

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2371

By: Kannady

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2021, Section 926.1, which relates to
9 punishments assessed and declared by juries;
10 authorizing juries to recommend sentencing
11 alternatives; amending 22 O.S. 2021, Section 991a,
12 which relates to sentencing powers of the court;
13 declaring sentencing options inapplicable unless
14 certain findings of fact are made by the court; and
15 providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2021, Section 926.1, is
18 amended to read as follows:

19 Section 926.1 A. In all cases of a verdict of conviction for
20 any offense against any of the laws of the State of Oklahoma, the
21 jury may, and shall, upon the request of the defendant, assess and
22 declare the punishment in their verdict within the limitations fixed
23 by law, and the court shall render a judgment according to such
24 verdict, ~~except as hereinafter provided.~~

B. In all cases in which a jury reaches a verdict that the
defendant is guilty of the offense charged or guilty of a lesser

1 included offense or offenses, the jury shall assess punishment
2 within the limitations fixed by law including any sentencing
3 alternatives available to the court pursuant to the provisions of
4 Section 991a, 991a-3 or 991c of this title, as applicable to the
5 case.

6 SECTION 2. AMENDATORY 22 O.S. 2021, Section 991a, is
7 amended to read as follows:

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

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

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

1 extent of the damage to the victim is determinable
2 with reasonable certainty,

3 b. to reimburse any state agency for amounts paid by the
4 state agency for hospital and medical expenses
5 incurred by the victim or victims, as a result of the
6 criminal act for which such person was convicted,
7 which reimbursement shall be made directly to the
8 state agency, with interest accruing thereon at the
9 rate of twelve percent (12%) per annum,

10 c. to engage in a term of community service without
11 compensation, according to a schedule consistent with
12 the employment and family responsibilities of the
13 person convicted,

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

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

23 f. to confinement as provided by law together with a term
24 of post-imprisonment community supervision for not

1 less than three (3) years of the total term allowed by
2 law for imprisonment, with or without restitution;
3 provided, however, the authority of this provision is
4 limited to Section 843.5 of Title 21 of the Oklahoma
5 Statutes when the offense involved sexual abuse or
6 sexual exploitation; Sections 681, 741 and 843.1 of
7 Title 21 of the Oklahoma Statutes when the offense
8 involved sexual abuse or sexual exploitation; and
9 Sections 865 et seq., 885, 886, 888, 891, 1021,
10 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
11 1123 of Title 21 of the Oklahoma Statutes,

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

1 defendant as a cost of prosecution. The term
2 "certified" means crime stoppers organizations that
3 annually meet the certification standards for crime
4 stoppers programs established by the Oklahoma Crime
5 Stoppers Association to the extent those standards do
6 not conflict with state statutes. The term "court"
7 refers to all municipal and district courts within
8 this state. The "Oklahoma Reward System" means the
9 reward program established by Section 150.18 of Title
10 74 of the Oklahoma Statutes,

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

22 i. to reimburse the Oklahoma State Bureau of
23 Investigation and any authorized law enforcement
24 agency for all costs incurred by that agency for

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

- 12 j. to pay a reasonable sum to the Crime Victims
13 Compensation Board, created by Section 142.2 et seq.
14 of Title 21 of the Oklahoma Statutes, for the benefit
15 of crime victims,
- 16 k. to reimburse the court fund for amounts paid to court-
17 appointed attorneys for representing the defendant in
18 the case in which the person is being sentenced,
- 19 l. to participate in an assessment and evaluation by an
20 assessment agency or assessment personnel certified by
21 the Department of Mental Health and Substance Abuse
22 Services pursuant to Section 3-460 of Title 43A of the
23 Oklahoma Statutes and, as determined by the
24 assessment, participate in an alcohol and drug

1 substance abuse course or treatment program or both,
2 pursuant to Sections 3-452 and 3-453 of Title 43A of
3 the Oklahoma Statutes, or as ordered by the court,
4 m. to be placed in a victims impact panel program, as
5 defined in subsection H of this section, or
6 victim/offender reconciliation program and payment of
7 a fee to the program of Seventy-five Dollars (\$75.00)
8 as set by the governing authority of the program to
9 offset the cost of participation by the defendant.
10 Provided, each victim/offender reconciliation program
11 shall be required to obtain a written consent form
12 voluntarily signed by the victim and defendant that
13 specifies the methods to be used to resolve the
14 issues, the obligations and rights of each person and
15 the confidentiality of the proceedings. Volunteer
16 mediators and employees of a victim/offender
17 reconciliation program shall be immune from liability
18 and have rights of confidentiality as provided in
19 Section 1805 of Title 12 of the Oklahoma Statutes,
20 n. to install, at the expense of the defendant, an
21 ignition interlock device approved by the Board of
22 Tests for Alcohol and Drug Influence. The device
23 shall be installed upon every motor vehicle operated
24 by the defendant, and the court shall require that a

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

- 21 o. to be confined by electronic monitoring administered
22 and supervised by the Department of Corrections or a
23 community sentence provider, and payment of a
24 monitoring fee to the supervising authority, not to

1 exceed Three Hundred Dollars (\$300.00) per month. Any
2 fees collected pursuant to this subparagraph shall be
3 deposited with the appropriate supervising authority.
4 Any willful violation of an order of the court for the
5 payment of the monitoring fee shall be a violation of
6 the sentence and may be punished as deemed proper by
7 the sentencing court. As used in this paragraph,
8 "electronic monitoring" means confinement of the
9 defendant within a specified location or locations
10 with supervision by means of an electronic device
11 approved by the Department of Corrections which is
12 designed to detect if the defendant is in the court-
13 ordered location at the required times and which
14 records violations for investigation by a qualified
15 supervisory agency or person,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 b. to attend a victims impact panel program, as defined
9 in subsection H of this section, and to pay a fee of
10 Seventy-five Dollars (\$75.00) as set by the governing
11 authority of the program and approved by the court, to
12 the program to offset the cost of participation by the
13 defendant, if in the opinion of the court the
14 defendant has the ability to pay such fee,

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

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

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

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

1 monitoring fee, if willfully disobeyed, may be
2 enforced as an indirect contempt of court;

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

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

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

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

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

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

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

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

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

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

19 16. In addition to the other sentencing powers of the court,
20 and pursuant to the terms and conditions of a written plea
21 agreement, the court may prohibit the defendant from entering,
22 visiting or residing within the judicial district in which the
23 defendant was convicted until after completion of his or her
24 sentence; provided, however, the court shall ensure that the

1 defendant has access to those services or programs for which the
2 defendant is required to participate as a condition of probation.
3 When seeking to enter the prohibited judicial district for personal
4 business not related to his or her criminal case, the defendant
5 shall be required to obtain approval by the court.

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

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

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

1 to their third conviction of a felony or, beginning January 1, 1993,
2 to defendants being sentenced for their second or subsequent felony
3 conviction for violation of Section 11-902 of Title 47 of the
4 Oklahoma Statutes, except as otherwise provided in this subsection.
5 In the case of a person being sentenced for his or her second or
6 subsequent felony conviction for violation of Section 11-902 of
7 Title 47 of the Oklahoma Statutes, the court may sentence the person
8 pursuant to the provisions of paragraph 1 of subsection A of this
9 section if the court orders the person to submit to electronically
10 monitored home detention administered and supervised by the
11 Department of Corrections pursuant to subparagraph e of paragraph 7
12 of subsection A of this section. Provided, the court may waive
13 these prohibitions upon written application of the district
14 attorney. Both the application and the waiver shall be made part of
15 the record of the case.

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

19 E. Probation, for purposes of subsection A of this section, is
20 a procedure by which a defendant found guilty of a crime, whether
21 upon a verdict or plea of guilty or upon a plea of nolo contendere,
22 is released by the court subject to conditions imposed by the court
23 and subject to supervision by the Department of Corrections, a
24 private supervision provider or other person designated by the

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

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

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

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

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

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

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

1 H. As used in this section:

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

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

12 3. "Victims impact panel program" means a program conducted by
13 a corporation registered with the Secretary of State in Oklahoma for
14 the sole purpose of operating a victims impact panel program. The
15 program shall include live presentations from presenters who will
16 share personal stories with participants about how alcohol, drug
17 abuse, the operation of a motor vehicle while using an electronic
18 communication device or the illegal conduct of others has personally
19 impacted the lives of the presenters. A victims impact panel
20 program shall be attended by persons who have committed the offense
21 of driving, operating or being in actual physical control of a motor
22 vehicle while under the influence of alcohol or other intoxicating
23 substance, operating a motor vehicle while the ability of the person
24 to operate such vehicle was impaired due to the consumption of

1 alcohol or any other substance or operating a motor vehicle while
2 using an electronic device or by persons who have been convicted of
3 furnishing alcoholic beverage to persons under twenty-one (21) years
4 of age, as provided in Sections 6-101 and 6-120 of Title 37A of the
5 Oklahoma Statutes. Persons attending a victims impact panel program
6 shall be required to pay a fee of Seventy-five Dollars (\$75.00) to
7 the provider of the program. A certificate of completion shall be
8 issued to the person upon satisfying the attendance and fee
9 requirements of the victims impact panel program. The certificate
10 of completion shall contain the business identification number of
11 the program provider. A certified assessment agency, certified
12 assessor or provider of an alcohol and drug substance abuse course
13 shall be prohibited from providing a victims impact panel program
14 and shall further be prohibited from having any proprietary or
15 pecuniary interest in a victims impact panel program. The provider
16 of the victims impact panel program shall carry general liability
17 insurance and maintain an accurate accounting of all business
18 transactions and funds received in relation to the victims impact
19 panel program. Beginning October 1, 2020, and each October 1
20 thereafter, the provider of the victims impact panel program shall
21 provide to the District Attorneys Council the following:

- 22 a. proof of registration with the Oklahoma Secretary of
- 23 State,
- 24 b. proof of general liability insurance,

- 1 c. end-of-year financial statements prepared by a
- 2 certified public accountant,
- 3 d. a copy of federal income tax returns filed with the
- 4 Internal Revenue Service,
- 5 e. a registration fee of One Thousand Dollars
- 6 (\$1,000.00). The registration fee shall be deposited
- 7 in the District Attorneys Council Revolving Fund
- 8 created in Section 215.28 of Title 19 of the Oklahoma
- 9 Statutes, and
- 10 f. a statement certifying that the provider of the
- 11 victims impact panel program has complied with all of
- 12 the requirements set forth in this paragraph.

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

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

1 Offenders Registration Act, a deferred judgment does not require
2 submission to DNA testing.

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

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

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

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

15 L. The provisions of paragraph 1 of subsection A of this
16 section shall not apply to a defendant being sentenced pursuant to a
17 jury verdict unless the court makes the following written findings
18 of fact:

19 1. That the recommended sentence of the jury would result in
20 substantial injustice to the defendant;

21 2. That the recommended sentence of the jury is not necessary
22 for the protection of the public; and

23 3. That the recommended sentence of the jury is clearly
24 erroneous.

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SECTION 3. This act shall become effective November 1, 2023.

59-1-5195 GRS 01/12/23