

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1970

By: Ford

7
8 COMMITTEE SUBSTITUTE

9 An Act relating to victims impact panel programs;
10 amending 22 O.S. 2011, Section 991a, as last amended
11 by Section 10, Chapter 304, O.S.L. 2018 (22 O.S.
12 Supp. 2018, Section 991a), which relates to
13 sentencing powers of the court; authorizing courts to
14 require participation in online victims impact panel
15 program; stating fee for program; allowing
16 participation by indigent persons at no charge;
17 modifying scope of certain definition; amending 22
18 O.S. 2011, Section 991c, as last amended by Section
19 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018,
20 Section 991c), which relates to deferred sentencing;
21 authorizing courts to require participation in online
22 victims impact panel program; stating fee for
23 program; allowing participation by indigent persons
24 at no charge; amending 47 O.S. 2011, Section 11-902,
as last amended by Section 1, Chapter 61, O.S.L. 2018
(47 O.S. Supp. 2018, Section 11-902), which relates
to driving under the influence of alcohol or other
intoxicating substance; authorizing courts to require
participation in online victims impact panel program;
stating fee for program; allowing participation by
indigent persons at no charge; and providing an
effective date.

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

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

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

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

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

23 b. to reimburse any state agency for amounts paid by the
24 state agency for hospital and medical expenses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 5 b. to attend a victims impact panel program, as defined
6 in subsection H of this section, and to pay a fee of
7 not more than Sixty Dollars (\$60.00) as set by the
8 governing authority of the program and approved by the
9 court, to the program to offset the cost of
10 participation by the defendant, if in the opinion of
11 the court the defendant has the ability to pay such
12 fee. Additionally, the court may also require such
13 person to participate in a victims impact panel
14 program, as defined in subsection H of this section,
15 that is offered online and pay a fee that may exceed
16 One Hundred Dollars (\$100.00) as set by the governing
17 authority of the victims impact panel program and
18 approved by the court if, in the opinion of the court,
19 the defendant has the ability to pay such fee. For
20 persons deemed indigent by the court, the victims
21 impact panel program offered online may be provided at
22 no charge to such indigent person,
- 23 c. to both participate in the alcohol and drug substance
24 abuse course or treatment program, pursuant to

1 subparagraph a of this paragraph and attend a victims
2 impact panel program, pursuant to subparagraph b of
3 this paragraph,

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

23 e. beginning January 1, 1993, to submit to electronically
24 monitored home detention administered and supervised

1 by the Department of Corrections, and to pay to the
2 Department a monitoring fee, not to exceed Seventy-
3 five Dollars (\$75.00) a month, to the Department of
4 Corrections, if in the opinion of the court the
5 defendant has the ability to pay such fee. Any fees
6 collected pursuant to this subparagraph shall be
7 deposited in the Department of Corrections Revolving
8 Fund. Any order by the court for the payment of the
9 monitoring fee, if willfully disobeyed, may be
10 enforced as an indirect contempt of court;

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

19 9. In addition to the other sentencing powers of the court, in
20 the case of a person convicted of any crime related to domestic
21 abuse, as defined in Section 60.1 of this title, the court may
22 require the defendant to undergo the treatment or participate in the
23 counseling services necessary to bring about the cessation of
24

1 domestic abuse against the victim. The defendant may be required to
2 pay all or part of the cost of the treatment or counseling services;

3 10. In addition to the other sentencing powers of the court,
4 the court, in the case of a sex offender sentenced after November 1,
5 1989, and required by law to register pursuant to the Sex Offenders
6 Registration Act, shall require the person to participate in a
7 treatment program designed specifically for the treatment of sex
8 offenders, if available. The treatment program will include
9 polygraph examinations specifically designed for use with sex
10 offenders for the purpose of supervision and treatment compliance,
11 provided the examination is administered by a certified licensed
12 polygraph examiner. The treatment program must be approved by the
13 Department of Corrections or the Department of Mental Health and
14 Substance Abuse Services. Such treatment shall be at the expense of
15 the defendant based on the defendant's ability to pay;

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

23 12. In addition to the other sentencing powers of the court,
24 the court, in the case of a person convicted of cruelty to animals

1 pursuant to Section 1685 of Title 21 of the Oklahoma Statutes, may
2 require the person to pay restitution to animal facilities for
3 medical care and any boarding costs of victimized animals;

4 13. In addition to the other sentencing powers of the court, a
5 sex offender who is habitual or aggravated as defined by Section 584
6 of Title 57 of the Oklahoma Statutes and who is required to register
7 as a sex offender pursuant to the Oklahoma Sex Offenders
8 Registration Act shall be supervised by the Department of
9 Corrections for the duration of the registration period and shall be
10 assigned to a global position monitoring device by the Department of
11 Corrections for the duration of the registration period. The cost
12 of such monitoring device shall be reimbursed by the offender;

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

20 15. In addition to the other sentencing powers of the court, in
21 the case of a sex offender who is required by law to register
22 pursuant to the Sex Offenders Registration Act, the court shall
23 require the person to register any electronic mail address
24 information, instant message, chat or other Internet communication

1 name or identity information that the person uses or intends to use
2 while accessing the Internet or used for other purposes of social
3 networking or other similar Internet communication.

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

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

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

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

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

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

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

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

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

23 2. Any offender eligible to participate in the Program pursuant
24 to this section shall be eligible to participate in a county

1 Program; provided, participation in county-funded Programs shall not
2 be limited to offenders who would otherwise be sentenced to
3 confinement with the Department of Corrections.

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

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

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

23 H. As used in this section:
24

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

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

11 3. "Victims impact panel program" means a program conducted by
12 a corporation registered with the Secretary of State in Oklahoma for
13 the purpose of operating a victims impact panel program. The
14 program shall include live presentations from presenters who will
15 share personal stories with participants about how alcohol, drug
16 abuse, the operation of a motor vehicle while using an electronic
17 communication device or the illegal conduct of others has personally
18 impacted the lives of the presenters. "Victims impact panel
19 program" also means a program offered online with at least ten
20 personal stories from victims and offenders about how alcohol, drug
21 abuse and illegal conduct has personally impacted the victims and
22 offenders. Victims impact panel programs offered online shall
23 provide a system for testing for attention and comprehension of the
24 participant and a system for verifying the identity of the person

1 participating in the panel program. A victims impact panel program
2 shall be attended by persons who have committed the offense of
3 driving, operating or being in actual physical control of a motor
4 vehicle while under the influence of alcohol or other intoxicating
5 substance, operating a motor vehicle while the ability of the person
6 to operate such vehicle was impaired due to the consumption of
7 alcohol or any other substance or operating a motor vehicle while
8 using an electronic device. Persons attending a victims impact
9 panel program shall be required to pay a fee of not more than Sixty
10 Dollars (\$60.00) to the provider of the program. Persons
11 participating in a victims impact panel program offered online shall
12 be required to pay a fee that may exceed One Hundred Dollars
13 (\$100.00) to the provider of the program; however, persons deemed
14 indigent by the court may participate in the program at no charge to
15 the indigent person. A certificate of completion shall be issued to
16 the person upon satisfying the attendance and fee requirements of
17 the victims impact panel program. The certificate of completion
18 shall contain the business identification number of the program
19 provider. A victims impact panel program shall not be provided by
20 any certified assessment agency or certified assessor unless the
21 assessment agency or certified assessor has been granted an
22 exemption by the Commissioner of the Department of Mental Health and
23 Substance Abuse Services. The provider of the victims impact panel
24 program shall carry general liability insurance and maintain an

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

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

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

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

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

11 J. Samples of blood or saliva for DNA testing required by
12 subsection I of this section shall be taken by employees or
13 contractors of the Department of Corrections, peace officers, or the
14 county sheriff or employees or contractors of the sheriff's office.
15 The individuals shall be properly trained to collect blood or saliva
16 samples. Persons collecting blood or saliva for DNA testing
17 pursuant to this section shall be immune from civil liabilities
18 arising from this activity. All collectors of DNA samples shall
19 ensure the collection of samples are mailed to the Oklahoma State
20 Bureau of Investigation within ten (10) days of the time the subject
21 appears for testing or within ten (10) days of the date the subject
22 comes into physical custody to serve a term of incarceration. All
23 collectors of DNA samples shall use sample kits provided by the OSBI
24 and procedures promulgated by the OSBI. Persons subject to DNA

1 testing who are not received at the Lexington Assessment and
2 Reception Center shall be required to pay a fee of Fifteen Dollars
3 (\$15.00) to the agency collecting the sample for submission to the
4 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
5 pursuant to this subsection shall be deposited in the revolving
6 account or the service fee account of the collection agency or
7 department.

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

13 SECTION 2. AMENDATORY 22 O.S. 2011, Section 991c, as
14 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
15 2018, Section 991c), is amended to read as follows:

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

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

1 proceedings are deferred when the defendant is not to be supervised
2 in the community. The total amount to be paid into the court fund
3 shall be established by the court and shall not exceed the amount of
4 the maximum fine authorized by law for the offense;

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

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

10 11. Any combination of the above provisions.

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

1 B. When the court has ordered restitution as a condition of
2 supervision as provided for in subsection A of this section and that
3 condition has not been satisfied, the court may, at any time prior
4 to the termination or expiration of the supervision period, order an
5 extension of supervision for a period not to exceed three (3) years.

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

1 a qualified practitioner or at another location as ordered by the
2 court. The facility or qualified practitioner shall, within
3 seventy-two (72) hours from the time the person is assessed, submit
4 a written report to the court for the purpose of assisting the court
5 in its determination of conditions for deferred sentence. No
6 person, agency or facility operating an alcohol and drug substance
7 abuse evaluation program certified by the Department of Mental
8 Health and Substance Abuse Services shall solicit or refer any
9 person evaluated pursuant to this subsection for any treatment
10 program or alcohol and drug substance abuse service in which the
11 person, agency or facility has a vested interest; however, this
12 provision shall not be construed to prohibit the court from ordering
13 participation in or any person from voluntarily utilizing a
14 treatment program or alcohol and drug substance abuse service
15 offered by such person, agency or facility. Any evaluation report
16 submitted to the court pursuant to this subsection shall be handled
17 in a manner which will keep the report confidential from review by
18 the general public. Nothing contained in this subsection shall be
19 construed to prohibit the court from ordering judgment and sentence
20 in the event the defendant fails or refuses to comply with an order
21 of the court to obtain the evaluation required by this subsection.
22 As used in this subsection, "qualified practitioner" means a person
23 with at least a bachelor's degree in substance abuse treatment,
24 mental health or a related health care field and at least two (2)

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

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

15 2. A victims impact panel program, as defined in subsection H
16 of Section 991a of this title, if such a program is offered in the
17 county where the judgment is rendered. The defendant shall be
18 required to pay a fee of not less than Fifteen Dollars (\$15.00) nor
19 more than Sixty Dollars (\$60.00) as set by the governing authority
20 of the program and approved by the court to the victims impact panel
21 program to offset the cost of participation by the defendant, if in
22 the opinion of the court the defendant has the ability to pay such
23 fee. Additionally, the court may also require such person to
24 participate in a victims impact panel program, as defined in

1 subsection H of Section 991a of this title, that is offered online
2 and pay a fee that may exceed One Hundred Dollars (\$100.00) as set
3 by the governing authority of the victims impact panel program and
4 approved by the court if, in the opinion of the court, the defendant
5 has the ability to pay such fee. For persons deemed indigent by the
6 court, the victims impact panel program offered online may be
7 provided at no charge to such indigent person.

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

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

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

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

24

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

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

11 Records expunged pursuant to this subsection shall be sealed to
12 the public but not to law enforcement agencies for law enforcement
13 purposes. Records expunged pursuant to this subsection shall be
14 admissible in any subsequent criminal prosecution to prove the
15 existence of a prior conviction or prior deferred judgment without
16 the necessity of a court order requesting the unsealing of such
17 records.

18 E. The provisions of subsection D of this section shall be
19 retroactive.

20 F. Whenever a judgment has been deferred by the court according
21 to the provisions of this section, deferred judgment may not be
22 accelerated for any technical violation unless a petition setting
23 forth the grounds for such acceleration is filed by the district
24 attorney with the clerk of the sentencing court and competent

1 evidence justifying the acceleration of the judgment is presented to
2 the court at a hearing to be held for that purpose. The hearing
3 shall be held not more than twenty (20) days after the entry of the
4 plea of not guilty to the petition, unless waived by both the state
5 and the defendant. Any acceleration of a deferred sentence based on
6 a technical violation shall not exceed ninety (90) days for a first
7 acceleration or five (5) years for a second or subsequent
8 acceleration.

9 G. Upon any violation of the deferred judgment, other than a
10 technical violation, the court may enter a judgment of guilt and
11 proceed as provided in Section 991a of this title or may modify any
12 condition imposed. Provided, however, if the deferred judgment is
13 for a felony offense, and the defendant commits another felony
14 offense, the defendant shall not be allowed bail pending appeal.

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

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

23 I. The deferred judgment procedure described in this section
24 shall not apply to defendants found guilty or who plead guilty or

1 nolo contendere to a sex offense required by law to register
2 pursuant to the Sex Offenders Registration Act.

3 J. All defendants who are supervised pursuant to this section
4 shall be subject to the sanction process as established in
5 subsection ~~B~~ D of Section 991b of this title.

6 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-902, as
7 last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp.
8 2018, Section 11-902), is amended to read as follows:

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

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

19 2. Is under the influence of alcohol;

20 3. Has any amount of a Schedule I chemical or controlled
21 substance, as defined in Section 2-204 of Title 63 of the Oklahoma
22 Statutes, or one of its metabolites or analogs in the person's
23 blood, saliva, urine or any other bodily fluid at the time of a test
24

1 of such person's blood, saliva, urine or any other bodily fluid
2 administered within two (2) hours after the arrest of such person;

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

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

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

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

- 17 a. participate in an assessment and evaluation pursuant
18 to subsection G of this section and shall follow all
19 recommendations made in the assessment and evaluation,
20 b. be punished by imprisonment in jail for not less than
21 ten (10) days nor more than one (1) year, and
22 c. be fined not more than One Thousand Dollars
23 (\$1,000.00).

24

1 2. Any person who, having been convicted of or having received
2 deferred judgment for a violation of this section or a violation
3 pursuant to the provisions of any law of this state or another state
4 prohibiting the offenses provided in this section, Section 11-904 of
5 this title or paragraph 4 of subsection A of Section 852.1 of Title
6 21 of the Oklahoma Statutes, or having a prior conviction in a
7 municipal criminal court of record for the violation of a municipal
8 ordinance prohibiting the offense provided for in this section
9 commits a subsequent violation of this section within ten (10) years
10 of the date following the completion of the execution of said
11 sentence or deferred judgment shall, upon conviction, be guilty of a
12 felony and shall participate in an assessment and evaluation
13 pursuant to subsection G of this section and shall be sentenced to:
14 a. follow all recommendations made in the assessment and
15 evaluation for treatment at the defendant's expense,
16 or
17 b. placement in the custody of the Department of
18 Corrections for not less than one (1) year and not to
19 exceed five (5) years and a fine of not more than Two
20 Thousand Five Hundred Dollars (\$2,500.00), or
21 c. treatment, imprisonment and a fine within the
22 limitations prescribed in subparagraphs a and b of
23 this paragraph.

24

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

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

- 14 a. follow all recommendations made in the assessment and
15 evaluation for treatment at the defendant's expense,
16 two hundred forty (240) hours of community service and
17 use of an ignition interlock device, as provided by
18 subparagraph n of paragraph 1 of subsection A of
19 Section 991a of Title 22 of the Oklahoma Statutes, or
20 b. placement in the custody of the Department of
21 Corrections for not less than one (1) year and not to
22 exceed ten (10) years and a fine of not more than Five
23 Thousand Dollars (\$5,000.00), or
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 treatment in subsection G of this section does
5 not include residential or inpatient treatment for a period of not
6 less than ten (10) days, the person shall serve a term of
7 imprisonment of at least ten (10) days.

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

17 a. follow all recommendations made in the assessment and
18 evaluation for treatment at the defendant's expense,
19 followed by not less than one (1) year of supervision
20 and periodic testing at the defendant's expense, four
21 hundred eighty (480) hours of community service, and
22 use of an ignition interlock device, as provided by
23 subparagraph n of paragraph 1 of subsection A of
24

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

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

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

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

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

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

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

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

9 D. Any person who is convicted of a violation of driving under
10 the influence with a blood or breath alcohol concentration of
11 fifteen-hundredths (0.15) or more pursuant to this section shall be
12 deemed guilty of aggravated driving under the influence. A person
13 convicted of aggravated driving under the influence shall
14 participate in an assessment and evaluation pursuant to subsection G
15 of this section and shall comply with all recommendations for
16 treatment. Such person shall be sentenced as provided in paragraph
17 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

24

1 E. When a person is sentenced to imprisonment in the custody of
2 the Department of Corrections, the person shall be processed through
3 the Lexington Assessment and Reception Center or at a place
4 determined by the Director of the Department of Corrections. The
5 Department of Corrections shall classify and assign the person to
6 one or more of the following:

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

10 2. A correctional facility operated by the Department of
11 Corrections with assignment to substance abuse treatment.
12 Successful completion of a Department-of-Corrections-approved
13 substance abuse treatment program shall satisfy the recommendation
14 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
15 course or treatment program or both. Successful completion of an
16 approved Department of Corrections substance abuse treatment program
17 may precede or follow the required assessment.

18 F. The Department of Public Safety is hereby authorized to
19 reinstate any suspended or revoked driving privilege when the person
20 meets the statutory requirements which affect the existing driving
21 privilege.

22 G. Any person who is found guilty of a violation of the
23 provisions of this section shall be ordered to participate in an
24 alcohol and drug substance abuse evaluation and assessment program

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

1 court shall, as a condition of any sentence imposed, including
2 deferred and suspended sentences, require the person to follow all
3 recommendations identified by the evaluation and assessment and
4 ordered by the court. No person, agency or facility operating an
5 evaluation and assessment program certified by the Department of
6 Mental Health and Substance Abuse Services shall solicit or refer
7 any person evaluated and assessed pursuant to this section for any
8 treatment program or substance abuse service in which such person,
9 agency or facility has a vested interest; however, this provision
10 shall not be construed to prohibit the court from ordering
11 participation in or any person from voluntarily utilizing a
12 treatment program or substance abuse service offered by such person,
13 agency or facility. If a person is sentenced to imprisonment in the
14 custody of the Department of Corrections and the court has received
15 a written evaluation report pursuant to the provisions of this
16 subsection, the report shall be furnished to the Department of
17 Corrections with the judgment and sentence. Any evaluation and
18 assessment report submitted to the court pursuant to the provisions
19 of this subsection shall be handled in a manner which will keep such
20 report confidential from the general public's review. Nothing
21 contained in this subsection shall be construed to prohibit the
22 court from ordering judgment and sentence in the event the defendant
23 fails or refuses to comply with an order of the court to obtain the
24 evaluation and assessment required by this subsection. If the

1 defendant fails or refuses to comply with an order of the court to
2 obtain the evaluation and assessment, the Department of Public
3 Safety shall not reinstate driving privileges until the defendant
4 has complied in full with such order. Nothing contained in this
5 subsection shall be construed to prohibit the court from ordering
6 judgment and sentence and any other sanction authorized by law for
7 failure or refusal to comply with an order of the court.

8 H. Any person who is found guilty of a violation of the
9 provisions of this section may be required by the court to attend a
10 victims impact panel program, as defined in subsection H of Section
11 991a of Title 22 of the Oklahoma Statutes, if such a program is
12 offered in the county where the judgment is rendered, and to pay a
13 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
14 Dollars (\$60.00) as set by the governing authority of the program
15 and approved by the court to the program to offset the cost of
16 participation by the defendant, if in the opinion of the court the
17 defendant has the ability to pay such fee. Additionally, the court
18 may also require such person to participate in a victims impact
19 panel program, as defined in subsection H of Section 991a of Title
20 22 of the Oklahoma Statutes, that is offered online and pay a fee
21 that may exceed One Hundred Dollars (\$100.00) as set by the
22 governing authority of the victims impact panel program and approved
23 by the court if, in the opinion of the court, the defendant has the
24 ability to pay such fee. For persons deemed indigent by the court,

1 the victims impact panel program offered online may be provided at
2 no charge to such indigent person.

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

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

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

17 L. 1. When a person is eighteen (18) years of age or older,
18 and is the driver, operator, or person in physical control of a
19 vehicle, and is convicted of violating any provision of this section
20 while transporting or having in the motor vehicle any child less
21 than eighteen (18) years of age, the fine shall be enhanced to
22 double the amount of the fine imposed for the underlying driving
23 under the influence (DUI) violation which shall be in addition to
24 any other penalties allowed by this section.

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

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

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

20 1. The results of any standardized field sobriety test
21 including, but not limited to, the horizontal gaze nystagmus (HGN)
22 test administered by a person who has completed training in
23 standardized field sobriety testing; or
24

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

7 SECTION 4. This act shall become effective November 1, 2019.

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9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2019 - DO
10 PASS, As Amended.

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