection shall be sealed to
24 the public but not to law enforcement agencies for law enforcement

1 purposes. Records expunged pursuant to this subsection shall be
2 admissible in any subsequent criminal prosecution to prove the
3 existence of a prior conviction or prior deferred judgment without
4 the necessity of a court order requesting the unsealing of such
5 records.

6 E. The provisions of subsection D of this section shall be
7 retroactive.

8 F. Whenever a judgment has been deferred by the court according
9 to the provisions of this section, deferred judgment may not be
10 accelerated for any technical violation unless a petition setting
11 forth the grounds for such acceleration is filed by the district
12 attorney with the clerk of the sentencing court and competent
13 evidence justifying the acceleration of the judgment is presented to
14 the court at a hearing to be held for that purpose. The hearing
15 shall be held not more than twenty (20) days after the entry of the
16 plea of not guilty to the petition, unless waived by both the state
17 and the defendant. Any acceleration of a deferred sentence based on
18 a technical violation shall not exceed ninety (90) days for a first
19 acceleration or five (5) years for a second or subsequent
20 acceleration.

21 G. Upon any violation of the deferred judgment, other than a
22 technical violation, the court may enter a judgment of guilt and
23 proceed as provided in Section 991a of this title or may modify any
24 condition imposed. Provided, however, if the deferred judgment is

1 for a felony offense, and the defendant commits another felony
2 offense, the defendant shall not be allowed bail pending appeal.

3 H. The deferred judgment procedure described in this section
4 shall apply only to defendants who have not been previously
5 convicted of a felony offense and have not received more than one
6 deferred judgment for a felony offense within the ten (10) years
7 previous to the commission of the pending offense.

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

11 I. The deferred judgment procedure described in this section
12 shall not apply to defendants found guilty or who plead guilty or
13 nolo contendere to a sex offense required by law to register
14 pursuant to the Sex Offenders Registration Act.

15 J. All defendants who are supervised pursuant to this section
16 shall be subject to the sanction process as established in
17 subsection D of Section 991b of this title.

18 K. Notwithstanding the provisions of subsections F and G of
19 this section, a person who is being considered for an acceleration
20 of a deferred judgment for an offense where the penalty has
21 subsequently been lowered to a misdemeanor shall only be subject to
22 a judgment and sentence that would have been applicable had he or
23 she committed the offense after July 1, 2017.

1 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-902, as
2 last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp.
3 2019, Section 11-902), is amended to read as follows:

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

10 1. Has a blood or breath alcohol concentration, as defined in
11 Section 756 of this title, of eight-hundredths (0.08) or more at the
12 time of a test of such person's blood or breath administered within
13 two (2) hours after the arrest of such person;

14 2. Is under the influence of alcohol;

15 3. Has any amount of a Schedule I chemical or controlled
16 substance, as defined in Section 2-204 of Title 63 of the Oklahoma
17 Statutes, or one of its metabolites or analogs in the person's
18 blood, saliva, urine or any other bodily fluid at the time of a test
19 of such person's blood, saliva, urine or any other bodily fluid
20 administered within two (2) hours after the arrest of such person;

21 4. Is under the influence of any intoxicating substance other
22 than alcohol which may render such person incapable of safely
23 driving or operating a motor vehicle; or
24

1 5. Is under the combined influence of alcohol and any other
2 intoxicating substance which may render such person incapable of
3 safely driving or operating a motor vehicle.

4 B. The fact that any person charged with a violation of this
5 section is or has been lawfully entitled to use alcohol or a
6 controlled dangerous substance or any other intoxicating substance
7 shall not constitute a defense against any charge of violating this
8 section.

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

- 12 a. participate in an assessment and evaluation pursuant
13 to subsection G of this section and shall follow all
14 recommendations made in the assessment and evaluation,
- 15 b. be punished by imprisonment in jail for not less than
16 ten (10) days nor more than one (1) year, and
- 17 c. be fined not more than One Thousand Dollars
18 (\$1,000.00).

19 2. Any person who, having been convicted of or having received
20 deferred judgment for a violation of this section or a violation
21 pursuant to the provisions of any law of this state or another state
22 prohibiting the offenses provided in this section, Section 11-904 of
23 this title or paragraph 4 of subsection A of Section 852.1 of Title
24 21 of the Oklahoma Statutes, or having a prior conviction in a

1 municipal criminal court of record for the violation of a municipal
2 ordinance prohibiting the offense provided for in this section
3 commits a subsequent violation of this section within ten (10) years
4 of the date following the completion of the execution of said
5 sentence or deferred judgment shall, upon conviction, be guilty of a
6 felony and shall participate in an assessment and evaluation
7 pursuant to subsection G of this section and shall be sentenced to:

8 a. follow all recommendations made in the assessment and
9 evaluation for treatment at the defendant's expense,

10 or

11 b. placement in the custody of the Department of
12 Corrections for not less than one (1) year and not to
13 exceed five (5) years and a fine of not more than Two
14 Thousand Five Hundred Dollars (\$2,500.00), or

15 c. treatment, imprisonment and a fine within the
16 limitations prescribed in subparagraphs a and b of
17 this paragraph.

18 However, if the treatment in subsection G of this section does
19 not include residential or inpatient treatment for a period of not
20 less than five (5) days, the person shall serve a term of
21 imprisonment of at least five (5) days.

22 3. Any person who commits a violation of this section after
23 having been convicted of a felony offense pursuant to the provisions
24 of this section or a violation pursuant to the provisions of any law

1 of this state or another state prohibiting the offenses provided for
2 in this section, Section 11-904 of this title or paragraph 4 of
3 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes
4 shall be guilty of a felony and participate in an assessment and
5 evaluation pursuant to subsection G of this section and shall be
6 sentenced to:

- 7 a. follow all recommendations made in the assessment and
8 evaluation for treatment at the defendant's expense,
9 two hundred forty (240) hours of community service and
10 use of an ignition interlock device, as provided by
11 subparagraph n of paragraph 1 of subsection A of
12 Section 991a of Title 22 of the Oklahoma Statutes, or
- 13 b. placement in the custody of the Department of
14 Corrections for not less than one (1) year and not to
15 exceed ten (10) years and a fine of not more than Five
16 Thousand Dollars (\$5,000.00), or
- 17 c. treatment, imprisonment and a fine within the
18 limitations prescribed in subparagraphs a and b of
19 this paragraph.

20 However, if the treatment in subsection G of this section does
21 not include residential or inpatient treatment for a period of not
22 less than ten (10) days, the person shall serve a term of
23 imprisonment of at least ten (10) days.

1 4. Any person who commits a violation of this section after
2 having been twice convicted of a felony offense pursuant to the
3 provisions of this section or a violation pursuant to the provisions
4 of any law of this state or another state prohibiting the offenses
5 provided for in this section, Section 11-904 of this title or
6 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
7 Oklahoma Statutes shall be guilty of a felony and participate in an
8 assessment and evaluation pursuant to subsection G of this section
9 and shall be sentenced to:

10 a. follow all recommendations made in the assessment and
11 evaluation for treatment at the defendant's expense,
12 followed by not less than one (1) year of supervision
13 and periodic testing at the defendant's expense, four
14 hundred eighty (480) hours of community service, and
15 use of an ignition interlock device, as provided by
16 subparagraph n of paragraph 1 of subsection A of
17 Section 991a of Title 22 of the Oklahoma Statutes, for
18 a minimum of thirty (30) days, or

19 b. placement in the custody of the Department of
20 Corrections for not less than one (1) year and not to
21 exceed twenty (20) years and a fine of not more than
22 Five Thousand Dollars (\$5,000.00), or
23
24

1 c. treatment, imprisonment and a fine within the
2 limitations prescribed in subparagraphs a and b of
3 this paragraph.

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

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

16 6. Provided, however, a conviction from another state shall not
17 be used to enhance punishment pursuant to the provisions of this
18 subsection if that conviction is based on a blood or breath alcohol
19 concentration of less than eight-hundredths (0.08).

20 7. In any case in which a defendant is charged with driving
21 under the influence of alcohol or other intoxicating substance
22 offense within any municipality with a municipal court other than a
23 court of record, the charge shall be presented to the county's
24

1 district attorney and filed with the district court of the county
2 within which the municipality is located.

3 D. Any person who is convicted of a violation of driving under
4 the influence with a blood or breath alcohol concentration of
5 fifteen-hundredths (0.15) or more pursuant to this section shall be
6 deemed guilty of aggravated driving under the influence. A person
7 convicted of aggravated driving under the influence shall
8 participate in an assessment and evaluation pursuant to subsection G
9 of this section and shall comply with all recommendations for
10 treatment. Such person shall be sentenced as provided in paragraph
11 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

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

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

4 2. A correctional facility operated by the Department of
5 Corrections with assignment to substance abuse treatment.
6 Successful completion of a Department-of-Corrections-approved
7 substance abuse treatment program shall satisfy the recommendation
8 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
9 course or treatment program or both. Successful completion of an
10 approved Department of Corrections substance abuse treatment program
11 may precede or follow the required assessment.

12 F. The Department of Public Safety is hereby authorized to
13 reinstate any suspended or revoked driving privilege when the person
14 meets the statutory requirements which affect the existing driving
15 privilege.

16 G. Any person who is found guilty of a violation of the
17 provisions of this section shall be ordered to participate in an
18 alcohol and drug substance abuse evaluation and assessment program
19 offered by a certified assessment agency or certified assessor for
20 the purpose of evaluating and assessing the receptivity to treatment
21 and prognosis of the person and shall follow all recommendations
22 made in the assessment and evaluation for treatment. The court
23 shall order the person to reimburse the agency or assessor for the
24 evaluation and assessment. Payment shall be remitted by the

1 defendant or on behalf of the defendant by any third party;
2 provided, no state-appropriated funds are utilized. The fee for an
3 evaluation and assessment shall be the amount provided in subsection
4 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
5 evaluation and assessment shall be conducted at a certified
6 assessment agency, the office of a certified assessor or at another
7 location as ordered by the court. The agency or assessor shall,
8 within seventy-two (72) hours from the time the person is evaluated
9 and assessed, submit a written report to the court for the purpose
10 of assisting the court in its sentencing determination. The court
11 shall, as a condition of any sentence imposed, including deferred
12 and suspended sentences, require the person to participate in and
13 successfully complete all recommendations from the evaluation, such
14 as an alcohol and substance abuse treatment program pursuant to
15 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
16 indicates that the evaluation and assessment shows that the
17 defendant would benefit from a ten-hour or twenty-four-hour alcohol
18 and drug substance abuse course or a treatment program or both, the
19 court shall, as a condition of any sentence imposed, including
20 deferred and suspended sentences, require the person to follow all
21 recommendations identified by the evaluation and assessment and
22 ordered by the court. No person, agency or facility operating an
23 evaluation and assessment program certified by the Department of
24 Mental Health and Substance Abuse Services shall solicit or refer

1 any person evaluated and assessed pursuant to this section for any
2 treatment program or substance abuse service in which such person,
3 agency or facility has a vested interest; however, this provision
4 shall not be construed to prohibit the court from ordering
5 participation in or any person from voluntarily utilizing a
6 treatment program or substance abuse service offered by such person,
7 agency or facility. If a person is sentenced to imprisonment in the
8 custody of the Department of Corrections and the court has received
9 a written evaluation report pursuant to the provisions of this
10 subsection, the report shall be furnished to the Department of
11 Corrections with the judgment and sentence. Any evaluation and
12 assessment report submitted to the court pursuant to the provisions
13 of this subsection shall be handled in a manner which will keep such
14 report confidential from the general public's review. Nothing
15 contained in this subsection shall be construed to prohibit the
16 court from ordering judgment and sentence in the event the defendant
17 fails or refuses to comply with an order of the court to obtain the
18 evaluation and assessment required by this subsection. If the
19 defendant fails or refuses to comply with an order of the court to
20 obtain the evaluation and assessment, the Department of Public
21 Safety shall not reinstate driving privileges until the defendant
22 has complied in full with such order. Nothing contained in this
23 subsection shall be construed to prohibit the court from ordering

24

1 judgment and sentence and any other sanction authorized by law for
2 failure or refusal to comply with an order of the court.

3 H. Any person who is found guilty of a violation of the
4 provisions of this section ~~may~~ shall be required by the court to
5 attend a victims impact panel program, as defined in subsection H of
6 Section 991a of Title 22 of the Oklahoma Statutes, if such a program
7 is offered in the county where the judgment is rendered, and to pay
8 a fee of ~~not less than Fifteen Dollars (\$15.00) nor more than Sixty~~
9 ~~Dollars (\$60.00)~~ Seventy-five Dollars (\$75.00), as set by the
10 governing authority of the program and approved by the court, to the
11 program to offset the cost of participation by the defendant, if in
12 the opinion of the court the defendant has the ability to pay such
13 fee.

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

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

22 K. When a person is found guilty of a violation of the
23 provisions of this section, the court shall order, in addition to
24 any other penalty, the defendant to pay a one-hundred-dollar

1 assessment to be deposited in the Drug Abuse Education and Treatment
2 Revolving Fund created in Section 2-503.2 of Title 63 of the
3 Oklahoma Statutes, upon collection.

4 L. 1. When a person is eighteen (18) years of age or older,
5 and is the driver, operator, or person in physical control of a
6 vehicle, and is convicted of violating any provision of this section
7 while transporting or having in the motor vehicle any child less
8 than eighteen (18) years of age, the fine shall be enhanced to
9 double the amount of the fine imposed for the underlying driving
10 under the influence (DUI) violation which shall be in addition to
11 any other penalties allowed by this section.

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

16 M. Any plea of guilty, nolo contendere or finding of guilt for
17 a violation of this section or a violation pursuant to the
18 provisions of any law of this state or another state prohibiting the
19 offenses provided for in this section, Section 11-904 of this title,
20 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
21 Oklahoma Statutes, shall constitute a conviction of the offense for
22 the purpose of this section; provided, any deferred judgment shall
23 only be considered to constitute a conviction for a period of ten
24

1 (10) years following the completion of any court-imposed
2 probationary term.

3 N. If qualified by knowledge, skill, experience, training or
4 education, a witness shall be allowed to testify in the form of an
5 opinion or otherwise solely on the issue of impairment, but not on
6 the issue of specific alcohol concentration level, relating to the
7 following:

8 1. The results of any standardized field sobriety test
9 including, but not limited to, the horizontal gaze nystagmus (HGN)
10 test administered by a person who has completed training in
11 standardized field sobriety testing; or

12 2. Whether a person was under the influence of one or more
13 impairing substances and the category of such impairing substance or
14 substances. A witness who has received training and holds a current
15 certification as a drug recognition expert shall be qualified to
16 give the testimony in any case in which such testimony may be
17 relevant.

18 SECTION 4. This act shall become effective September 1, 2020.
19

20 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02/13/2020 -
21 DO PASS, As Coauthored.
22
23
24