

CS for EHB 1771

1 THE STATE SENATE  
2 Thursday, April 3, 2003

3 Committee Substitute for  
4 ENGROSSED  
5 House Bill No. 1771

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1771 - By: ASKINS  
7 of the House and HELTON and LAWLER of the Senate.

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

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

13 Section 991f-1.1 A. Each district attorney shall create within  
14 the district attorney's office a Restitution and Diversion Program  
15 and assign sufficient staff and resources for the efficient  
16 operation of such program. The purpose of the Restitution and  
17 Diversion Program is to allow the district attorney the discretion  
18 to divert criminal complaints involving property crimes or a crime  
19 punishable by not more than one (1) year in the county jail, except  
20 violations alleged pursuant to Sections 11-902 and 11-904 of Title  
21 47 of the Oklahoma Statutes and domestic abuse, from criminal court  
22 and, to monitor restitution payments, and to monitor conditions of  
23 probation as agreed to by the parties. At the discretion of the  
24 district attorney, the program may be administered by the Bogus  
25 Check Restitution Program operated by the county.

1           B. 1. Referral of a criminal complaint to the Restitution and  
2 Diversion Program shall be at the discretion of the district  
3 attorney. This act shall not limit the power of the district  
4 attorney to prosecute criminal complaints.

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

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

11           a. whether the criminal complaint alleges an offense  
12                involving property or a crime punishable by not more  
13                that one (1) year in the county jail, except  
14                violations alleged pursuant to Sections 11-902 and 11-  
15                904 of Title 47 of the Oklahoma Statutes and domestic  
16                abuse,

17           b. whether the alleged offense was committed in an  
18                aggressive, violent, premeditated or willful manner,

19           c. the prospects for adequate protection of the public if  
20                the accused person is processed through deferred  
21                prosecution in the Restitution and Diversion Program,

- 1           d.    the number of criminal complaints against the  
2                    defendant previously received by the district  
3                    attorney,  
4           e.    whether or not there are other criminal complaints  
5                    currently pending against the defendant,  
6           f.    the strength of the evidence of the particular  
7                    criminal complaint, and  
8           g.    the wishes of the victim.

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

- 12           1.    The date the act which is the subject of the complaint  
13            occurred;  
14           2.    The name of the victim;  
15           3.    The date before which the accused person must contact the  
16            office of the district attorney concerning the complaint; and  
17           4.    A statement of the penalty for the crime which is the  
18            subject of the complaint.

19           D.    The district attorney may enter into a written agreement  
20            with the accused person to defer prosecution on the criminal  
21            complaint for a period to be determined by the district attorney,  
22            not to exceed two (2) years pending restitution being made to the  
23            victim of the complaint and payment of necessary fees.  The accused

1 and the state, through the district attorney, may execute an  
2 agreement whereby the accused agrees to waive any rights to a speedy  
3 accusation, a speedy trial, and any statute of limitations, and  
4 agrees to fulfill such conditions to which the accused and the state  
5 may agree including, but not limited to, restitution and community  
6 services.

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

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

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

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

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

22 I. The agreement between the parties may require the accused to  
23 pay a victim compensation assessment pursuant to the provisions of

1 Section 142.18 of Title 21 of the Oklahoma Statutes. The amount of  
2 the assessment shall be agreed to by the parties and shall be within  
3 the amounts specified in Section 142.18 of Title 21 of the Oklahoma  
4 Statutes for the offense charged.

5 J. Any deferred prosecution agreement including, but not  
6 limited to, any fee, sliding scale fee, compensation, contract,  
7 assessment, or other financial agreement charged or waived by the  
8 accused or the State of Oklahoma shall be a record open to the  
9 public.

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

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

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

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

21 ~~E.~~ L. Each ~~restitution~~ agreement shall include a provision  
22 requiring the accused person to pay to the district attorneys office  
23 a fee equal to the amount which would have been assessed as court

1 costs upon the filing of the case in district court plus Twenty-five  
2 Dollars (\$25.00) for each criminal complaint covered by the  
3 agreement. ~~This~~ One-half (1/2) of this fee may be deposited in a  
4 special fund with the county treasurer to be known as the  
5 "Restitution and Diversion Program Fund" or in the Bogus Check  
6 Restitution Fund. The other one-half (1/2) of this fee shall be  
7 paid to the clerk of the court of the county in which the incident  
8 occurred to offset the loss of court costs by diversion of the case.  
9 The monies deposited in the Restitution and Diversion Program Fund  
10 shall be used by the district attorney to make any lawful  
11 expenditure associated with the district attorney's office. The  
12 district attorney shall keep records of all monies deposited to and  
13 disbursed from these funds. The records of these funds shall be  
14 audited at the same time the records of county funds are audited.

15 ~~F.~~ M. 1. Restitution to be paid by the accused person to the  
16 victim shall include out-of-pocket expenses the victim incurred as a  
17 direct result of the crime having been committed. A restitution  
18 agreement may include provisions for restitution in an amount up to  
19 treble the amount of property involved except such restitution shall  
20 not apply to false or bogus checks. If, instead of paying  
21 restitution directly to the victim, the accused person delivers  
22 restitution funds to the office of the district attorney, the  
23 district attorney shall deposit such funds in a depository account

1 in the office of the county treasurer to be disbursed to the victim  
2 by a warrant signed by the district attorney or a member of the  
3 district attorney's staff assigned to the Restitution and Diversion  
4 Program. The district attorney shall keep full records of all  
5 restitution monies received and disbursed. These records shall be  
6 audited at the same time the county funds are audited~~r~~.

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

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

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

18 2. By September 15 of each year, the District Attorneys Council  
19 shall publish an annual report for the previous fiscal year of the  
20 Restitution and Diversion Program. A copy of the report shall be  
21 distributed to the President Pro Tempore of the Senate and the  
22 Speaker of the House of Representatives and the chairs of the House  
23 and Senate Appropriations Committees. Each district attorney shall

1 submit information requested by the District Attorneys Council  
2 regarding the Restitution and Diversion Program. This report shall  
3 include the number of cases processed, the total dollar amount for  
4 which restitution was made, the total amount of the restitution  
5 collected, the total amount of fees collected, the total cost of the  
6 program, and such other information as required by the District  
7 Attorneys Council.

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

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

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

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

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

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

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

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

11       Section 1521. Every person who shall lease or rent, for any  
12 period of time whatsoever, any motor vehicle or any other personal  
13 property and, with intent to cheat and defraud, who pays the fees  
14 for such lease or rental by means of a false, bogus or worthless  
15 check written for the sum of Twenty Dollars (\$20.00) or less shall  
16 be guilty of a misdemeanor and upon conviction thereof shall be  
17 punished by a fine not to exceed Five Hundred Dollars (\$500.00) or  
18 by imprisonment in the county jail for not more than six (6) months,  
19 or both such fine and imprisonment. If the value of the false,  
20 bogus or worthless check shall exceed the sum of Twenty Dollars  
21 (\$20.00) but is less than Five Hundred Dollars (\$500.00), any person  
22 convicted pursuant to this section shall be guilty of a felony and  
23 shall be punished by incarceration in the county jail for not to

1 exceed one (1) year or incarceration in the county jail one or more  
2 nights or weekends pursuant to Section 991a-2 of Title 22 of the  
3 Oklahoma Statutes, at the option of the court, and shall be subject  
4 to a fine of not more than Five Thousand Dollars (\$5,000.00) and  
5 ordered to provide restitution to the victim as provided in Section  
6 991a of Title 22 of the Oklahoma Statutes. If the value of the  
7 worthless check is Five Hundred Dollars (\$500.00) or more, any  
8 person convicted hereunder shall be deemed guilty of a felony and  
9 shall be punished by imprisonment in the State Penitentiary for a  
10 term not exceeding seven (7) years or by a fine not to exceed Five  
11 Hundred Dollars (\$500.00), or both such fine and imprisonment.

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

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-26-03 - DO  
14 PASS, As Amended and Coauthored.