

1 **SENATE FLOOR VERSION**

2 April 10, 2019

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 2218

6 By: May of the House

7 and

8 Jech of the Senate

9 [criminal procedure - fines, costs and fees in
10 criminal cases - sentencing - modifying time
11 limitation for paying supervision fee to the district
12 attorney - effective date]

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

14 SECTION 1. AMENDATORY 22 O.S. 2011, Section 983, as
15 amended by Section 2, Chapter 128, O.S.L. 2018 (22 O.S. Supp. 2018,
16 Section 983), is amended to read as follows:

17 Section 983. A. Any defendant found guilty of an offense in
18 any court of this state may be imprisoned for nonpayment of the
19 fine, cost, fee~~7~~ or assessment when the trial court finds after
20 notice and hearing that the defendant is financially able but
21 refuses or neglects to pay the fine, cost, fee~~7~~ or assessment. A
22 sentence to pay a fine, cost, fee~~7~~ or assessment may be converted
23 into a jail sentence only after a hearing and a judicial
24 determination, memorialized of record, that the defendant is able to

1 satisfy the fine, cost, fee, or assessment by payment, but refuses
2 or neglects so to do.

3 B. After a judicial determination that the defendant is able to
4 pay the fine, cost, fee, or assessment in installments, the court
5 may order the fine, cost, fee, or assessment to be paid in
6 installments and shall set the amount and date for each installment.

7 C. ~~In addition~~ If, after notice and hearing, the court finds
8 that the defendant is financially able but willfully refuses or
9 neglects to pay the fine, cost, fee or assessment, the district
10 court or municipal court, within one hundred twenty (120) days from
11 the date upon which the person was originally ordered to make
12 payment, may send notice of nonpayment of any court ordered fine and
13 costs for a moving traffic violation to the Department of Public
14 Safety with a recommendation of suspension of driving privileges of
15 the defendant until the total amount of any fine and costs has been
16 paid. Upon receipt of payment of the total amount of the fine and
17 costs for the moving traffic violation, the court shall send notice
18 thereof to the Department, if a nonpayment notice was sent as
19 provided for in this subsection. Notices sent to the Department
20 shall be on forms or by a method approved by the Department.

21 D. The Court of Criminal Appeals shall implement procedures and
22 rules for methods of establishing payment plans of fines, costs,
23 fees, and assessments by indigents according to discretionary
24 income, as defined in subsection L of Section 991a of this title,

1 which procedures and rules shall be distributed to all district
2 courts and municipal courts by the Administrative Office of the
3 Courts.

4 SECTION 2. AMENDATORY Section 1, Chapter 392, O.S.L.
5 2016 (22 O.S. Supp. 2018, Section 983a), is amended to read as
6 follows:

7 Section 983a. A. On or after November 1, 2016, the court shall
8 have the authority to waive all outstanding fines, court costs and
9 fees in a criminal case for any person who:

10 1. Served a period of imprisonment in the custody of the
11 Department of Corrections after conviction for a crime;

12 2. Has been released from the custody of the Department of
13 Corrections;

14 3. Has complied with all probation or supervision requirements
15 since being released from the custody of the Department of
16 Corrections; and

17 4. Has made installment payments on outstanding fines, court
18 costs, fees and restitution ordered by the court on a timely basis
19 every month for the previous twenty-four (24) months following
20 release from the custody of the Department of Corrections.

21 B. The court shall waive outstanding fines, court costs and
22 fees if the person has secured admission to and is enrolled in an
23 institution that is a technology center school, workforce training
24 program or member of The Oklahoma State System of Higher Education.

1 C. Upon the completion of each forty-hour work week, the court
2 shall waive the fines, court costs and fees based on the equivalent
3 value of the potential gross income of the person as determined by
4 the minimum wage of the state as set forth in Section 197.2 of Title
5 40 of the Oklahoma Statutes.

6 D. The provisions of this section shall not apply to amounts
7 owed by the person for restitution to a victim pursuant to a court
8 order or child support obligations pursuant to a court order.

9 SECTION 3. AMENDATORY Section 2, Chapter 392, O.S.L.
10 2016 (22 O.S. Supp. 2018, Section 983b), is amended to read as
11 follows:

12 Section 983b. A. Any person released on parole or released
13 without parole from a term of imprisonment with the Department of
14 Corrections shall be required to report at a time not less than one
15 hundred eighty (180) days after his or her release from the
16 Department of Corrections to:

17 1. The district court of the county from which the judgment and
18 sentence resulting in incarceration arose; and

19 2. All other district courts or municipal courts where the
20 person owes fines, fees, costs and assessments,
21 for the purpose of scheduling a hearing to determine the ability of
22 the person to pay fines, fees, costs or assessments owed by the
23 person in every felony or misdemeanor criminal case filed in a
24 district court or criminal case filed in a municipal court of this

1 state. Such hearing shall be held in accordance with the provisions
2 of Section VIII of the Rules of the Court of Criminal Appeals, 22
3 O.S. 2011, Ch. 18, App. A court may for good cause shown or in its
4 discretion continue such hearing for up to one hundred eighty (180)
5 days.

6 B. In determining the ability of the person to satisfy fines,
7 fees, costs or assessments owed to a district or municipal court,
8 the court shall inquire of the person at the time of the hearing
9 which counties and municipalities the person owes fines, fees, costs
10 or assessments in every felony or misdemeanor criminal case filed
11 against the person and shall consider all court-ordered debt,
12 including restitution and child support, in determining the ability
13 of the person to pay. ~~The person court shall not be required to pay~~
14 waive payment of any outstanding fines, fees, costs or assessments
15 prior to the expiration of the one-hundred-eighty-day period;
16 provided, however, the person shall not be precluded from
17 voluntarily making payment toward the satisfaction of any fines,
18 fees, costs or assessments due and owing to a district or municipal
19 court of this state.

20 C. ~~The Court of Criminal Appeals~~ Supreme Court shall promulgate
21 rules governing the provisions of this section including, but not
22 limited to:

23 1. Reporting, hearing and payment requirements as provided for
24 in subsections A and B of this section;

1 2. Consolidating district and municipal court fines, fees,
2 costs or assessments owed by a person into one order for payment;
3 and

4 3. Accepting and distributing payments received for fines,
5 fees, costs or assessments to various district and municipal courts
6 when consolidated by the court into one order for payment.

7 SECTION 4. AMENDATORY 22 O.S. 2011, Section 991a, as
8 last amended by Section 10, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
9 2018, Section 991a), is amended to read as follows:

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

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

18 a. to provide restitution to the victim as provided by
19 Section 991f et seq. of this title or according to a
20 schedule of payments established by the sentencing
21 court, together with interest upon any pecuniary sum
22 at the rate of twelve percent (12%) per annum, if the
23 defendant agrees to pay such restitution or, in the
24 opinion of the court, if the defendant is able to pay

1 such restitution without imposing manifest hardship on
2 the defendant or the immediate family and if the
3 extent of the damage to the victim is determinable
4 with reasonable certainty,

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

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

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

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

- 1 f. to confinement as provided by law together with a term
2 of post-imprisonment community supervision for not
3 less than three (3) years of the total term allowed by
4 law for imprisonment, with or without restitution;
5 provided, however, the authority of this provision is
6 limited to Section 843.5 of Title 21 of the Oklahoma
7 Statutes when the offense involved sexual abuse or
8 sexual exploitation; Sections 681, 741 and 843.1 of
9 Title 21 of the Oklahoma Statutes when the offense
10 involved sexual abuse or sexual exploitation; and
11 Sections 865 et seq., 885, 886, 888, 891, 1021,
12 1021.2, 1021.3, 1040.13a, 1087, 1088, 1111.1, 1115 and
13 1123 of Title 21 of the Oklahoma Statutes,
- 14 g. to repay the reward or part of the reward paid by a
15 local certified crime stoppers program and the
16 Oklahoma Reward System. In determining whether the
17 defendant shall repay the reward or part of the
18 reward, the court shall consider the ability of the
19 defendant to make the payment, the financial hardship
20 on the defendant to make the required payment, and the
21 importance of the information to the prosecution of
22 the defendant as provided by the arresting officer or
23 the district attorney with due regard for the
24 confidentiality of the records of the local certified

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

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

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

1 Services pursuant to Section 3-460 of Title 43A of the
2 Oklahoma Statutes and, as determined by the
3 assessment, participate in an alcohol and drug
4 substance abuse course or treatment program or both,
5 pursuant to Sections 3-452 and 3-453 of Title 43A of
6 the Oklahoma Statutes, or as ordered by the court,
7 m. to be placed in a victims impact panel program, as
8 defined in subsection H of this section, or
9 victim/offender reconciliation program and payment of
10 a fee to the program of not less than Fifteen Dollars
11 (\$15.00) nor more than Sixty Dollars (\$60.00) as set
12 by the governing authority of the program to offset
13 the cost of participation by the defendant. Provided,
14 each victim/offender reconciliation program shall be
15 required to obtain a written consent form voluntarily
16 signed by the victim and defendant that specifies the
17 methods to be used to resolve the issues, the
18 obligations and rights of each person, and the
19 confidentiality of the proceedings. Volunteer
20 mediators and employees of a victim/offender
21 reconciliation program shall be immune from liability
22 and have rights of confidentiality as provided in
23 Section 1805 of Title 12 of the Oklahoma Statutes,
24

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

1 defendant has a blood or breath alcohol concentration
2 of two-hundredths (0.02) or greater,

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

22 p. to perform one or more courses of treatment, education
23 or rehabilitation for any conditions, behaviors,
24 deficiencies or disorders which may contribute to

1 criminal conduct, including but not limited to alcohol
2 and substance abuse, mental health, emotional health,
3 physical health, propensity for violence, antisocial
4 behavior, personality or attitudes, deviant sexual
5 behavior, child development, parenting assistance, job
6 skills, vocational-technical skills, domestic
7 relations, literacy, education, or any other
8 identifiable deficiency which may be treated
9 appropriately in the community and for which a
10 certified provider or a program recognized by the
11 court as having significant positive impact exists in
12 the community. Any treatment, education or
13 rehabilitation provider required to be certified
14 pursuant to law or rule shall be certified by the
15 appropriate state agency or a national organization,
16 q. to submit to periodic testing for alcohol,
17 intoxicating substance, or controlled dangerous
18 substances by a qualified laboratory,
19 r. to pay a fee, costs for treatment, education,
20 supervision, participation in a program, or any
21 combination thereof as determined by the court, based
22 upon the defendant's ability to pay the fees or costs,
23
24

- 1 s. to be supervised by a Department of Corrections
2 employee, a private supervision provider, or other
3 person designated by the court,
- 4 t. to obtain positive behavior modeling by a trained
5 mentor,
- 6 u. to serve a term of confinement in a restrictive
7 housing facility available in the community,
- 8 v. to serve a term of confinement in the county jail at
9 night or during weekends pursuant to Section 991a-2 of
10 this title or for work release,
- 11 w. to obtain employment or participate in employment-
12 related activities,
- 13 x. to participate in mandatory day reporting to
14 facilities or persons for services, payments, duties
15 or person-to-person contacts as specified by the
16 court,
- 17 y. to pay day fines not to exceed fifty percent (50%) of
18 the net wages earned. For purposes of this paragraph,
19 "day fine" means the offender is ordered to pay an
20 amount calculated as a percentage of net daily wages
21 earned. The day fine shall be paid to the local
22 community sentencing system as reparation to the
23 community. Day fines shall be used to support the
24 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,
24

1 hh. in the case of a person being sentenced for a
2 conviction for a violation of Section 644 of Title 21
3 of the Oklahoma Statutes, require the person to
4 receive an assessment for batterers, which shall be
5 conducted through a certified treatment program for
6 batterers, and

7 ii. any other provision specifically ordered by the court.

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

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

1 ~~the fine, costs and costs of prosecution is warranted, the court~~
2 ~~shall equally apply the same percentage reduction to the fine, costs~~
3 ~~and costs of prosecution owed by the offender;~~

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

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

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

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

1 administrative costs and shall remit the remainder to the Oklahoma
2 State Bureau of Investigation to be deposited in the OSBI Revolving
3 Fund established by Section 150.19a of Title 74 of the Oklahoma
4 Statutes;

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

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

21 b. to attend a victims impact panel program, as defined
22 in subsection H of this section, if such a program is
23 offered in the county where the judgment is rendered,
24 and to pay a fee of not less than Fifteen Dollars

1 (\$15.00) nor more than Sixty Dollars (\$60.00) as set
2 by the governing authority of the program and approved
3 by the court, to the program to offset the cost of
4 participation by the defendant, if in the opinion of
5 the court the defendant has the ability to pay such
6 fee,

7 c. to both participate in the alcohol and drug substance
8 abuse course or treatment program, pursuant to
9 subparagraph a of this paragraph and attend a victims
10 impact panel program, pursuant to subparagraph b of
11 this paragraph,

12 d. to install, at the expense of the person, an ignition
13 interlock device approved by the Board of Tests for
14 Alcohol and Drug Influence, upon every motor vehicle
15 operated by such person and to require that a notation
16 of this restriction be affixed to the person's driver
17 license at the time of reinstatement of the license.
18 The restriction shall remain on the driver license for
19 such period as the court shall determine. The
20 restriction may be modified or removed by order of the
21 court and notice of the order shall be given to the
22 Department of Public Safety. Upon the expiration of
23 the period for the restriction, the Department of
24 Public Safety shall remove the restriction without

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

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

19 7. In addition to the other sentencing powers of the court, in
20 the case of a person convicted of prostitution pursuant to Section
21 1029 of Title 21 of the Oklahoma Statutes, require such person to
22 receive counseling for the behavior which may have caused such
23 person to engage in prostitution activities. Such person may be
24 required to receive counseling in areas including but not limited to

1 alcohol and substance abuse, sexual behavior problems, or domestic
2 abuse or child abuse problems;

3 8. In addition to the other sentencing powers of the court, in
4 the case of a person convicted of any crime related to domestic
5 abuse, as defined in Section 60.1 of this title, the court may
6 require the defendant to undergo the treatment or participate in an
7 intervention program for batterers certified by the Office of the
8 Attorney General, necessary to bring about the cessation of domestic
9 abuse. In the instance where the defendant alleges that he or she
10 is a victim of domestic abuse and the current conviction is a
11 response to that abuse, the court may require the defendant to
12 undergo an assessment by a domestic violence program certified by
13 the Office of the Attorney General, and, if based upon the results
14 of the assessment, the defendant is determined to be a victim of
15 domestic violence, the defendant shall undergo treatment and
16 participate in a certified program for domestic violence victims.
17 The defendant may be required to pay all or part of the cost of the
18 treatment or counseling services;

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

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

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

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

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

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

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

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

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

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

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

10 C. When sentencing a person convicted of a crime, the court
11 shall first consider a program of restitution for the victim, as
12 well as imposition of a fine or incarceration of the offender. The
13 provisions of paragraph 1 of subsection A of this section shall not
14 apply to a defendant being sentenced for:

15 1. A third or subsequent conviction of a violent crime
16 enumerated in Section 571 of Title 57 of the Oklahoma Statutes;

17 2. A fourth or subsequent conviction for any other felony
18 crime; or

19 3. Beginning January 1, 1993, a defendant being sentenced for a
20 second or subsequent felony conviction for violation of Section 11-
21 902 of Title 47 of the Oklahoma Statutes, except as otherwise
22 provided in this subsection.

23 In the case of a person being sentenced for a second or
24 subsequent felony conviction for violation of Section 11-902 of

1 Title 47 of the Oklahoma Statutes, the court may sentence the person
2 pursuant to the provisions of paragraph 1 of subsection A of this
3 section if the court orders the person to submit to electronically
4 monitored home detention administered and supervised by the
5 Department of Corrections pursuant to subparagraph e of paragraph 7
6 of subsection A of this section. Provided, the court may waive
7 these prohibitions upon written application of the district
8 attorney. Both the application and the waiver shall be made part of
9 the record of the case.

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

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

1 immediately upon release from incarceration or if parole is granted
2 and shall not be limited to two (2) years. The court shall require
3 all providers that supervise persons under this section to use the
4 sanctions and incentives process established under Section 991b of
5 this title in order to respond to probationer behavior. Provided
6 further, any supervision provided for in this section may be
7 extended for a period not to exceed the expiration of the maximum
8 term or terms of the sentence upon a determination by the court or
9 the Division of Probation and Parole of the Department of
10 Corrections that the best interests of the public and the release
11 will be served by an extended period of supervision. Any
12 supervision provided for under this section may not have the period
13 of supervision extended for a failure to pay fines, fees and other
14 costs, excluding restitution, except upon a finding of willful
15 nonpayment. Any person on probation supervision, except a person
16 convicted of an offense enumerated in Section 13.1 of Title 21 of
17 the Oklahoma Statutes or subsection C, D, E, F, G or J of Section
18 644 of Title 21 of the Oklahoma Statutes, shall be eligible to earn
19 discharge credits that reduce the period of supervision and the term
20 of the sentence for compliance with the terms and conditions of
21 supervision pursuant to Section 515a of Title 57 of the Oklahoma
22 Statutes.

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

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

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

9 2. Any offender eligible to participate in the Program pursuant
10 to Section 991a et seq. of this title shall be eligible to
11 participate in a county Program; provided, participation in county-
12 funded Programs shall not be limited to offenders who would
13 otherwise be sentenced to confinement with the Department of
14 Corrections.

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

23 4. The Department is hereby authorized to provide technical
24 assistance to any county in establishing a Program, regardless of

1 whether the county enters into a contract pursuant to this
2 subsection. Technical assistance shall include appropriate
3 staffing, development of community resources, sponsorship,
4 supervision and any other requirements.

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

10 H. As used in this section:

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

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

21 3. "Victims impact panel program" means a meeting with at least
22 one live presenter who will share personal stories with participants
23 about how alcohol, drug abuse and the illegal conduct of others has
24 personally impacted the life of the presenter. A victims impact

1 panel program shall be attended by persons who have committed the
2 offense of driving, operating or being in actual physical control of
3 a motor vehicle while under the influence of alcohol or other
4 intoxicating substance. Persons attending a victims impact panel
5 program shall be required to pay a fee of not less than Fifteen
6 Dollars (\$15.00) nor more than Sixty Dollars (\$60.00) to the
7 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. A victims impact
10 panel program shall not be provided by any certified assessment
11 agency or certified assessor. The provider of the victims impact
12 panel program shall carry general liability insurance and maintain
13 an accurate accounting of all business transactions and funds
14 received in relation to the victims impact panel program.

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

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

1 the OSBI Combined DNA Index System (CODIS) Database at the time of
2 sentencing shall not be required to submit to additional testing.
3 Except as required by the Sex Offenders Registration Act, a deferred
4 judgment does not require submission to deoxyribonucleic acid
5 testing.

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

16 J. Samples of blood or saliva for DNA testing required by
17 subsection I of this section shall be taken by employees or
18 contractors of the Department of Corrections, peace officers, or the
19 county sheriff or employees or contractors of the sheriff's office.
20 The individuals shall be properly trained to collect blood or saliva
21 samples. Persons collecting blood or saliva for DNA testing
22 pursuant to this section shall be immune from civil liabilities
23 arising from this activity. All collectors of DNA samples shall
24 ensure the collection of samples are mailed to the Oklahoma State

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

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

18 L. Any person who has been ordered by the court to pay a fine,
19 court cost, fee or assessment, or any combination thereof, under the
20 provisions of this section may request a hearing to establish a
21 payment plan. The payment plan authorized under this subsection
22 shall be determined by assessing the discretionary income of the
23 person. As used in this section, "discretionary income" shall be
24 defined as income in excess of one hundred fifty percent (150%) of

1 the federal poverty line. After a judicial determination of the
2 discretionary income of the person, the court shall order the total
3 amount of the financial obligation of the person, excluding
4 restitution, be paid in installments equal to no more than ten
5 percent (10%) of the discretionary income of the person. The
6 payment plan shall be established regardless of the result of an
7 indigent request for representation as provided in Section 1355A of
8 this title. The payment plan established under the provisions of
9 this subsection shall apply to all fines, court costs and fees
10 ordered by the court pursuant to this section and all subsections
11 therein.

12 SECTION 5. AMENDATORY 22 O.S. 2011, Section 991b, as
13 last amended by Section 11, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
14 2018, Section 991b), is amended to read as follows:

15 Section 991b. A. Whenever a sentence has been suspended by the
16 court after conviction of a person for any crime, the suspended
17 sentence of the person may not be revoked, in whole or part, for any
18 cause unless a petition setting forth the grounds for such
19 revocation is filed by the district attorney with the clerk of the
20 sentencing court and competent evidence justifying the revocation of
21 the suspended sentence is presented to the court at a hearing to be
22 held for that purpose within twenty (20) days after the entry of the
23 plea of not guilty to the petition, unless waived by both the state
24 and the defendant. The State of Oklahoma may dismiss the petition

1 without prejudice one time upon good cause shown to the court,
2 provided that any successor petition must be filed within forty-five
3 (45) days of the date of the dismissal of the petition.

4 B. 1. Whenever a sentence has been suspended by the court
5 after conviction of a person for any crime, the suspended sentence
6 of the person may not be revoked ~~in whole~~ for a technical violation
7 ~~unless a petition setting forth the grounds for such revocation is~~
8 ~~filed by the district attorney with the clerk of the sentencing~~
9 ~~court and competent evidence justifying the revocation of the~~
10 ~~suspended sentence is presented to the court at a hearing to be held~~
11 ~~for that purpose within twenty (20) days after the entry of the plea~~
12 ~~of not guilty to the petition, unless waived by both the state and~~
13 ~~the defendant. The State of Oklahoma may dismiss the petition~~
14 ~~without prejudice one time upon good cause shown to the court,~~
15 ~~provided that any successor petition must be filed within forty-five~~
16 ~~(45) days of the date of the dismissal of the petition. Any~~
17 ~~revocation of a suspended sentence based on a technical violation~~
18 ~~shall not exceed six (6) months for a first revocation and five (5)~~
19 ~~years for a second or subsequent revocation except in accordance~~
20 ~~with paragraphs 2, 3 and 4 of this subsection and Section 517 of~~
21 ~~Title 57 of the Oklahoma Statutes. The petition to revoke under~~
22 ~~this subsection must be filed within sixty (60) days of the alleged~~
23 ~~violation, provided the district attorney has received adequate~~
24 ~~notice from the supervision provider.~~

1 2. The court shall hold a revocation hearing for any
2 probationer who is issued a summons within twenty (20) calendar days
3 from the date the summons is issued. The court may, in its
4 discretion, revoke probation or continue probation and modify the
5 term and conditions thereof. The court shall consider the
6 employment status of the offender when making a determination as to
7 whether to revoke or continue the offender on probation. Upon a
8 finding that the offender is employed and a revocation of the
9 sentence would result in a disruption of employment, the court may,
10 in lieu of revocation, order the probationer to serve weekends in a
11 county jail pursuant to Section 991a of this title. If the court
12 revokes probation for a technical violation of the terms or
13 conditions of probation, the court shall impose a period of
14 imprisonment of not more than fifteen (15) days for the first
15 revocation, not more than thirty (30) days for the second
16 revocation, and not more than sixty (60) days for the third
17 revocation. For the fourth and subsequent revocation for a
18 technical violation, the court may impose a period of imprisonment
19 of not more than two (2) years or the remainder of the maximum
20 sentence imposed, whichever is less. If the court does not hold a
21 revocation hearing within twenty (20) calendar days pursuant to this
22 paragraph, the probationer shall be returned to probation status.
23 The court may subsequently hold a revocation hearing and may revoke
24 probation or continue probation and modify the terms and conditions

1 of probation. If the court revokes probation for a technical
2 violation, the court shall impose a period of imprisonment that
3 follows the revocation periods outlined in this paragraph.

4 3. If the probationer has been arrested and detained on a
5 warrant and the court does not hold a revocation hearing within
6 twenty (20) calendar days, the probationer shall be released from
7 county jail, intermediate sanctions facility or facility of the
8 Department of Corrections and shall return to probation status. The
9 court may subsequently hold a revocation hearing and may revoke
10 probation or continue probation and modify the terms and conditions
11 of probation. If the court revokes probation for a technical
12 violation and imposes a period of imprisonment, the court shall
13 impose a period of imprisonment that follows the revocation periods
14 outlined in paragraph 2 of this subsection.

15 4. The judge may depart from the periods of imprisonment
16 required under paragraph 2 of this subsection if the offender is on
17 probation supervision for an offense enumerated in Section 13.1 of
18 Title 21 of the Oklahoma Statutes.

19 C. "Technical violation" as used in this section means a
20 violation of the court-imposed rules and conditions of probation,
21 other than:

22 1. ~~Committing or being arrested for~~ Commission of a new ~~crime~~
23 criminal offense for which felony or misdemeanor charges are filed,
24

1 including a violation of a protective order pursuant to Section 60.6
2 of this title;

3 ~~2. Attempting to falsify a drug screen, or three (3) or more~~
4 ~~failed drug or alcohol screens within a three (3) month period;~~

5 ~~3. Failing to pay restitution;~~

6 ~~4. Tampering with an electronic monitoring device;~~

7 ~~5. Failing Absconding, defined as failing to initially report~~
8 ~~or missing assigned reporting requirements for an excess of sixty~~
9 ~~(60) days; and~~

10 ~~6. Unlawfully contacting a victim, co-defendant or criminal~~
11 ~~associates;~~

12 ~~7. Five (5) or more separate and distinct technical violations~~
13 ~~within a ninety-day period; or~~

14 ~~8. 3. Any violation of the Specialized Sex Offender Rules.~~

15 D. 1. The Department of Corrections shall ~~develop a matrix of~~
16 ~~technical violations and sanctions to address violations committed~~
17 ~~by persons who are being supervised by the Department. The~~
18 ~~Department shall~~ be authorized to use a violation response and
19 intermediate sanction process ~~based on the sanction matrix~~ to apply
20 to any technical violations of probationers supervised by the
21 Department. Within four (4) working days of the discovery of the
22 violation, the probation officer shall initiate the violation
23 response and intermediate sanction process. ~~The sentencing judge~~
24 ~~may authorize any recommended sanctions, which may include, but are~~

1 ~~not limited to: short term jail or lockup, day treatment, program~~
2 ~~attendance, community service, outpatient or inpatient treatment,~~
3 ~~monetary fines, curfews, ignition interlock devices on vehicles, or~~
4 ~~a one-time referral to a term of confinement of six (6) months in an~~
5 ~~intermediate revocation facility operated by the Department of~~
6 ~~Corrections; provided, upon approval of the district attorney, a~~
7 ~~person may be sanctioned to serve additional terms of confinement in~~
8 ~~an intermediate revocation facility.~~ The probation officer shall
9 complete a sanction form, which shall specify the technical
10 violation, sanction, and the action plan to correct the noncompliant
11 behavior resulting in the technical violation. The probation
12 officer shall ~~refer to the sanctioning matrix to~~ determine the
13 supervision, treatment, and sanctions appropriate to address the
14 noncompliant behavior. The probation officer shall refer the
15 violation information and recommended response with a sanction plan
16 to the Department of Corrections to be heard by a hearing officer.
17 The Department of Corrections shall develop ~~a sanction matrix,~~
18 ~~forms,~~ the policies and procedures necessary to implement this
19 provision. If the severity of a violation warrants a more severe
20 response, intermediate sanctions have been exhausted and the
21 noncompliant behavior has continued, the Department may recommend
22 revocation pursuant to subsection B of this section. The Department
23 of Corrections shall establish procedures to hear responses to
24

1 technical violations and review sanction plans including the
2 following:

3 a. hearing officers shall report through a chain of
4 command separate from that of the supervising
5 probation officers,

6 b. the Department shall provide the offender written
7 notice of the violation, the evidence relied upon, and
8 the reason the sanction was imposed,

9 c. the hearing shall be held unless the offender waives
10 the right to the hearing,

11 d. hearings shall be electronically recorded, and

12 e. the Department shall provide to judges and district
13 attorneys a record of all violations and actions taken
14 pursuant to this subsection.

15 2. The hearing officer shall determine based on a preponderance
16 of the evidence whether a technical violation occurred. Upon a
17 finding that a technical violation occurred, the hearing officer may
18 order the offender to participate in the recommended sanction plan
19 or may modify the plan. Offenders who accept the sanction plan
20 shall sign a violation response sanction form, and the hearing
21 officer shall then impose the sanction. Failure of the offender to
22 comply with the imposed sanction plan shall constitute a violation
23 of the rules and conditions of supervision that may result in a
24 revocation proceeding. If an offender does not voluntarily accept

1 the recommended sanction plan, the Department shall either impose
2 the sanction and allow the offender to appeal to the district court,
3 or request a revocation proceeding as provided by law. Every
4 administrative hearing and sanction imposed by the Department shall
5 be appealable to the district court.

6 3. Absent a finding of willful nonpayment by the offender, the
7 failure of an offender to pay fines and costs may not serve as a
8 basis for revocation, ~~excluding restitution.~~

9 E. 1. Where one of the grounds for revocation is the willful
10 failure of the defendant to make restitution as ordered, the
11 Department of Corrections shall forward to the district attorney all
12 information pertaining to the failure of the defendant to make
13 timely restitution as ordered by the court, and the district
14 attorney shall file a petition setting forth the grounds for
15 revocation.

16 2. The defendant ordered to make restitution can petition the
17 court at any time for remission or a change in the terms of the
18 order of restitution if the defendant undergoes a change of
19 condition which materially affects the ability of the defendant to
20 comply with the order of the court.

21 3. At the hearing, if one of the grounds for the petition for
22 revocation is the failure of the defendant to make timely
23 restitution as ordered by the court, the court will hear evidence
24 and if it appears to the satisfaction of the court from such

1 evidence that the terms of the order of restitution create a
2 manifest hardship on the defendant or the immediate family of the
3 defendant, the court may cancel all or any part of the amount still
4 due, or modify the terms or method of payment. Provided, if the
5 court determines that a reduction in the restitution still due is
6 warranted, the court shall equally apply the same percentage
7 reduction to any court-ordered monetary obligation owed by the
8 defendant including, but not limited to, fines, court costs and
9 costs of incarceration.

10 F. ~~The~~ Subject to the limitations described in subsection B of
11 this section, the court may revoke a portion of the sentence and
12 leave the remaining part not revoked, but suspended for the
13 remainder of the term of the sentence, and under the provisions
14 applying to it. The person whose suspended sentence is being
15 considered for revocation at the hearing shall have the right to be
16 represented by counsel, to present competent evidence in his or her
17 own behalf and to be confronted by the witnesses against the
18 defendant. Any order of the court revoking the suspended sentence,
19 in whole or in part, shall be subject to review on appeal, as in
20 other appeals of criminal cases. Provided, however, that if the
21 crime for which the suspended sentence is given was a felony, the
22 defendant may be allowed bail pending appeal. If the reason for
23 revocation be that the defendant committed a felony, the defendant
24 shall not be allowed bail pending appeal.

1 SECTION 6. AMENDATORY 22 O.S. 2011, Section 991c, as
2 last amended by Section 12, Chapter 128, O.S.L. 2018 (22 O.S. Supp.
3 2018, Section 991c), is amended to read as follows:

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

- 13 1. Pay court costs;
- 14 2. Pay an assessment in lieu of any fine authorized by law for
15 the offense;
- 16 3. Pay any other assessment or cost authorized by law;
- 17 4. Engage in a term of community service without compensation,
18 according to a schedule consistent with the employment and family
19 responsibilities of the defendant;
- 20 5. County jail confinement for a period not to exceed ninety
21 (90) days or the maximum amount of jail time provided for the
22 offense, if it is less than ninety (90) days;

23

24

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

4 7. Be supervised in the community for a period not to exceed
5 ~~eighteen (18) months~~ one (1) year, unless a petition alleging
6 violation of any condition of deferred judgment is filed during the
7 period of supervision. As a condition of any supervision, the
8 defendant shall be required to pay a supervision fee of Forty
9 Dollars (\$40.00) per month. The supervision fee shall be waived in
10 whole or part by the supervisory agency when the accused is
11 indigent. No person shall be denied supervision based solely on the
12 inability of the person to pay a fee;

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

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

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

24 11. Any combination of the above provisions.

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

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

21 C. In addition to any conditions of supervision provided for in
22 subsection A of this section, the court shall, in the case of a
23 person before the court for the offense of operating or being in
24 control of a motor vehicle while the person was under the influence

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

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

1 experience and certification requirements stated herein are met by
2 September 1, 1995. The court may also require the person to
3 participate in one or both of the following:

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

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

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

24

- 1 1. All references to the name of the defendant shall be deleted
2 from the docket sheet;
- 3 2. The public index of the filing of the charge shall be
4 expunged by deletion, mark-out or obliteration;
- 5 3. Upon expungement, the court clerk shall keep a separate
6 confidential index of case numbers and names of defendants which
7 have been obliterated pursuant to the provisions of this section;
- 8 4. No information concerning the confidential file shall be
9 revealed or released, except upon written order of a judge of the
10 district court or upon written request by the named defendant to the
11 court clerk for the purpose of updating the criminal history record
12 of the defendant with the Oklahoma State Bureau of Investigation;
13 and
- 14 5. Defendants qualifying under Section 18 of this title may
15 petition the court to have the filing of the indictment and the
16 dismissal expunged from the public index and docket sheet. This
17 section shall not be mutually exclusive of Section 18 of this title.
- 18 Records expunged pursuant to this subsection shall be sealed to
19 the public but not to law enforcement agencies for law enforcement
20 purposes. Records expunged pursuant to this subsection shall be
21 admissible in any subsequent criminal prosecution to prove the
22 existence of a prior conviction or prior deferred judgment without
23 the necessity of a court order requesting the unsealing of such
24 records.

1 E. The provisions of subsection D of this section shall be
2 retroactive.

3 F. Whenever a judgment has been deferred by the court according
4 to the provisions of this section, deferred judgment may not be
5 accelerated for any technical violation unless a petition setting
6 forth the grounds for such acceleration is filed by the district
7 attorney with the clerk of the sentencing court and competent
8 evidence justifying the acceleration of the judgment is presented to
9 the court at a hearing to be held for that purpose. The hearing
10 shall be held not more than twenty (20) days after the entry of the
11 plea of not guilty to the petition, unless waived by both the state
12 and the defendant. ~~Any~~ A petition for acceleration of a deferred
13 ~~sentence based on a technical violation shall not exceed ninety (90)~~
14 ~~days for a first acceleration or five (5) years for a second or~~
15 ~~subsequent acceleration~~ under this subsection must be filed within
16 sixty (60) days of the alleged violation, provided the district
17 attorney has received adequate notice from the supervision provider.
18 For accelerations under this subsection, the court shall sentence
19 the offender in accordance with the provisions of Section 517 of
20 Title 57 of the Oklahoma Statutes.

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

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

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

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

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

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

18 SECTION 7. AMENDATORY 22 O.S. 2011, Section 991d, as
19 amended by Section 1, Chapter 414, O.S.L. 2014 (22 O.S. Supp. 2018,
20 Section 991d), is amended to read as follows:

21 Section 991d. A. 1. When the court orders supervision by the
22 Department of Corrections, or the district attorney requires the
23 Department to supervise any person pursuant to a deferred
24 prosecution agreement, the person shall be required to pay a

1 supervision fee of Forty Dollars (\$40.00) per month during the
2 supervision period, unless the fee would impose an unnecessary
3 hardship on the person. In hardship cases, the Department shall
4 expressly waive all or part of the fee. The court shall make
5 payment of the fee a condition of the sentence which shall be
6 imposed whether the supervision is incident to the suspending of
7 execution of a sentence, incident to the suspending of imposition of
8 a sentence, or incident to the deferral of proceedings after a
9 verdict or plea of guilty. The Department shall determine methods
10 for payment of supervision fee, and may charge a reasonable user fee
11 for collection of supervision fees electronically. The Department
12 is required to report to the sentencing court any failure of the
13 person to pay supervision fees and to report immediately if the
14 person violates any condition of the sentence.

15 2. When the court imposes a suspended or deferred sentence for
16 any offense and does not order supervision by the Department of
17 Corrections, the offender shall be required to pay to the district
18 attorney a supervision fee of Forty Dollars (\$40.00) per month as a
19 fee to compensate the district attorney for the actual act of
20 supervising the offender ~~during the applicable~~ for a period of
21 ~~supervision~~ not to exceed two (2) years. In hardship cases, the
22 district attorney shall expressly waive all or part of the fee.

23 3. If restitution is ordered by the court in conjunction with
24 supervision, the supervision fee will be paid in addition to the

1 restitution ordered. In addition to the restitution payment and
2 supervision fee, a reasonable user fee may be charged by the
3 Department of Corrections to cover the expenses of administration of
4 the restitution, except no user fee shall be collected by the
5 Department when restitution payment is collected and disbursed to
6 the victim by the office of the district attorney as provided in
7 Section 991f of this title or Section 991f-1.1 of this title.

8 B. The Pardon and Parole Board shall require a supervision fee
9 to be paid by the parolee as a condition of parole which shall be
10 paid to the Department of Corrections. The Department shall
11 determine the amount of the fee as provided for other persons under
12 supervision by the Department.

13 C. Upon acceptance of an offender by the Department of
14 Corrections whose probation or parole supervision was transferred to
15 Oklahoma through the Interstate Compact Agreement, or upon the
16 assignment of an inmate to any community placement, a fee shall be
17 required to be paid by the offender to the Department of Corrections
18 as provided for other persons under supervision of the Department.

19 D. Except as provided in subsection A and this subsection, all
20 fees collected pursuant to this section shall be deposited in the
21 Department of Corrections Revolving Fund created pursuant to Section
22 557 of Title 57 of the Oklahoma Statutes. For the fiscal year
23 ending June 30, 1996, fifty percent (50%) of all collections
24 received from offenders placed on supervision after July 1, 1995,

1 shall be transferred to the credit of the General Revenue Fund of
2 the State Treasury until such time as total transfers equal Three
3 Million Three Hundred Thousand Dollars (\$3,300,000.00).

4 SECTION 8. This act shall become effective November 1, 2019.

5 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
6 April 10, 2019 - DO PASS AS AMENDED
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