

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2877

By: Sanders

4  
5 AS INTRODUCED

6 An Act relating to victims impact panel programs;  
7 amending 22 O.S. 2011, Section 991a, as last amended  
8 by Section 10, Chapter 304, O.S.L. 2018 (22 O.S.  
9 Supp. 2019, Section 991a), which relates to  
10 sentencing powers of the court; changing fee amount  
11 for victims impact panel programs; prohibiting  
12 certain agencies or providers from having a  
13 proprietary or pecuniary interest in victims impact  
14 panel programs; directing victims impact panel  
15 program providers to submit certain documentation and  
16 registration fee to the District Attorneys Council;  
17 directing deposit of registration fee into certain  
18 revolving fund; amending 22 O.S. 2011, Section 991c,  
19 as last amended by Section 4, Chapter 459, O.S.L.  
20 2019 (22 O.S. Supp. 2019, Section 991c), which  
21 relates to deferred sentences; changing fee amount  
22 for victims impact panel program; amending 47 O.S.  
23 2011, Section 11-902, as last amended by Section 1,  
24 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.

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

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

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

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

1 state agency, with interest accruing thereon at the  
2 rate of twelve percent (12%) per annum,

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

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

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

16 f. to confinement as provided by law together with a term  
17 of post-imprisonment community supervision for not  
18 less than three (3) years of the total term allowed by  
19 law for imprisonment, with or without restitution;  
20 provided, however, the authority of this provision is  
21 limited to Section 843.5 of Title 21 of the Oklahoma  
22 Statutes when the offense involved sexual abuse or  
23 sexual exploitation; Sections 681, 741 and 843.1 of  
24 Title 21 of the Oklahoma Statutes when the offense

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

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

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

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

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

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

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

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

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

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

1           ~~(\$15.00) nor more than Sixty Dollars (\$60.00)~~ Seventy-  
2           five Dollars (\$75.00) as set by the governing  
3           authority of the program to offset the cost of  
4           participation by the defendant.  Provided, each  
5           victim/offender reconciliation program shall be  
6           required to obtain a written consent form voluntarily  
7           signed by the victim and defendant that specifies the  
8           methods to be used to resolve the issues, the  
9           obligations and rights of each person, and the  
10          confidentiality of the proceedings.  Volunteer  
11          mediators and employees of a victim/offender  
12          reconciliation program shall be immune from liability  
13          and have rights of confidentiality as provided in  
14          Section 1805 of Title 12 of the Oklahoma Statutes,  
15          n.   to install, at the expense of the defendant, an  
16          ignition interlock device approved by the Board of  
17          Tests for Alcohol and Drug Influence.  The device  
18          shall be installed upon every motor vehicle operated  
19          by the defendant, and the court shall require that a  
20          notation of this restriction be affixed to the  
21          defendant's driver license.  The restriction shall  
22          remain on the driver license not exceeding two (2)  
23          years to be determined by the court.  The restriction  
24          may be modified or removed only by order of the court

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

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



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

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

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

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

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

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

13 ee. in the case of a sex offender sentenced after November  
14 1, 1989, and required by law to register pursuant to  
15 the Sex Offender Registration Act, the court shall  
16 require the person to comply with sex offender  
17 specific rules and conditions of supervision  
18 established by the Department of Corrections and  
19 require the person to participate in a treatment  
20 program designed for the treatment of sex offenders  
21 during the period of time while the offender is  
22 subject to supervision by the Department of  
23 Corrections. The treatment program shall include  
24 polygraph examinations specifically designed for use

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

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

20 gg. in the case of a person convicted of any false or  
21 bogus check violation, as defined in Section 1541.4 of  
22 Title 21 of the Oklahoma Statutes, impose a fee of  
23 Twenty-five Dollars (\$25.00) to the victim for each  
24 check, and impose a bogus check fee to be paid to the

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

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

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

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

18 However, unless under the supervision of the district attorney,  
19 the offender shall be required to pay Forty Dollars (\$40.00) per  
20 month to the district attorney during the first two (2) years of  
21 probation to compensate the district attorney for the costs incurred  
22 during the prosecution of the offender and for the additional work  
23 of verifying the compliance of the offender with the rules and  
24 conditions of his or her probation. The district attorney may waive

1 any part of this requirement in the best interests of justice. The  
2 court shall not waive, suspend, defer or dismiss the costs of  
3 prosecution in its entirety. However, if the court determines that  
4 a reduction in the fine, costs and costs of prosecution is  
5 warranted, the court shall equally apply the same percentage  
6 reduction to the fine, costs and costs of prosecution owed by the  
7 offender;

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

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

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

23 5. Order the defendant to reimburse the Oklahoma State Bureau  
24 of Investigation for all costs incurred by that agency for cleaning

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

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

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

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



1 program or both, pursuant to Sections 3-452 and 3-453  
2 of Title 43A of the Oklahoma Statutes,

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

11 c. to both participate in the alcohol and drug substance  
12 abuse course or treatment program, pursuant to  
13 subparagraph a of this paragraph and attend a victims  
14 impact panel program, pursuant to subparagraph b of  
15 this paragraph,

16 d. to install, at the expense of the person, an ignition  
17 interlock device approved by the Board of Tests for  
18 Alcohol and Drug Influence, upon every motor vehicle  
19 operated by such person and to require that a notation  
20 of this restriction be affixed to the person's driver  
21 license at the time of reinstatement of the license.  
22 The restriction shall remain on the driver license for  
23 such period as the court shall determine. The  
24 restriction may be modified or removed by order of the

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

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

23 8. In addition to the other sentencing powers of the court, in  
24 the case of a person convicted of prostitution pursuant to Section

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

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

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

1 Substance Abuse Services. Such treatment shall be at the expense of  
2 the defendant based on the defendant's ability to pay;

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

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

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

24

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

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

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

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

1 confidential from the general public's review. Nothing contained in  
2 this subsection shall be construed to prohibit the court from  
3 ordering judgment and sentence in the event the defendant fails or  
4 refuses to comply with an order of the court to obtain the  
5 evaluation required by this subsection.

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

1 attorney. Both the application and the waiver shall be made part of  
2 the record of the case.

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

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

24



1 interests of the public and the release will be served by an  
2 extended period of supervision.

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

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

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

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

1 set appropriate compensation to the county for services to the  
2 Department.

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

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

14 H. As used in this section:

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

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

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

1 ~~by any certified assessment agency or certified assessor unless the~~  
2 ~~assessment agency or certified assessor has been granted an~~  
3 ~~exemption by the Commissioner of the Department of Mental Health and~~  
4 ~~Substance Abuse Services~~ further be prohibited from having any  
5 proprietary or pecuniary interest in a victims impact panel program.

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

- 13 a. proof of registration with the Oklahoma Secretary of  
14 State,
- 15 b. proof of general liability insurance,
- 16 c. end-of-year financial statements prepared by a  
17 certified public accountant, ~~and~~
- 18 d. a copy of federal income tax returns filed with the  
19 Internal Revenue Service,
- 20 e. a registration fee of One Thousand Dollars  
21 (\$1,000.00). The registration fee shall be deposited  
22 in the District Attorneys Council Revolving Fund  
23 created in Section 215.28 of Title 19 of the Oklahoma  
24 Statutes, and

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

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

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

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

1 probation or otherwise not supervised by the Department of  
2 Corrections shall submit for blood or saliva testing to the sheriff  
3 of the sentencing county.

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

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

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

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

- 18 1. Pay court costs;
- 19 2. Pay an assessment in lieu of any fine authorized by law for  
20 the offense;
- 21 3. Pay any other assessment or cost authorized by law;
- 22 4. Engage in a term of community service without compensation,  
23 according to a schedule consistent with the employment and family  
24 responsibilities of the defendant;



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

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

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

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

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

24

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

4        11. Any combination of the above provisions.

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

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

1 C. In addition to any conditions of supervision provided for in  
2 subsection A of this section, the court shall, in the case of a  
3 person before the court for the offense of operating or being in  
4 control of a motor vehicle while the person was under the influence  
5 of alcohol, other intoxicating substance, or a combination of  
6 alcohol and another intoxicating substance, or who is before the  
7 court for the offense of operating a motor vehicle while the ability  
8 of the person to operate such vehicle was impaired due to the  
9 consumption of alcohol, require the person to participate in an  
10 alcohol and drug substance abuse evaluation program offered by a  
11 facility or qualified practitioner certified by the Department of  
12 Mental Health and Substance Abuse Services for the purpose of  
13 evaluating the receptivity to treatment and prognosis of the person.  
14 The court shall order the person to reimburse the facility or  
15 qualified practitioner for the evaluation. The Department of Mental  
16 Health and Substance Abuse Services shall establish a fee schedule,  
17 based upon the ability of a person to pay, provided the fee for an  
18 evaluation shall not exceed Seventy-five Dollars (\$75.00). The  
19 evaluation shall be conducted at a certified facility, the office of  
20 a qualified practitioner or at another location as ordered by the  
21 court. The facility or qualified practitioner shall, within  
22 seventy-two (72) hours from the time the person is assessed, submit  
23 a written report to the court for the purpose of assisting the court  
24 in its determination of conditions for deferred sentence. No

1 person, agency or facility operating an alcohol and drug substance  
2 abuse evaluation program certified by the Department of Mental  
3 Health and Substance Abuse Services shall solicit or refer any  
4 person evaluated pursuant to this subsection for any treatment  
5 program or alcohol and drug substance abuse service in which the  
6 person, agency or facility has a vested interest; however, this  
7 provision shall not be construed to prohibit the court from ordering  
8 participation in or any person from voluntarily utilizing a  
9 treatment program or alcohol and drug substance abuse service  
10 offered by such person, agency or facility. Any evaluation report  
11 submitted to the court pursuant to this subsection shall be handled  
12 in a manner which will keep the report confidential from review by  
13 the general public. Nothing contained in this subsection shall be  
14 construed to prohibit the court from ordering judgment and sentence  
15 in the event the defendant fails or refuses to comply with an order  
16 of the court to obtain the evaluation required by this subsection.  
17 As used in this subsection, "qualified practitioner" means a person  
18 with at least a bachelor's degree in substance abuse treatment,  
19 mental health or a related health care field and at least two (2)  
20 years of experience in providing alcohol abuse treatment, other drug  
21 abuse treatment, or both alcohol and other drug abuse treatment who  
22 is certified each year by the Department of Mental Health and  
23 Substance Abuse Services to provide these assessments. However, any  
24 person who does not meet the requirements for a qualified

1 practitioner as defined herein, but who has been previously  
2 certified by the Department of Mental Health and Substance Abuse  
3 Services to provide alcohol or drug treatment or assessments, shall  
4 be considered a qualified practitioner provided all education,  
5 experience and certification requirements stated herein are met by  
6 September 1, 1995. The court may also require the person to  
7 participate in one or both of the following:

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

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

19 D. Upon completion of the conditions of the deferred judgment,  
20 and upon a finding by the court that the conditions have been met  
21 and all fines, fees, and monetary assessments have been paid as  
22 ordered, the defendant shall be discharged without a court judgment  
23 of guilt, and the court shall order the verdict or plea of guilty or  
24 plea of nolo contendere to be expunged from the record and the

1 charge shall be dismissed with prejudice to any further action. The  
2 procedure to expunge the record of the defendant shall be as  
3 follows:

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

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

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

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

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

21 Records expunged pursuant to this subsection shall be sealed to  
22 the public but not to law enforcement agencies for law enforcement  
23 purposes. Records expunged pursuant to this subsection shall be  
24 admissible in any subsequent criminal prosecution to prove the

1 existence of a prior conviction or prior deferred judgment without  
2 the necessity of a court order requesting the unsealing of such  
3 records.

4 E. The provisions of subsection D of this section shall be  
5 retroactive.

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

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

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

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

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

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

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

22 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-902, as  
23 last amended by Section 1, Chapter 61, O.S.L. 2018 (47 O.S. Supp.  
24 2019, Section 11-902), is amended to read as follows:



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

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

11 2. Is under the influence of alcohol;

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

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

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

24

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

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

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

16 2. Any person who, having been convicted of or having received  
17 deferred judgment for a violation of this section or a violation  
18 pursuant to the provisions of any law of this state or another state  
19 prohibiting the offenses provided in this section, Section 11-904 of  
20 this title or paragraph 4 of subsection A of Section 852.1 of Title  
21 21 of the Oklahoma Statutes, or having a prior conviction in a  
22 municipal criminal court of record for the violation of a municipal  
23 ordinance prohibiting the offense provided for in this section  
24 commits a subsequent violation of this section within ten (10) years

1 of the date following the completion of the execution of said  
2 sentence or deferred judgment shall, upon conviction, be guilty of a  
3 felony and shall participate in an assessment and evaluation  
4 pursuant to subsection G of this section and shall be sentenced to:

5 a. follow all recommendations made in the assessment and  
6 evaluation for treatment at the defendant's expense,  
7 or

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

12 c. treatment, imprisonment and a fine within the  
13 limitations prescribed in subparagraphs a and b of  
14 this paragraph.

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

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

1 shall be guilty of a felony and participate in an assessment and  
2 evaluation pursuant to subsection G of this section and shall be  
3 sentenced to:

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

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

21 4. Any person who commits a violation of this section after  
22 having been twice convicted of a felony offense pursuant to the  
23 provisions of this section or a violation pursuant to the provisions  
24 of any law of this state or another state prohibiting the offenses

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

- 6 a. follow all recommendations made in the assessment and  
7 evaluation for treatment at the defendant's expense,  
8 followed by not less than one (1) year of supervision  
9 and periodic testing at the defendant's expense, four  
10 hundred eighty (480) hours of community service, and  
11 use of an ignition interlock device, as provided by  
12 subparagraph n of paragraph 1 of subsection A of  
13 Section 991a of Title 22 of the Oklahoma Statutes, for  
14 a minimum of thirty (30) days, or
- 15 b. placement in the custody of the Department of  
16 Corrections for not less than one (1) year and not to  
17 exceed twenty (20) years and a fine of not more than  
18 Five Thousand Dollars (\$5,000.00), or
- 19 c. treatment, imprisonment and a fine within the  
20 limitations prescribed in subparagraphs a and b of  
21 this paragraph.

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

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

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

14           7. In any case in which a defendant is charged with driving  
15 under the influence of alcohol or other intoxicating substance  
16 offense within any municipality with a municipal court other than a  
17 court of record, the charge shall be presented to the county's  
18 district attorney and filed with the district court of the county  
19 within which the municipality is located.

20           D. Any person who is convicted of a violation of driving under  
21 the influence with a blood or breath alcohol concentration of  
22 fifteen-hundredths (0.15) or more pursuant to this section shall be  
23 deemed guilty of aggravated driving under the influence. A person  
24 convicted of aggravated driving under the influence shall

1 participate in an assessment and evaluation pursuant to subsection G  
2 of this section and shall comply with all recommendations for  
3 treatment. Such person shall be sentenced as provided in paragraph  
4 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

11 E. When a person is sentenced to imprisonment in the custody of  
12 the Department of Corrections, the person shall be processed through  
13 the Lexington Assessment and Reception Center or at a place  
14 determined by the Director of the Department of Corrections. The  
15 Department of Corrections shall classify and assign the person to  
16 one or more of the following:

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

20 2. A correctional facility operated by the Department of  
21 Corrections with assignment to substance abuse treatment.

22 Successful completion of a Department-of-Corrections-approved  
23 substance abuse treatment program shall satisfy the recommendation  
24 for a ten-hour or twenty-four-hour alcohol and drug substance abuse

1 course or treatment program or both. Successful completion of an  
2 approved Department of Corrections substance abuse treatment program  
3 may precede or follow the required assessment.

4 F. The Department of Public Safety is hereby authorized to  
5 reinstate any suspended or revoked driving privilege when the person  
6 meets the statutory requirements which affect the existing driving  
7 privilege.

8 G. Any person who is found guilty of a violation of the  
9 provisions of this section shall be ordered to participate in an  
10 alcohol and drug substance abuse evaluation and assessment program  
11 offered by a certified assessment agency or certified assessor for  
12 the purpose of evaluating and assessing the receptivity to treatment  
13 and prognosis of the person and shall follow all recommendations  
14 made in the assessment and evaluation for treatment. The court  
15 shall order the person to reimburse the agency or assessor for the  
16 evaluation and assessment. Payment shall be remitted by the  
17 defendant or on behalf of the defendant by any third party;  
18 provided, no state-appropriated funds are utilized. The fee for an  
19 evaluation and assessment shall be the amount provided in subsection  
20 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The  
21 evaluation and assessment shall be conducted at a certified  
22 assessment agency, the office of a certified assessor or at another  
23 location as ordered by the court. The agency or assessor shall,  
24 within seventy-two (72) hours from the time the person is evaluated



1 and assessed, submit a written report to the court for the purpose  
2 of assisting the court in its sentencing determination. The court  
3 shall, as a condition of any sentence imposed, including deferred  
4 and suspended sentences, require the person to participate in and  
5 successfully complete all recommendations from the evaluation, such  
6 as an alcohol and substance abuse treatment program pursuant to  
7 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report  
8 indicates that the evaluation and assessment shows that the  
9 defendant would benefit from a ten-hour or twenty-four-hour alcohol  
10 and drug substance abuse course or a treatment program or both, the  
11 court shall, as a condition of any sentence imposed, including  
12 deferred and suspended sentences, require the person to follow all  
13 recommendations identified by the evaluation and assessment and  
14 ordered by the court. No person, agency or facility operating an  
15 evaluation and assessment program certified by the Department of  
16 Mental Health and Substance Abuse Services shall solicit or refer  
17 any person evaluated and assessed pursuant to this section for any  
18 treatment program or substance abuse service in which such person,  
19 agency or facility has a vested interest; however, this provision  
20 shall not be construed to prohibit the court from ordering  
21 participation in or any person from voluntarily utilizing a  
22 treatment program or substance abuse service offered by such person,  
23 agency or facility. If a person is sentenced to imprisonment in the  
24 custody of the Department of Corrections and the court has received

1 a written evaluation report pursuant to the provisions of this  
2 subsection, the report shall be furnished to the Department of  
3 Corrections with the judgment and sentence. Any evaluation and  
4 assessment report submitted to the court pursuant to the provisions  
5 of this subsection shall be handled in a manner which will keep such  
6 report confidential from the general public's review. Nothing  
7 contained in this subsection shall be construed to prohibit the  
8 court from ordering judgment and sentence in the event the defendant  
9 fails or refuses to comply with an order of the court to obtain the  
10 evaluation and assessment required by this subsection. If the  
11 defendant fails or refuses to comply with an order of the court to  
12 obtain the evaluation and assessment, the Department of Public  
13 Safety shall not reinstate driving privileges until the defendant  
14 has complied in full with such order. Nothing contained in this  
15 subsection shall be construed to prohibit the court from ordering  
16 judgment and sentence and any other sanction authorized by law for  
17 failure or refusal to comply with an order of the court.

18 H. Any person who is found guilty of a violation of the  
19 provisions of this section ~~may~~ shall be required by the court to  
20 attend a victims impact panel program, as defined in subsection H of  
21 Section 991a of Title 22 of the Oklahoma Statutes, if such a program  
22 is offered in the county where the judgment is rendered, and to pay  
23 a fee of ~~not less than Fifteen Dollars (\$15.00) nor more than Sixty~~  
24 ~~Dollars (\$60.00)~~ Seventy-five Dollars (\$75.00), as set by the

1 governing authority of the program and approved by the court, to the  
2 program to offset the cost of participation by the defendant, if in  
3 the opinion of the court the defendant has the ability to pay such  
4 fee.

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

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

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

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

1 under the influence (DUI) violation which shall be in addition to  
2 any other penalties allowed by this section.

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

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

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

22 1. The results of any standardized field sobriety test  
23 including, but not limited to, the horizontal gaze nystagmus (HGN)

24

1 test administered by a person who has completed training in  
2 standardized field sobriety testing; or

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

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

10

11 57-2-10697 GRS 01/13/20

12

13

14

15

16

17

18

19

20

21

22

23

24