

SHORT TITLE: Criminal procedure; prohibiting referral of certain checks to Bogus Check Restitution Program; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 4

By: Herbert

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Sections 112, 113, and 114, which relate to the Bogus Check Restitution Program; prohibiting referral of checks in certain amounts and under certain conditions; adding referral guideline; limiting certain discretion to refuse referral or prosecution; modifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 112, is amended to read as follows:

Section 112. A. Referral of a an eligible bogus check complaint to the Bogus Check Restitution Program shall be at the discretion of the district attorney. ~~This~~ Nothing in this act shall ~~not~~ limit the power of the district attorney to prosecute bogus check complaints.

B. Upon receipt of an eligible bogus check complaint, the district attorney shall determine if the complaint ~~is one which is appropriate to~~ shall be referred to the Bogus Check Restitution Program.

C. In determining whether to refer a case to the Bogus Check Restitution Program, the district attorney shall consider the following guidelines:

1. ~~The~~ Whether the amount of the bogus check or checks constitutes a felony offense;

2. If there is a prior criminal record of the defendant;

3. The number of bogus check complaints against the defendant previously received by the district attorney;

4. Whether or not there are other bogus check complaints currently pending against the defendant; ~~and~~

5. The strength of the evidence of intent to defraud the victim; and

6. Whether a public or private entity has attempted unsuccessfully to collect the bogus check or checks.

D. The district attorney shall not refer any bogus check when the amount of such check constitutes a misdemeanor offense nor shall any bogus check be referred when the statutes of limitations for collection and criminal prosecution have lapsed.

The district attorney shall not refuse referral of any eligible bogus check complaint to the Bogus Check Restitution Program or refuse criminal prosecution of any false or bogus check on grounds of a prior private collection attempt.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 113, is amended to read as follows:

Section 113. A. Upon referral of a ~~a~~ an eligible complaint to the Bogus Check Restitution Program, a notice of the complaint shall be forwarded by mail to the defendant.

B. The notice shall contain:

1. The date and amount of the check or checks;

2. The name of the payee;

3. The date before which the defendant must contact the office of the district attorney concerning the complaint; and

4. A statement of the penalty for obtaining money, merchandise or services by means of a ~~a~~ any false and bogus check.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 114, is amended to read as follows:

Section 114. A. The district attorney may enter into a written restitution agreement with the defendant to defer prosecution on ~~the~~ any eligible bogus check for a period to be determined by the district attorney, not to exceed six (6) months, pending full restitution being made to the victim of the bogus check or checks.

B. Each restitution agreement shall include a provision requiring the defendant to pay a fee equal to the amount which would have been assessed as court costs upon filing of the case in district court to the district attorney for each check covered by the restitution agreement. This money shall be deposited in a special fund with the county treasurer to be known as the "Bogus Check Restitution Program Fund". This fund shall be used by the district attorney to defray the expense of the Bogus Check Restitution Program. The district attorney shall keep records of all monies deposited to and disbursed from this fund. The records of the fund shall be audited at the same time the records of county funds are audited.

C. Restitution paid by the defendant to the victim shall include the face amount of the check or checks plus any charges the victim may have been required to pay to his bank as the result of having received the bogus check or checks. If, instead of paying restitution directly to the victim, the defendant delivers restitution funds to the office of the district attorney, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the victim by a warrant signed by the district attorney or a member of his staff assigned to the Bogus Check Restitution Program. The district attorney shall keep full records of all restitution monies received and disbursed. These records shall be audited at the same time the county funds are audited.

D. Restitution paid by the defendant to the Oklahoma Tax Commission shall include the face amount of the check or checks plus

the administrative service fee authorized pursuant to Section 218 of Title 68 of the Oklahoma Statutes. If the defendant delivers such restitution funds to the office of the district attorney instead of paying restitution directly to the Oklahoma Tax Commission, the district attorney shall deposit such funds in a depository account in the office of the county treasurer to be disbursed to the Oklahoma Tax Commission by warrant signed by the district attorney or a member of his staff assigned to the Bogus Check Restitution Program or shall transmit the restitution funds directly to the Oklahoma Tax Commission.

E. If the defendant fails to comply with the restitution agreement, the district attorney ~~may~~ shall file an information and proceed with the prosecution of the defendant as provided by law.

SECTION 4. This act shall become effective September 1, 1995.

45-1-0042

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