

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 3052

By: Steele

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5
6 AS INTRODUCED

7 An Act relating to corrections; amending 21 O.S.
8 2011, Section 13.1, which relates to required service
9 of prison sentence; modifying eligibility
10 requirements for earned credits; amending 22 O.S.
11 2011, Section 471.2, which relates to the Oklahoma
12 Drug Court Act; providing for the use of intermediate
13 sanctions facilities; amending 22 O.S. 2011, Section
14 982a, which relates to judicial reviews; increasing
15 time limitation for requesting sentence modification;
16 requiring approval by the district attorney under
17 certain circumstances; amending 22 O.S. 2011, Section
18 991a, which relates to sentencing powers of the
19 court; requiring certain persons to participate in an
20 assessment and evaluation; providing access to
21 assessment results; directing use of assessment
22 results for sentencing options; requiring mandatory
23 term of supervised probation; establishing time
24 limitation for mandatory probation; amending 57 O.S.
2011, Section 517, which relates to probation
violations; modifying circumstances that allow the
revocation of probation; clarifying procedures for
intermediate sanctions facility placement;
authorizing the Department of Corrections to develop
matrix of technical notations and sanctions for
certain persons; authorizing use of intermediate
sanctions process; providing procedures for sanctions
process; directing the Department of Corrections to
develop certain policies and procedures; providing
procedures for technical violation hearings; making
hearing and sanctions appealable to the district
court; authorizing the Department of Corrections to
establish intermediate sanctions facilities for
certain persons; establishing time limitation for
confinement in facility; prohibiting offenders from
receiving earned credits; amending 63 O.S. 2011,

1 Section 2-402, which relates to the Uniform
2 Controlled Dangerous Substances Act; modifying
3 penalties for certain crimes; creating the Justice
4 Reinvestment Grant Program; authorizing the Attorney
5 General to award competitive grants to local law
6 enforcement agencies; directing use of funds;
7 providing eligibility requirements; directing the
8 Attorney General to publish guidelines and
9 application; authorizing the Attorney General to
10 adopt rules and procedures; providing for
11 codification; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2011, Section 13.1, is
amended to read as follows:

Section 13.1 Persons convicted of:

1. First degree murder as defined in Section 701.7 of this
title;
2. Second degree murder as defined by Section 701.8 of this
title;
3. Manslaughter in the first degree as defined by Section 711
of this title;
4. Poisoning with intent to kill as defined by Section 651 of
this title;
5. Shooting with intent to kill, use of a vehicle to facilitate
use of a firearm, crossbow or other weapon, assault, battery, or
assault and battery with a deadly weapon or by other means likely to

1 produce death or great bodily harm, as provided for in Section 652
2 of this title;

3 6. Assault with intent to kill as provided for in Section 653
4 of this title;

5 7. Conjoint robbery as defined by Section 800 of this title;

6 8. Robbery with a dangerous weapon as defined in Section 801 of
7 this title;

8 9. First degree robbery as defined in Section 797 of this
9 title;

10 10. First degree rape as provided for in Section 1115 of this
11 title;

12 11. First degree arson as defined in Section 1401 of this
13 title;

14 12. First degree burglary as provided for in Section 1436 of
15 this title;

16 13. Bombing as defined in Section 1767.1 of this title;

17 14. Any crime against a child provided for in Section 843.5 of
18 this title;

19 15. Forcible sodomy as defined in Section 888 of this title;

20 16. Child pornography as defined in Section 1021.2, 1021.3 or
21 1024.1 of this title;

22 17. Child prostitution as defined in Section 1030 of this
23 title;

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1 18. Lewd molestation of a child as defined in Section 1123 of
2 this title;

3 19. Abuse of a vulnerable adult as defined in Section 10-103 of
4 Title 43A of the Oklahoma Statutes who is a resident of a nursing
5 facility;

6 20. Aggravated trafficking as provided for in subsection C of
7 Section 2-415 of Title 63 of the Oklahoma Statutes; or

8 21. Aggravated assault and battery upon any person defending
9 another person from assault and battery,
10 shall be required to serve not less than eighty-five percent (85%)
11 of any sentence of imprisonment imposed by the judicial system prior
12 to becoming eligible for consideration for parole.—~~Persons~~
13 ~~convicted of these offenses shall not be eligible for~~ or for
14 receiving earned credits or any other type of credits which have the
15 effect of reducing the length of ~~the sentence to less than~~ imposed.
16 The Department of Corrections shall keep an accounting of the earned
17 credits of the inmate during incarceration and shall, in the
18 discretion of the Director, apply said credits when eighty-five
19 percent (85%) of the sentence imposed has been served. Granting of
20 the credits shall be solely in the discretion of the Director based
21 on institutional behavior and the total credits granted shall not be
22 more than fifteen percent (15%) of the total sentence.

23 SECTION 2. AMENDATORY 22 O.S. 2011, Section 471.2, is
24 amended to read as follows:

1 Section 471.2 A. The initial opportunity for review of an
2 offender for a drug court program shall occur within four (4) days
3 after the arrest and detention or incarceration of the offender in
4 the city or county jail, or if an immediate bond release program is
5 available through the jail, the initial opportunity for review shall
6 occur in conjunction with the bond release program. When a drug
7 court is established, the following information shall be initially
8 reviewed by the sheriff or designee, if the offender is held in a
9 county jail, or by the chief of police or designee, if the offender
10 is held in a city jail:

11 1. The offender's arrest or charge does not involve a crime of
12 violence against any person, unless there is a specific treatment
13 program in the jurisdiction designed to address domestic violence
14 and the offense is related to domestic violence and substance abuse;

15 2. The offender has no prior felony conviction in this state or
16 another state for a violent offense within the last ten (10) years,
17 except as may be allowed in a domestic violence treatment program
18 authorized by the drug court program. It shall be sufficient for
19 this paragraph that a criminal history records name search was
20 conducted and indicated no apparent violent offense;

21 3. The offender's arrest or charge does not involve a violation
22 of the Trafficking In Illegal Drugs Act, Section 2-414 et seq. of
23 Title 63 of the Oklahoma Statutes;

24 4. The offender has committed a felony offense; and

1 5. The offender:

- 2 a. admits to having a substance abuse addiction,
- 3 b. appears to have a substance abuse addiction,
- 4 c. is known to have a substance abuse addiction, or
- 5 d. the arrest or charge is based upon an offense eligible
- 6 for the drug court program.

7 B. If it appears to the reviewing officer that the offender may
8 be potentially eligible for the drug court program based upon a
9 review of the information in subsection A of this section, the
10 offender shall be given an eligibility form which may be voluntarily
11 completed by the offender, and the reviewing officer shall file the
12 criminal case record within the time prescribed in subsection E of
13 Section ~~2~~ 471.1 of this ~~act~~ title. The offender shall not
14 automatically be considered for the program based upon this review.
15 The offender must request consideration for the drug court program
16 as provided in subsection C of this section and shall have approval
17 from the district attorney before being considered for the drug
18 court program. The eligibility form shall describe the drug court
19 program for which the offender may be eligible, including, but not
20 limited to:

- 21 1. A full description of the drug court process and
- 22 investigation;
- 23 2. A general explanation of the roles and authority of the
- 24 supervising staff, the district attorney, the defense attorney, the

1 treatment provider, the offender, and the judge in the drug court
2 program;

3 3. A clear statement that the drug court judge may decide after
4 a hearing not to consider the offender for the drug court program
5 and in that event the offender will be prosecuted in the traditional
6 manner;

7 4. A clear statement that the offender is required, before
8 consideration in the program, to enter a guilty plea as part of a
9 written plea agreement;

10 5. A clear statement that the plea agreement will specify the
11 offense to which the guilty plea will be entered and will state any
12 penalty to be imposed for the offense, both in the event of a
13 successful completion of the drug court program, and in the event of
14 a failure to complete the program;

15 6. A clear statement that the offender must voluntarily agree
16 to:

- 17 a. waive the right to a speedy trial,
- 18 b. waive the right to a preliminary hearing,
- 19 c. the terms and conditions of a treatment plan, and
- 20 d. sign a performance contract with the court;

21 7. A clear statement that the offender, if accepted into the
22 drug court program, may not be incarcerated for the offense in a
23 state correctional institution or jail upon successful completion of
24 the program;

1 8. A clear statement that during participation in the drug
2 court program should the offender fail to comply with the terms of
3 the agreement, the offender may be sanctioned to serve a term of
4 confinement of up to six (6) months in an intermediate sanctions
5 facility operated by the Department of Corrections;

6 9. A clear statement that during participation in the drug
7 court program should the offender:

- 8 a. fail to comply with the terms of the agreements,
- 9 b. be convicted of a misdemeanor offense which reflects a
10 propensity for violence,
- 11 c. be arrested for a violent felony offense, or
- 12 d. be convicted of any felony offense,

13 the offender may be required, after a court hearing, to be revoked
14 from the program and sentenced without trial pursuant to the
15 punishment provisions of the negotiated plea agreement; and

16 ~~9.~~ 10. An explanation of the criminal record retention and
17 disposition resulting from participation in the drug court program
18 following successful completion of the program.

19 C. 1. The offender may request consideration for the drug
20 court program as follows:

- 21 a. if the offender is incarcerated, the offender must
22 sign and complete the eligibility form and return it
23 to the sheriff, if the offender is held in the county
24 jail; or to the chief of police, if the offender is

1 held in a city jail. The sheriff or chief of police,
2 upon receipt of the eligibility form, shall file the
3 form with the district attorney at the time of filing
4 the criminal case record or at any time during the
5 period of incarceration when the offender completes
6 the form after the criminal case record has been
7 filed, or

8 b. after release of the offender from incarceration, the
9 offender must sign and complete the eligibility form
10 and file it with the district attorney or the court,
11 prior to or at the time of either initial appearance
12 or arraignment.

13 2. Any offender desiring legal consultation prior to signing or
14 completing the form for consideration in a drug court program shall
15 be referred to the defense attorney of the drug court team, or a
16 public defender, if the offender is indigent, or allowed to consult
17 with private legal counsel.

18 3. Nothing contained in the provisions of this subsection shall
19 prohibit the drug court from considering any offender deemed
20 eligible for the program at any time prior to sentencing whose case
21 has been prosecuted in the traditional manner, or upon a violation
22 of parole or probation conditions relating to substance abuse, upon
23 recommendation of the district attorney as provided in Section 9
24 471.8 of this ~~act~~ title.

1 D. When an offender has filed a voluntary request to be
2 considered for a drug court program on the appropriate form, the
3 district attorney shall indicate his or her approval of the request
4 by filing the form with the drug court judge. Upon the filing of
5 the request form by the district attorney, an initial hearing shall
6 be set before the drug court judge. The hearing shall be not less
7 than three (3) work days nor more than five (5) work days after the
8 date of the filing of the request form. Notice of the hearing shall
9 be given to the drug court team, or in the event no drug court team
10 is designated, to the offender, the district attorney, and to the
11 public defender. The offender shall be required to notify any
12 private legal counsel of the date and time of the hearing.

13 SECTION 3. AMENDATORY 22 O.S. 2011, Section 982a, is
14 amended to read as follows:

15 Section 982a. A. Any time within ~~twelve (12)~~ twenty-four (24)
16 months after a sentence is imposed or within ~~twelve (12)~~ twenty-four
17 (24) months after probation has been revoked, the court imposing
18 sentence or revocation of probation may modify such sentence or
19 revocation by directing that another sentence be imposed, if the
20 court is satisfied that the best interests of the public will not be
21 jeopardized; provided, however, the court shall not impose a
22 deferred sentence. Any application for sentence modification that
23 is filed beyond twelve (12) months of the initial sentence being
24 imposed must be approved by the district attorney. This section

1 shall not apply to convicted felons who have been in confinement in
2 any state prison system for any previous felony conviction during
3 the ten-year period preceding the date that the sentence this
4 section applies to was imposed. Further, without the consent of the
5 district attorney, this section shall not apply to sentences imposed
6 pursuant to a plea agreement.

7 B. For purposes of judicial review, upon court order or written
8 request from the sentencing judge, the Department of Corrections
9 shall provide the court imposing sentence or revocation of probation
10 with a report to include a summary of the offender's assessed needs,
11 any progress made by the offender in addressing his or her assessed
12 needs, and any other information the Department can supply on the
13 inmate. The court shall consider such reports when modifying the
14 sentence or revocation of probation. The court shall allow the
15 Department of Corrections at least twenty (20) days after receipt of
16 a request or order from the court to prepare the required reports.

17 C. If the court considers modification of the sentence or
18 revocation of probation, a hearing shall be made in open court after
19 receipt of the reports required in subsection B of this section.
20 The clerk of the court imposing sentence or revocation of probation
21 shall give notice of the judicial review hearing to the Department
22 of Corrections, the inmate, the inmate's legal counsel, and the
23 district attorney of the county in which the inmate was convicted
24 upon receipt of the reports. Such notice shall be mailed at least

1 twenty-one (21) days prior to the hearing date and shall include a
2 copy of the report and any other written information to be
3 considered at the judicial review hearing.

4 D. If an appeal is taken from the original sentence or from a
5 revocation of probation which results in a modification of the
6 sentence or modification to the revocation of probation of the
7 defendant, such sentence may be further modified in the manner
8 hereinbefore described within ~~twelve (12)~~ twenty-four (24) months
9 after the receipt by the clerk of the district court of the mandate
10 from the Supreme Court or the Court of Criminal Appeals.

11 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991a, is
12 amended to read as follows:

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

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

- 21 a. to provide restitution to the victim as provided by
22 Section 991f et seq. of this title or according to a
23 schedule of payments established by the sentencing
24 court, together with interest upon any pecuniary sum

1 at the rate of twelve percent (12%) per annum, if the
2 defendant agrees to pay such restitution or, in the
3 opinion of the court, if the defendant is able to pay
4 such restitution without imposing manifest hardship on
5 the defendant or the immediate family and if the
6 extent of the damage to the victim is determinable
7 with reasonable certainty,

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

15 c. to engage in a term of community service without
16 compensation, according to a schedule consistent with
17 the employment and family responsibilities of the
18 person convicted,

19 d. to pay a reasonable sum into any trust fund,
20 established pursuant to the provisions of Sections 176
21 through 180.4 of Title 60 of the Oklahoma Statutes,
22 and which provides restitution payments by convicted
23 defendants to victims of crimes committed within this
24

1 state wherein such victim has incurred a financial
2 loss,

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

5 f. to confinement as provided by law together with a term
6 of post-imprisonment community supervision for not
7 less than three (3) years of the total term allowed by
8 law for imprisonment, with or without restitution;
9 provided, however, the authority of this provision is
10 limited to Section 843.5 of Title 21 of the Oklahoma
11 Statutes when the offense involved sexual abuse or
12 sexual exploitation; Sections 681, 741 and 843.1 of
13 Title 21 of the Oklahoma Statutes when the offense
14 involved sexual abuse or sexual exploitation; and
15 Sections 865 et seq., 885, 886, 888, 891, 1021,
16 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
17 1123 of Title 21 of the Oklahoma Statutes,

18 g. to repay the reward or part of the reward paid by a
19 local certified crime stoppers program and the
20 Oklahoma Reward System. In determining whether the
21 defendant shall repay the reward or part of the
22 reward, the court shall consider the ability of the
23 defendant to make the payment, the financial hardship
24 on the defendant to make the required payment, and the

1 importance of the information to the prosecution of
2 the defendant as provided by the arresting officer or
3 the district attorney with due regard for the
4 confidentiality of the records of the local certified
5 crime stoppers program and the Oklahoma Reward System.
6 The court shall assess this repayment against the
7 defendant as a cost of prosecution. The term
8 "certified" means crime stoppers organizations that
9 annually meet the certification standards for crime
10 stoppers programs established by the Oklahoma Crime
11 Stoppers Association to the extent those standards do
12 not conflict with state statutes. The term "court"
13 refers to all municipal and district courts within
14 this state. The "Oklahoma Reward System" means the
15 reward program established by Section 150.18 of Title
16 74 of the Oklahoma Statutes,

17 h. to reimburse the Oklahoma State Bureau of
18 Investigation for costs incurred by that agency during
19 its investigation of the crime for which the defendant
20 pleaded guilty, nolo contendere or was convicted,
21 including compensation for laboratory, technical, or
22 investigation services performed by the Bureau if, in
23 the opinion of the court, the defendant is able to pay
24 without imposing manifest hardship on the defendant,

1 and if the costs incurred by the Bureau during the
2 investigation of the defendant's case may be
3 determined with reasonable certainty,

- 4 i. to reimburse the Oklahoma State Bureau of
5 Investigation and any authorized law enforcement
6 agency for all costs incurred by that agency for
7 cleaning up an illegal drug laboratory site for which
8 the defendant pleaded guilty, nolo contendere or was
9 convicted. The court clerk shall collect the amount
10 and may retain five percent (5%) of such monies to be
11 deposited in the Court Clerk Revolving Fund to cover
12 administrative costs and shall remit the remainder to
13 the Oklahoma State Bureau of Investigation to be
14 deposited in the OSBI Revolving Fund established by
15 Section 150.19a of Title 74 of the Oklahoma Statutes
16 or to the general fund wherein the other law
17 enforcement agency is located,
- 18 j. to pay a reasonable sum to the Crime Victims
19 Compensation Board, created by Section 142.2 et seq.
20 of Title 21 of the Oklahoma Statutes, for the benefit
21 of crime victims,
- 22 k. to reimburse the court fund for amounts paid to court-
23 appointed attorneys for representing the defendant in
24 the case in which the person is being sentenced,

1. to participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and, as determined by the assessment, participate in an alcohol and drug substance abuse course or treatment program or both, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes, or as ordered by the court,
- m. to be placed in a victims impact panel program or victim/offender reconciliation program and payment of a fee to the program of not less than Fifteen Dollars (\$15.00) nor more than Fifty Dollars (\$50.00) as set by the governing authority of the program to offset the cost of participation by the defendant. Provided, each victim/offender reconciliation program shall be required to obtain a written consent form voluntarily signed by the victim and defendant that specifies the methods to be used to resolve the issues, the obligations and rights of each person, and the confidentiality of the proceedings. Volunteer mediators and employees of a victim/offender reconciliation program shall be immune from liability

1 and have rights of confidentiality as provided in
2 Section 1805 of Title 12 of the Oklahoma Statutes,
3 n. to install, at the expense of the defendant, an
4 ignition interlock device approved by the Board of
5 Tests for Alcohol and Drug Influence. The device
6 shall be installed upon every motor vehicle operated
7 by the defendant, and the court shall require that a
8 notation of this restriction be affixed to the
9 defendant's driver license. The restriction shall
10 remain on the driver license not exceeding two (2)
11 years to be determined by the court. The restriction
12 may be modified or removed only by order of the court
13 and notice of any modification order shall be given to
14 the Department of Public Safety. Upon the expiration
15 of the period for the restriction, the Department of
16 Public Safety shall remove the restriction without
17 further court order. Failure to comply with the order
18 to install an ignition interlock device or operating
19 any vehicle without a device during the period of
20 restriction shall be a violation of the sentence and
21 may be punished as deemed proper by the sentencing
22 court. As used in this paragraph, "ignition interlock
23 device" means a device that, without tampering or
24 intervention by another person, would prevent the

1 defendant from operating a motor vehicle if the
2 defendant has a blood or breath alcohol concentration
3 of two-hundredths (0.02) or greater,

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

23 p. to perform one or more courses of treatment, education
24 or rehabilitation for any conditions, behaviors,

1 deficiencies or disorders which may contribute to
2 criminal conduct, including but not limited to alcohol
3 and substance abuse, mental health, emotional health,
4 physical health, propensity for violence, antisocial
5 behavior, personality or attitudes, deviant sexual
6 behavior, child development, parenting assistance, job
7 skills, vocational-technical skills, domestic
8 relations, literacy, education, or any other
9 identifiable deficiency which may be treated
10 appropriately in the community and for which a
11 certified provider or a program recognized by the
12 court as having significant positive impact exists in
13 the community. Any treatment, education or
14 rehabilitation provider required to be certified
15 pursuant to law or rule shall be certified by the
16 appropriate state agency or a national organization,

17 q. to submit to periodic testing for alcohol,
18 intoxicating substance, or controlled dangerous
19 substances by a qualified laboratory,

20 r. to pay a fee, costs for treatment, education,
21 supervision, participation in a program, or any
22 combination thereof as determined by the court, based
23 upon the defendant's ability to pay the fees or costs,
24

- s. to be supervised by a Department of Corrections employee, a private supervision provider, or other person designated by the court,
- t. to obtain positive behavior modeling by a trained mentor,
- u. to serve a term of confinement in a restrictive housing facility available in the community,
- v. to serve a term of confinement in the county jail at night or during weekends pursuant to Section 991a-2 of this title or for work release,
- w. to obtain employment or participate in employment-related activities,
- x. to participate in mandatory day reporting to facilities or persons for services, payments, duties or person-to-person contacts as specified by the court,
- y. to pay day fines not to exceed fifty percent (50%) of the net wages earned. For purposes of this paragraph, "day fine" means the offender is ordered to pay an amount calculated as a percentage of net daily wages earned. The day fine shall be paid to the local community sentencing system as reparation to the community. Day fines shall be used to support the local system,

- 1 z. to submit to blood or saliva testing as required by
2 subsection I of this section,
- 3 aa. to repair or restore property damaged by the
4 defendant's conduct, if the court determines the
5 defendant possesses sufficient skill to repair or
6 restore the property and the victim consents to the
7 repairing or restoring of the property,
- 8 bb. to restore damaged property in kind or payment of out-
9 of-pocket expenses to the victim, if the court is able
10 to determine the actual out-of-pocket expenses
11 suffered by the victim,
- 12 cc. to attend a victim-offender reconciliation program if
13 the victim agrees to participate and the offender is
14 deemed appropriate for participation,
- 15 dd. in the case of a person convicted of prostitution
16 pursuant to Section 1029 of Title 21 of the Oklahoma
17 Statutes, require such person to receive counseling
18 for the behavior which may have caused such person to
19 engage in prostitution activities. Such person may be
20 required to receive counseling in areas including but
21 not limited to alcohol and substance abuse, sexual
22 behavior problems, or domestic abuse or child abuse
23 problems,
- 24

1 ee. in the case of a sex offender sentenced after November
2 1, 1989, and required by law to register pursuant to
3 the Sex Offender Registration Act, the court shall
4 require the person to comply with sex offender
5 specific rules and conditions of supervision
6 established by the Department of Corrections and
7 require the person to participate in a treatment
8 program designed for the treatment of sex offenders
9 during the period of time while the offender is
10 subject to supervision by the Department of
11 Corrections. The treatment program shall include
12 polygraph examinations specifically designed for use
13 with sex offenders for purposes of supervision and
14 treatment compliance, and shall be administered not
15 less than each six (6) months during the period of
16 supervision. The examination shall be administered by
17 a certified licensed polygraph examiner. The
18 treatment program must be approved by the Department
19 of Corrections or the Department of Mental Health and
20 Substance Abuse Services. Such treatment shall be at
21 the expense of the defendant based on the defendant's
22 ability to pay,

23 ff. in addition to other sentencing powers of the court,
24 the court in the case of a defendant being sentenced

1 for a felony conviction for a violation of Section 2-
2 402 of Title 63 of the Oklahoma Statutes which
3 involves marijuana may require the person to
4 participate in a drug court program, if available. If
5 a drug court program is not available, the defendant
6 may be required to participate in a community
7 sanctions program, if available,

8 gg. in the case of a person convicted of any false or
9 bogus check violation, as defined in Section 1541.4 of
10 Title 21 of the Oklahoma Statutes, impose a fee of
11 Twenty-five Dollars (\$25.00) to the victim for each
12 check, and impose a bogus check fee to be paid to the
13 district attorney. The bogus check fee paid to the
14 district attorney shall be equal to the amount
15 assessed as court costs plus Twenty-five Dollars
16 (\$25.00) for each check upon filing of the case in
17 district court. This money shall be deposited in the
18 Bogus Check Restitution Program Fund as established in
19 subsection B of Section 114 of this title.

20 Additionally, the court may require the offender to
21 pay restitution and bogus check fees on any other
22 bogus check or checks that have been submitted to the
23 District Attorney Bogus Check Restitution Program, and

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

1 However, any such order for restitution, community service,
2 payment to a local certified crime stoppers program, payment to the
3 Oklahoma Reward System, or confinement in the county jail, or a
4 combination thereof, shall be made in conjunction with probation and
5 shall be made a condition of the suspended sentence;

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

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

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

21 5. Order the defendant to reimburse the Oklahoma State Bureau
22 of Investigation for all costs incurred by that agency for cleaning
23 up an illegal drug laboratory site for which the defendant pleaded
24 guilty, nolo contendere or was convicted. The court clerk shall

1 collect the amount and may retain five percent (5%) of such monies
2 to be deposited in the Court Clerk Revolving Fund to cover
3 administrative costs and shall remit the remainder to the Oklahoma
4 State Bureau of Investigation to be deposited in the OSBI Revolving
5 Fund established by Section 150.19a of Title 74 of the Oklahoma
6 Statutes;

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

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

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

- 1 b. to attend a victims impact panel program, if such a
2 program is offered in the county where the judgment is
3 rendered, and to pay a fee, not less than Fifteen
4 Dollars (\$15.00) nor more than Fifty Dollars (\$50.00)
5 as set by the governing authority of the program and
6 approved by the court, to the program to offset the
7 cost of participation by the defendant, if in the
8 opinion of the court the defendant has the ability to
9 pay such fee,
- 10 c. to both participate in the alcohol and drug substance
11 abuse course or treatment program, pursuant to
12 subparagraph a of this paragraph and attend a victims
13 impact panel program, pursuant to subparagraph b of
14 this paragraph,
- 15 d. to install, at the expense of the person, an ignition
16 interlock device approved by the Board of Tests for
17 Alcohol and Drug Influence, upon every motor vehicle
18 operated by such person and to require that a notation
19 of this restriction be affixed to the person's driver
20 license at the time of reinstatement of the license.
21 The restriction shall remain on the driver license for
22 such period as the court shall determine. The
23 restriction may be modified or removed by order of the
24 court and notice of the order shall be given to the

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

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

22 8. In addition to the other sentencing powers of the court, in
23 the case of a person convicted of prostitution pursuant to Section
24 1029 of Title 21 of the Oklahoma Statutes, require such person to

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

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

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

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, as defined in Section 1-1-105 of Title 10A of the Oklahoma
6 Statutes, may require the person to undergo treatment or to
7 participate in counseling services. The defendant may be required
8 to pay all or part of the cost of the treatment or counseling
9 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;

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 web site 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 victim 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 the supervision of the Department of Corrections.

11 Such supervision shall be initiated upon an order of probation from
12 the court, and shall not exceed two (2) years, except as otherwise
13 provided by law. In the case of a person convicted of a sex
14 offense, supervision shall begin immediately upon release from
15 incarceration or if parole is granted and shall not be limited to
16 two (2) years. Provided further, any supervision provided for in
17 this section may be extended for a period not to exceed the
18 expiration of the maximum term or terms of the sentence upon a
19 determination by the Division of Probation and Parole of the
20 Department of Corrections that the best interests of the public and
21 the release will be served by an extended period of supervision.

22 F. The Department of Corrections, or such other agency as the
23 court may designate, shall be responsible for the monitoring and
24 administration of the restitution and service programs provided for

1 by subparagraphs a, c, and d of paragraph 1 of subsection A of this
2 section, and shall ensure that restitution payments are forwarded to
3 the victim and that service assignments are properly performed.

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

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

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

21 4. The Department is hereby authorized to provide technical
22 assistance to any county in establishing a Program, regardless of
23 whether the county enters into a contract pursuant to this
24 subsection. Technical assistance shall include appropriate

1 staffing, development of community resources, sponsorship,
2 supervision and any other requirements.

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

8 H. As used in this section:

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

14 2. "Electronically monitored home detention" means
15 incarceration of the defendant within a specified location or
16 locations with monitoring by means of a device approved by the
17 Department of Corrections that detects if the person leaves the
18 confines of any specified location.

19 I. A person convicted of a felony offense or receiving any form
20 of probation for an offense in which registration is required
21 pursuant to the Sex Offenders Registration Act, shall submit to
22 deoxyribonucleic acid DNA testing for law enforcement identification
23 purposes in accordance with Section 150.27 of Title 74 of the
24 Oklahoma Statutes and the rules promulgated by the Oklahoma State

1 Bureau of Investigation for the OSBI Combined DNA Index System
2 (CODIS) Database. Subject to the availability of funds, any person
3 convicted of a misdemeanor offense of assault and battery, domestic
4 abuse, stalking, possession of a controlled substance prohibited
5 under Schedule IV of the Uniform Controlled Dangerous Substances
6 Act, outraging public decency, resisting arrest, escape or
7 attempting to escape, eluding a police officer, peeping tom,
8 pointing a firearm, unlawful carry of a firearm, illegal transport
9 of a firearm, discharging of a firearm, threatening an act of
10 violence, breaking and entering a dwelling place, destruction of
11 property, negligent homicide, or causing a personal injury accident
12 while driving under the influence of any intoxicating substance, or
13 any alien unlawfully present under federal immigration law, upon
14 arrest, shall submit to deoxyribonucleic acid DNA testing for law
15 enforcement identification purposes in accordance with Section
16 150.27 of Title 74 of the Oklahoma Statutes and the rules
17 promulgated by the Oklahoma State Bureau of Investigation for the
18 OSBI Combined DNA Index System (CODIS) Database. Any defendant
19 sentenced to probation shall be required to submit to testing within
20 thirty (30) days of sentencing either to the Department of
21 Corrections or to the county sheriff or other peace officer as
22 directed by the court. Defendants who are sentenced to a term of
23 incarceration shall submit to testing in accordance with Section
24 530.1 of Title 57 of the Oklahoma Statutes, for those defendants who

1 enter the custody of the Department of Corrections or to the county
2 sheriff, for those defendants sentenced to incarceration in a county
3 jail. Convicted individuals who have previously submitted to DNA
4 testing under this section and for whom a valid sample is on file in
5 the OSBI Combined DNA Index System (CODIS) Database at the time of
6 sentencing shall not be required to submit to additional testing.
7 Except as required by the Sex Offenders Registration Act, a deferred
8 judgment does not require submission to deoxyribonucleic acid
9 testing.

10 Any person who is incarcerated in the custody of the Department
11 of Corrections after July 1, 1996, and who has not been released
12 before January 1, 2006, shall provide a blood or saliva sample prior
13 to release. Every person subject to DNA testing after January 1,
14 2006, whose sentence does not include a term of confinement with the
15 Department of Corrections shall submit a blood or saliva sample.
16 Every person subject to DNA testing who is sentenced to unsupervised
17 probation or otherwise not supervised by the Department of
18 Corrections shall submit for blood or saliva testing to the sheriff
19 of the sentencing county.

20 J. Samples of blood or saliva for DNA testing required by
21 subsection I of this section shall be taken by employees or
22 contractors of the Department of Corrections, peace officers, or the
23 county sheriff or employees or contractors of the sheriff's office.
24 The individuals shall be properly trained to collect blood or saliva

1 samples. Persons collecting blood or saliva for DNA testing
2 pursuant to this section shall be immune from civil liabilities
3 arising from this activity. All collectors of DNA samples shall
4 ensure the collection of samples are mailed to the Oklahoma State
5 Bureau of Investigation within ten (10) days of the time the subject
6 appears for testing or within ten (10) days of the date the subject
7 comes into physical custody to serve a term of incarceration. All
8 collectors of DNA samples shall use sample kits provided by the OSBI
9 and procedures promulgated by the OSBI. Persons subject to DNA
10 testing who are not received at the Lexington Assessment and
11 Reception Center shall be required to pay a fee of Fifteen Dollars
12 (\$15.00) to the agency collecting the sample for submission to the
13 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
14 pursuant to this subsection shall be deposited in the revolving
15 account or the service fee account of the collection agency or
16 department.

17 K. When sentencing a person who has been convicted of a crime
18 that would subject that person to the provisions of the Sex
19 Offenders Registration Act, neither the court nor the district
20 attorney shall be allowed to waive or exempt such person from the
21 registration requirements of the Sex Offenders Registration Act.

22 L. In addition to the other sentencing powers of the court, any
23 person convicted of or who pleads guilty or nolo contendere to a
24 felony offense shall, prior to sentencing, be required to submit to

1 an approved assessment which shall be administered and scored by an
2 appropriately trained person pursuant to a service agreement with
3 the Department of Corrections. Any defendant lacking sufficient
4 skills to comprehend or otherwise participate in the assessment and
5 evaluation shall have appropriate assistance. If it is determined
6 that the defendant has a history of alcohol or substance abuse, the
7 Department of Corrections shall refer the defendant to participate
8 in an assessment and evaluation by an assessment agency or
9 assessment personnel certified by the Department of Mental Health
10 and Substance Abuse Services. The court, district attorney,
11 defendant and counsel for the defendant shall have access to the
12 results of the assessment and evaluation. The court and the
13 district attorney shall use the results of the assessment and
14 evaluation to determine sentencing options for the defendant.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 991a-21 of Title 22, unless
17 there is created a duplication in numbering, reads as follows:

18 The court shall include in the sentence of any person who is
19 convicted of a felony and sentenced to a term of confinement with
20 the Department of Corrections, as provided in Section 991a of this
21 title or any other provision of the Oklahoma Statutes, a term of
22 supervised probation. The supervised probation shall be for a
23 period of not less than nine (9) months following confinement of the
24

1 person and under conditions prescribed by the Department of
2 Corrections.

3 SECTION 6. AMENDATORY 57 O.S. 2011, Section 517, is
4 amended to read as follows:

5 Section 517. A. Except as provided in subsection B of this
6 section, the Probation and Parole Officer shall, upon information
7 sufficient to give the officer reasonable grounds to believe that a
8 probationer has ~~violated the terms or conditions of the sentence of~~
9 ~~probation~~ been charged with committing a felony offense or has
10 escaped from custody as provided in Section 443 of Title 21 of the
11 Oklahoma Statutes, notify the Department. If it is determined that
12 the facts justify revocation action, the Department shall issue a
13 warrant for the arrest of the probationer and the warrant shall have
14 the force and effect of any warrant of arrest issued by a district
15 court in this state. A probationer shall, after arrest, be
16 immediately incarcerated in the nearest county jail or intermediate
17 sanctions facility to await action by the court as to whether the
18 probation will be revoked.

19 B. Any probationer determined to have violated any terms or
20 conditions of probation by the supervising probation officer may,
21 upon approval of the court and the Department of Corrections, be
22 placed ~~by the court~~ in an intermediate sanctions facility for
23 disciplinary sanction and programmatic services in lieu of
24 revocation ~~when revocation is deemed unnecessary for the nature of~~

1 ~~the violation.~~ Repeated violations by the probationer of the terms
2 and conditions of probation may result in a revocation proceeding.

3 C. Any probationer for whom a warrant for arrest issues as
4 provided in subsection A of this section may, at the discretion of
5 the court, be placed in an intermediate sanctions facility pending
6 or following any action by the court as to revocation of probation
7 or required additional conditions to remain on probation. A
8 probationer may be processed by the Department on an expedited basis
9 through any facility serving such purpose or may be processed
10 directly by the intermediate sanctions facility.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 517.1 of Title 57, unless there
13 is created a duplication in numbering, reads as follows:

14 A. The Department of Corrections shall develop a matrix of
15 technical violations and sanctions for persons supervised by the
16 Department. The Department shall be authorized to use a violation
17 response and intermediate sanction process based on the sanction
18 matrix to apply to any technical violations of probationers. Within
19 four (4) working days of the discovery of the violation, a probation
20 officer of the Department of Corrections shall initiate the
21 violation response and intermediate sanction process. The probation
22 officer may authorize any recommended sanctions, which may include,
23 but are not limited to: short-term jail or lockup not to exceed
24 three (3) days, day treatment, program attendance, community

1 service, outpatient or inpatient treatment, monetary fines, curfews,
2 or ignition interlock devices on vehicles.

3 B. The probation officer shall complete a sanction form, which
4 shall specify the technical violation, sanction, and the action plan
5 to correct the noncompliant behavior resulting in the technical
6 violation. The probation officer shall refer to the sanctioning
7 matrix to determine the supervision, treatment, and sanctions
8 appropriate to address the noncompliant behavior. The probation
9 officer shall refer the violation information and recommended
10 response with a sanction plan to the Department of Corrections to be
11 heard by a hearing officer. The Department of Corrections shall
12 develop a sanction matrix, forms, policies and procedures necessary
13 to implement this provision. The Department of Corrections shall
14 establish procedures to hear responses to technical violations and
15 review sanction plans including the following:

16 1. Hearing officers shall report through a chain of command
17 separate from that of the supervising probation officers;

18 2. The Department shall provide the offender written notice of
19 the violation, the evidence relied upon, and the reason the sanction
20 was imposed;

21 3. The hearing shall be held unless the offender waives the
22 right to the hearing;

23 4. Hearings shall be electronically recorded; and
24

1 5. The Department shall make available to judges and district
2 attorneys a record of all actions taken pursuant to this subsection.

3 C. The hearing officer shall determine based on a preponderance
4 of the evidence whether a technical violation occurred. Upon a
5 finding that a technical violation occurred, the hearing officer may
6 order the offender to participate in the recommended sanction plan
7 or may modify the plan. Offenders who accept the sanction plan
8 shall sign a violation response sanction form, and the hearing
9 officer shall then impose the sanction. Failure of the offender to
10 comply with the imposed sanction plan shall constitute a violation
11 of the rules and conditions of supervision that may result in a
12 referral to an intermediate sanctions facility or a revocation
13 proceeding. If an offender does not voluntarily accept the
14 recommended sanction plan, the Department shall either impose the
15 sanction and allow the offender to appeal to the district court, or
16 request a revocation proceeding as provided by law. Every
17 administrative hearing and sanction imposed by the Department shall
18 be appealable to the district court.

19 SECTION 8. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 628 of Title 57, unless there is
21 created a duplication in numbering, reads as follows:

22 The Department of Corrections is hereby authorized to establish
23 facilities to be designated as intermediate sanctions facilities for
24 the purpose of temporarily confining offenders who have violated the

1 terms and conditions of probation and whose sentence would otherwise
2 be revoked. A period of confinement in an intermediate sanctions
3 facility shall not exceed six (6) months. An offender who is
4 referred to an intermediate sanctions facility shall not be eligible
5 to receive any earned credits pursuant to the provisions of Section
6 138 of Title 57 of the Oklahoma Statutes.

7 SECTION 9. AMENDATORY 63 O.S. 2011, Section 2-402, is
8 amended to read as follows:

9 Section 2-402. A. 1. It shall be unlawful for any person
10 knowingly or intentionally to possess a controlled dangerous
11 substance unless such substance was obtained directly, or pursuant
12 to a valid prescription or order from a practitioner, while acting
13 in the course of his professional practice, or except as otherwise
14 authorized by this act.

15 2. It shall be unlawful for any person to purchase any
16 preparation excepted from the provisions of the Uniform Controlled
17 Dangerous Substances Act, ~~Section 2-101 et seq. of this title,~~
18 pursuant to Section 2-313 of this title in an amount or within a
19 time interval other than that permitted by Section 2-313 of this
20 title.

21 3. It shall be unlawful for any person or business to sell,
22 market, advertise or label any product containing ephedrine, its
23 salts, optical isomers, or salts of optical isomers, for the
24 indication of stimulation, mental alertness, weight loss, appetite

1 control, muscle development, energy or other indication which is not
2 approved by the pertinent federal OTC Final Monograph, Tentative
3 Final Monograph, or FDA-approved new drug application or its legal
4 equivalent. In determining compliance with this requirement, the
5 following factors shall be considered:

- 6 a. the packaging of the product,
- 7 b. the name of the product, and
- 8 c. the distribution and promotion of the product,
9 including verbal representations made at the point of
10 sale.

11 B. Any person who violates this section with respect to:

12 1. Any Schedule I or II substance, except marihuana or a
13 substance included in subsection D of Section 2-206 of this title,
14 is guilty of a felony punishable by imprisonment for not less than
15 two (2) years nor more than ten (10) years and by a fine not
16 exceeding Five Thousand Dollars (\$5,000.00). A second or subsequent
17 violation of this section with respect to Schedule I or II
18 substance, except marijuana or a substance included in subsection D
19 of Section 2-206 of this title, is a felony punishable by
20 imprisonment for not less than four (4) years nor more than twenty
21 (20) years and by a fine not exceeding Ten Thousand Dollars
22 (\$10,000.00); ~~or~~

23 2. Any Schedule III, IV or V substance, marihuana, a substance
24 included in subsection D of Section 2-206 of this title, or any

1 preparation excepted from the provisions of the Uniform Controlled
2 Dangerous Substances Act is guilty of a misdemeanor punishable by
3 confinement for not more than one (1) year and by a fine not
4 exceeding One Thousand Dollars (\$1,000.00). ~~A second or subsequent~~
5 ~~violation of this section with respect to any;~~

6 3. Any Schedule III, IV or V substance, marijuana, a substance
7 included in subsection D of Section 2-206 of this title, or any
8 preparation excepted from the provisions of the Uniform Controlled
9 Dangerous Substances Act ~~is~~ and who, during the period of any court-
10 imposed probationary term or within ten (10) years of the date
11 following the completion of the execution of any sentence or
12 deferred judgment for a violation of this section, commits a second
13 violation of this section shall, upon conviction, be guilty of a
14 felony punishable by imprisonment in the custody of the Department
15 of Corrections for not less than two (2) years nor more than ten
16 (10) years and by a fine not exceeding Five Thousand Dollars
17 (\$5,000.00); or

18 4. Any Schedule III, IV or V substance, marijuana, a substance
19 included in subsection D of Section 2-206 of this title, or any
20 preparation excepted from the provisions of the Uniform Controlled
21 Dangerous Substances Act and who commits a second or subsequent
22 violation of this section shall, upon conviction, be guilty of a
23 felony punishable by imprisonment in the custody of the Department
24

1 of Corrections for not less than one (1) year nor more than five (5)
2 years and by a fine not exceeding Five Thousand Dollars (\$5,000.00).

3 C. Any person who violates any provision of this section by
4 possessing or purchasing a controlled dangerous substance from any
5 person, in or on, or within one thousand (1,000) feet of the real
6 property comprising a public or private elementary or secondary
7 school, public vocational school, public or private college or
8 university, or other institution of higher education, recreation
9 center or public park, including state parks and recreation areas,
10 or in the presence of any child under twelve (12) years of age,
11 shall be guilty of a felony and punished by:

12 1. For a first offense, a term of imprisonment, or by the
13 imposition of a fine, or by both, not exceeding twice that
14 authorized by the appropriate provision of this section. In
15 addition, the person shall serve a minimum of fifty percent (50%) of
16 the sentence received prior to becoming eligible for state
17 correctional institution earned credits toward the completion of
18 said sentence; or

19 2. For a second or subsequent offense, a term of imprisonment
20 not exceeding three times that authorized by the appropriate
21 provision of this section and the person shall serve a minimum of
22 ninety percent (90%) of the sentence received prior to becoming
23 eligible for state correctional institution earned credits toward
24

1 the completion of said sentence, and imposition of a fine not
2 exceeding Ten Thousand Dollars (\$10,000.00).

3 D. Any person convicted of any offense described in this
4 section shall, in addition to any fine imposed, pay a special
5 assessment trauma-care fee of One Hundred Dollars (\$100.00) to be
6 deposited into the Trauma Care Assistance Revolving Fund created in
7 Section ~~1-2522~~ 1-2530.9 of this title.

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 20k of Title 74, unless there is
10 created a duplication in numbering, reads as follows:

11 A. There is hereby established the Justice Reinvestment Grant
12 Program. Contingent upon the provision of appropriate funds
13 designated for Justice Reinvestment grants, the Office of the
14 Attorney General is authorized to award one or more such competitive
15 grants to local law enforcement agencies for the purpose of
16 providing funding for new initiatives and strategies to combat
17 violent crime as proposed by local law enforcement agencies. Funds
18 shall be used for local initiatives, technical assistance, law
19 enforcement training, law enforcement personnel, equipment,
20 contractual support and information systems for criminal justice
21 purposes.

22 B. To be eligible for a Justice Reinvestment grant, local law
23 enforcement agencies shall submit proposals to the Office of the
24 Attorney General that focus on increasing the capacity of the law

1 enforcement agency to address violent crime within their
2 jurisdiction through one of the following priority strategies:

3 1. Focusing on intervention and enforcement through the use of
4 increased staffing resources with overtime funds to target violent
5 crime with evidence-driven approaches. Policing initiatives may
6 include directed patrols, "hot spot" policing, intelligence-led
7 policing, or youth and gang violence interventions;

8 2. Increasing technological capacity to support intervention
9 and enforcement with the purchase of technology for crime prevention
10 and criminal justice problem solving. Technology shall include, but
11 not be limited to, crime mapping software, Global Positioning
12 Systems (GPS) technology and smart phone tools;

13 3. Enhancing analytical capacity through the development or
14 expansion of analytical capabilities that focus on crime mapping,
15 analysis of crime trends and developing data-driven strategies that
16 focus on violent crime reduction through the employment of civilian
17 crime analysts; and

18 4. Engaging with community partners in order to develop
19 partnerships and projects that focus on preventing violent crime in
20 the community. Community partners may include, but not be limited
21 to, public and private service providers, the courts, and probation
22 and parole services. Projects shall include, but are not limited
23 to, programs that focus on drug enforcement efforts, youth violent
24 crime, gang violence, and offender recidivism.

1 C. Preference shall be given to grant applicants that can
2 demonstrate a commitment to regional, multijurisdictional strategies
3 to address community safety issues and can clearly outline a
4 comprehensive plan for municipalities to work with law enforcement,
5 community-based organizations and government agencies to address
6 violent criminal activity.

7 D. Grants awarded pursuant to the Justice Reinvestment Grant
8 Program shall be considered one-time grants awarded to local law
9 enforcement agencies. The Office of the Attorney General shall
10 publish guidelines and an application for the competitive portion of
11 the grant program no later than January 1, 2013.

12 E. The Office of the Attorney General is hereby authorized to
13 adopt rules and procedures as necessary to carry out the provisions
14 of this section.

15 SECTION 11. This act shall become effective November 1, 2012.

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