

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1771

By: Askins of the House

and

Helton of the Senate

COMMITTEE SUBSTITUTE

[criminal procedure - amending 22 O.S., Section
991f-1.1 - Restitution and Diversion Program - return
of property - supervision fees - effective date]

SECTION 1. AMENDATORY 22 O.S. 2001, Section 991f-1.1, is amended to read as follows:

Section 991f-1.1 A. Each district attorney shall create within the district attorney's office a Restitution and Diversion Program and assign sufficient staff and resources for the efficient operation of such program. The purpose of the Restitution and Diversion Program is to allow the district attorney the discretion to divert criminal complaints involving property crimes or a crime punishable by not more than one (1) year in the county jail, except violations alleged pursuant to Sections 11-902 and 11-904 of Title 47 of the Oklahoma Statutes and domestic abuse, from criminal court ~~and,~~ to monitor restitution payments, and to monitor conditions of probation as agreed to by the parties. At the discretion of the district attorney, the program may be administered by the Bogus Check Restitution Program operated by the county.

B. 1. Referral of a criminal complaint to the Restitution and Diversion Program shall be at the discretion of the district

attorney. This act shall not limit the power of the district attorney to prosecute criminal complaints.

2. Upon receipt of a criminal complaint ~~involving property~~, the district attorney shall determine if the complaint is one which is appropriate for deferred prosecution.

3. In determining whether to defer prosecution and refer a case to the Restitution and Diversion Program, the district attorney shall consider the following factors:

- a. whether the criminal complaint alleges an offense involving property or a crime punishable by not more than one (1) year in the county jail, except violations alleged pursuant to Sections 11-902 and 11-904 of Title 47 of the Oklahoma Statutes and domestic abuse,
- b. whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner,
- c. the prospects for adequate protection of the public if the accused person is processed through deferred prosecution in the Restitution and Diversion Program,
- d. the number of criminal complaints against the defendant previously received by the district attorney,
- e. whether or not there are other criminal complaints currently pending against the defendant,
- f. the strength of the evidence of the particular criminal complaint, and
- g. the wishes of the victim.

C. Upon referral of a complaint to the Restitution and Diversion Program, a notice of the complaint shall be forwarded by mail to the accused person. The notice shall contain:

1. The date the act which is the subject of the complaint occurred;

2. The name of the victim;

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

4. A statement of the penalty for the crime which is the subject of the complaint.

D. The district attorney may enter into a written agreement with the accused person to defer prosecution on the criminal complaint for a period to be determined by the district attorney, not to exceed two (2) years pending restitution being made to the victim of the complaint and payment of necessary fees. The accused and the state, through the district attorney, may execute an agreement whereby the accused agrees to waive any rights to a speedy accusation, a speedy trial, and any statute of limitations, and agrees to fulfill such conditions to which the accused and the state may agree including, but not limited to, restitution and community services.

E. The accused, as consideration for entering into a deferred prosecution agreement, consents and agrees to a full and complete photographic record of property which was to be used as evidence. The photographic record shall be competent evidence of the property and admissible in any criminal action or proceeding as the best evidence.

F. As additional consideration for the deferred prosecution agreement, the state shall agree not to file an information if the accused satisfactorily completes the conditions of the agreement.

G. The agreement between the accused and the state may include provisions whereby the accused agrees to be supervised in the community. If the accused is required to be supervised pursuant to the terms of the agreement, the person shall be required to pay a supervision fee to be established by the supervisory agency or the district attorney. The supervision fee shall be paid to the supervisory agency as required by the rules of the supervisory

agency. The supervisory agency shall monitor the person for compliance with the conditions of the agreement. The supervisory agency shall report to the district attorney on the progress of the accused, and shall report immediately if the accused fails to report or participate as required by the agreement.

H. The agreement between the parties may require the accused to participate or consult with local service providers, including the Department of Human Services, the Department of Mental Health and Substance Abuse Services, the Employment Security Commission, federal services agencies, other state or local agencies, colleges, universities, technology center schools, and private or charitable service organizations. When the accused is required to participate or consult with any service provider, a program fee may be required. The program fee shall be established by the service provider based upon a sliding scale. Any state agency called upon for assistance in a deferred prosecution program by any district attorney shall render services and assistance as available. Any supervision fee or program fee authorized by this section may be waived in whole or in part when the accused is indigent. No person who is otherwise qualified for a deferred prosecution program shall be denied services or supervision based solely on the person's inability to pay a fee or fees.

I. The agreement between the parties may require the accused to pay a victim compensation assessment pursuant to the provisions of Section 142.18 of Title 21 of the Oklahoma Statutes. The amount of the assessment shall be agreed to by the parties and shall be within the amounts specified in Section 142.18 of Title 21 of the Oklahoma Statutes for the offense charged.

J. Any deferred prosecution agreement including, but not limited to, any fee, sliding scale fee, compensation, contract, assessment, or other financial agreement charged or waived by the

accused or the State of Oklahoma shall be a record open to the public.

K. Property used as evidence shall be returned to its owner only after the photographic record is made subject to the following conditions:

1. Property, except that which is prohibited by law, shall be returned to its owner after proper verification of title;

2. The return of property to the owner shall be without prejudice to the state or to any person who may have a claim against the property; and

3. When property is returned, the recipient shall sign, under penalty of perjury, a declaration of ownership which shall be retained by the police department or sheriff's office.

~~E.~~ L. Each ~~restitution~~ agreement shall include a provision requiring the accused person to pay to the district attorneys office a fee equal to the amount which would have been assessed as court costs upon the filing of the case in district court plus Twenty-five Dollars (\$25.00) for each criminal complaint covered by the agreement. ~~This~~ One-half (1/2) of this fee may be deposited in a special fund with the county treasurer to be known as the "Restitution and Diversion Program Fund" or in the Bogus Check Restitution Fund. The other one-half (1/2) of this fee shall be paid to the clerk of the court of the county in which the incident occurred to offset the loss of court costs by diversion of the case.

The monies deposited in the Restitution and Diversion Program Fund shall be used by the district attorney to make any lawful expenditure associated with the district attorney's office. The district attorney shall keep records of all monies deposited to and disbursed from these funds. The records of these funds shall be audited at the same time the records of county funds are audited.

~~F.~~ M. 1. Restitution to be paid by the accused person to the victim shall include out-of-pocket expenses the victim incurred as a

direct result of the crime having been committed. A restitution agreement may include provisions for restitution in an amount up to treble the amount of property involved except such restitution shall not apply to false or bogus checks. If, instead of paying restitution directly to the victim, the accused person 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 the district attorney's staff assigned to the Restitution and Diversion 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~~+~~.

2. If the accused person fails to comply with the provisions of the Restitution and Diversion Program agreement, the district attorney may file an information and proceed with the prosecution of the accused person as provided by law.

~~G.~~ N. Members of the district attorney's staff shall perform duties in connection with the Restitution and Diversion Program in addition to any other duties which may be assigned by the district attorney.

~~H.~~ O. 1. District attorneys shall prepare and submit an annual report to the District Attorneys Council showing total deposits and total expenditures in the Restitution and Diversion Program.

2. By September 15 of each year, the District Attorneys Council shall publish an annual report for the previous fiscal year of the Restitution and Diversion Program. A copy of the report shall be distributed to the President Pro Tempore of the Senate and the Speaker of the House of Representatives and the chairs of the House and Senate Appropriations Committees. Each district attorney shall submit information requested by the District Attorneys Council regarding the Restitution and Diversion Program. This report shall

include the number of cases processed, the total dollar amount for which restitution was made, the total amount of the restitution collected, the total amount of fees collected, the total cost of the program, and such other information as required by the District Attorneys Council.

~~I.~~ P. For the purposes of the Restitution and Diversion Program, the following definitions shall apply:

1. "Property Crime" shall include, but not be limited to the following:

- a. embezzlement offenses,
- b. larceny offenses,
- c. theft offenses,
- d. malicious injury to property, and
- e. any offense which results in economic loss, but does not result in physical injury to another human being, and which is not enumerated in Section 571 of Title 57 of the Oklahoma Statutes;

2. "Victim" is defined by Section 991f of Title 22 of the Oklahoma Statutes;

3. "Restitution" is defined by Section 991f of Title 22 of the Oklahoma Statutes; and

4. "Economic loss" is defined by Section 991f of Title 22 of the Oklahoma Statutes.

~~J.~~ Q. The victim shall promptly provide to the Restitution and Diversion Program all documentation and evidence of compensation or reimbursement from insurance companies or agencies of this state, any other state, or the federal government received as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

SECTION 2. AMENDATORY 21 O.S. 2001, Section 1521, is amended to read as follows:

Section 1521. Every person who shall lease or rent, for any period of time whatsoever, any motor vehicle or any other personal property and, with intent to cheat and defraud, who pays the fees for such lease or rental by means of a false, bogus or worthless check written for the sum of Twenty Dollars (\$20.00) or less shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. If the value of the false, bogus or worthless check shall exceed the sum of Twenty Dollars (\$20.00) but is less than Five Hundred Dollars (\$500.00), any person convicted pursuant to this section shall be guilty of a felony and shall be punished by incarceration in the county jail for not to exceed one (1) year or incarceration in the county jail one or more nights or weekends pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes, at the option of the court, and shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) and ordered to provide restitution to the victim as provided in Section 991a of Title 22 of the Oklahoma Statutes. If the value of the worthless check is Five Hundred Dollars (\$500.00) or more, any person convicted hereunder shall be deemed guilty of a felony and shall be punished by imprisonment in the State Penitentiary for a term not exceeding seven (7) years or by a fine not to exceed Five Hundred Dollars (\$500.00), or both such fine and imprisonment.

SECTION 3. This act shall become effective November 1, 2003.

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