

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1735

By: Tibbs

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5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Section 991f, which relates to victim
9 restitution; adding considerations for calculation of
10 restitution; expanding procedures for collection of
11 restitution; and providing an effective date.

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

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

15 Section 991f. A. For the purposes of any provision of ~~Title 22~~
16 ~~of the Oklahoma Statutes~~ this title relating to criminal sentencing
17 and restitution orders and for the Restitution and Diversion
18 Program:

19 1. "Restitution" means the sum to be paid by the defendant to
20 the victim of the criminal act to compensate that victim for up to
21 three times the amount of the economic loss suffered as a direct
22 result of the criminal act of the defendant;

1 2. "Victim" means any person, partnership, corporation or legal
2 entity that suffers an economic loss as a direct result of the
3 criminal act of another person;

4 3. "Economic loss" means actual financial detriment suffered by
5 the victim consisting of medical expenses actually incurred, damage
6 to or loss of real and personal property and any other out-of-pocket
7 expenses, including loss of earnings, reasonably incurred as the
8 direct result of the criminal act of the defendant. No other
9 elements of damage shall be included as an economic loss for
10 purposes of this section.

11 B. In all criminal prosecutions and juvenile proceedings in
12 this state, when the court enters an order directing the ~~offender~~
13 defendant to pay restitution to any victim for economic loss or to
14 pay to the state any fines, fees or assessments, the order, for
15 purposes of validity and collection, shall not be limited to the
16 maximum term of imprisonment for which the ~~offender~~ defendant could
17 have been sentenced, nor limited to any term of probation, parole,
18 or extension thereof, nor expire until fully satisfied. The court
19 order for restitution, fines, fees or assessments shall remain a
20 continuing obligation of the ~~offender~~ defendant until fully
21 satisfied, and the obligation shall not be considered a debt, nor
22 shall the obligation be dischargeable in any bankruptcy proceeding.
23 The court order shall continue in full force and effect with the
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1 supervision of the state until fully satisfied, and the state shall
2 use all methods of collection authorized by law.

3 C. 1. Upon conviction for any crime wherein property has been
4 stolen, converted or otherwise unlawfully obtained, or its value
5 substantially decreased as a direct result of the crime, or wherein
6 the crime victim suffered injury, loss of income, or out-of-pocket
7 loss, the individuals criminally responsible shall be sentenced to
8 make restitution. Restitution may be ordered in addition to the
9 punishments prescribed by law. The sentencing of a defendant to a
10 term of imprisonment is not a mitigating factor that prevents the
11 court from ordering the defendant to pay restitution.

12 2. The court shall order full restitution based upon the
13 following considerations:

14 a. the nature and amount of restitution shall be
15 sufficient to restore the crime victim to the
16 equivalent economic status existing prior to the
17 losses sustained as a direct result of the crime, and
18 may allow the crime victim to receive payment in
19 excess of the losses sustained; provided, the excess
20 amount of restitution shall not be more than treble
21 the actual economic loss incurred, and

22 b. the amount of restitution shall be established
23 regardless of the financial resources of the ~~offender~~
24 defendant.

1 3. The court:

2 a. may direct the return of property to be made as soon
3 as practicable and make an award of restitution in the
4 amount of the loss of value to the property itself as
5 a direct result of the crime, including out-of-pocket
6 expenses and loss of earnings incurred as a result of
7 damage to or loss of use of the property, the cost to
8 return the property to the victim or to restore the
9 property to its pre-crime condition whichever may be
10 appropriate under the circumstances,

11 b. may order restitution in a lump sum or by such
12 schedules as may be established and thereafter
13 adjusted by agreement consistent with the order of the
14 court,

15 c. shall have the authority to amend or alter any order
16 of restitution made pursuant to this section providing
17 that the court shall state its reasons and conclusions
18 as a matter of record for any change or amendment to
19 any previous order,

20 d. may order interest upon any ordered restitution sum to
21 accrue at the rate of twelve percent (12%) per annum
22 until the restitution is paid in full. The court may
23 further order such interest to be paid to the victims
24 of the crime or proportion the interest payment

1 between the victims and the court fund, and/or the
2 Restitution and Diversion Program, in the discretion
3 of the court, and

4 e. shall consider any pre-existing orders imposed on the
5 defendant, including, but not limited to, orders
6 imposed under civil and criminal proceedings.

7 D. 1. In addition to any other penalty prescribed by law and
8 any restitution ordered under this section that did not include
9 long-term physical health care costs, the court may, upon conviction
10 of a misdemeanor or felony, order the defendant to pay restitution
11 to a victim in accordance with the provisions of this subsection if
12 the victim has suffered physical injury as a result of the offense
13 that is reasonably probable to require or has required long-term
14 physical health care for more than three (3) months. As used in
15 this subsection, "long-term physical health care" includes mental
16 health care.

17 2. The estimate of long-term physical health care costs of the
18 victim may be included as part of the victim request for restitution
19 form, as provided in subsection F of this section, or may be
20 provided separately. The court shall enter the long-term physical
21 health care restitution order at the time of sentencing. An order
22 of restitution made under this subsection shall fix a monthly amount
23 to be paid by the defendant for as long as long-term physical health
24 care of the victim is required as a result of the criminal offense.

1 The order may exceed the length of any sentence imposed upon the
2 defendant for the criminal offense. The court shall include as a
3 special finding in the judgment of conviction its determination of
4 the monthly cost of long-term physical health care.

5 3. After a sentencing order has been entered, the court may
6 from time to time by petition of either the defendant or victim, or
7 upon its own motion:

8 a. enter an order for restitution for long-term physical
9 health care,

10 b. modify the existing order for restitution for long-
11 term physical health care, or

12 c. modify the existing order for restitution for long-
13 term physical health care as to the amount of monthly
14 payments.

15 Any modification of the order shall be based only upon a substantial
16 change of circumstances relating to the cost of long-term physical
17 health care or the financial condition of either the defendant or
18 the victim. The petition shall be filed as part of the original
19 criminal docket.

20 E. If restitution to more than one person, agency or entity is
21 set at the same time, the court shall establish the following
22 priorities of payment:

23 1. The crime victim or victims; and
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1 2. Any other government agency which has provided reimbursement
2 to the victim as a result of the ~~offender's~~ criminal conduct of the
3 defendant.

4 ~~E. F.~~ 1. The ~~district attorney's~~ office of the district
5 attorney shall present the ~~crime victim's~~ restitution claim of the
6 crime victim to the court at the time of the conviction of the
7 ~~offender~~ defendant or the restitution provisions shall be included
8 in the written plea agreement presented to the court, in which case,
9 the restitution claim shall be reviewed by the judge prior to
10 acceptance of the plea agreement.

11 2. At the initiation of the prosecution of the defendant, the
12 ~~district attorney's~~ office of the district attorney shall provide
13 all identifiable crime victims with written and oral information
14 explaining their rights and responsibilities to receive restitution
15 established under this section.

16 3. The ~~district attorney's~~ office of the district attorney
17 shall provide all crime victims, regardless of whether the crime
18 victim makes a specific request, with an official request for
19 restitution form to be completed and signed by the crime victim, and
20 to include all invoices, bills, receipts, and other evidence of
21 injury, loss of earnings and out-of-pocket loss. This form shall be
22 filed with any victim impact statement to be included in the
23 judgment and sentence. Every crime victim receiving the restitution
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1 claim form shall be provided assistance and direction to properly
2 complete the form.

3 4. The official restitution request form shall be presented in
4 all cases regardless of whether the case is brought to trial. In a
5 plea bargain, the district attorney in every case where the victim
6 has suffered economic loss, shall, as a part of the plea bargain,
7 require that the ~~offender~~ defendant pay restitution to the crime
8 victim. The district attorney shall be authorized to act as a
9 clearing house for collection and disbursement of restitution
10 payments made pursuant to this section, and shall assess a fee of
11 One Dollar (\$1.00) per payment received from the defendant, except
12 when the defendant is sentenced to incarceration in the Department
13 of Corrections.

14 ~~F.~~ G. The crime victim shall provide all documentation and
15 evidence of compensation or reimbursement from insurance companies
16 or agencies of this state, any other state, or the federal
17 government received as a direct result of the crime for injury, loss
18 of earnings or out-of-pocket loss.

19 ~~G.~~ H. The court shall, upon motion by the crime victim, redact
20 from the submitted documentation all personal information relating
21 to the crime victim that does not directly and necessarily establish
22 the authenticity of any document or substantiate the asserted amount
23 of the restitution claim.

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1 ~~H.~~ I. The unexcused failure or refusal of the crime victim to
2 provide all or part of the requisite information prior to the
3 sentencing, unless disclosure is deferred by the court, shall
4 constitute a waiver of any grounds to appeal or seek future
5 amendment or alteration of the restitution order predicated on the
6 undisclosed available information. The court shall order the
7 ~~offender~~ defendant to submit either as part of the pre-sentence
8 investigation or assessment and evaluation required for a community
9 sentence or, if no pre-sentence investigation is conducted, in
10 advance of the sentencing proceeding such information as the court
11 may direct and finds necessary to be disclosed for the purpose of
12 ascertaining the type and manner of restitution to be ordered.

13 ~~I.~~ J. The willful failure or refusal of the ~~offender~~ defendant
14 to provide all or part of the requisite information prior to the
15 sentencing, unless disclosure is deferred by the court shall not
16 deprive the court of the authority to set restitution or set the
17 schedule of payment. The willful failure or refusal of the ~~offender~~
18 defendant to provide all or part of the requisite information prior
19 to the sentencing, unless disclosure is deferred by the court, shall
20 constitute a waiver of any grounds to appeal or seek future
21 amendment or alteration of the restitution order predicated on the
22 undisclosed information. The willful failure or refusal of the
23 ~~offender~~ defendant to provide all or part of the requisite
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1 information prior to sentencing, unless disclosure is deferred by
2 the court, shall constitute an act of contempt.

3 ~~J.~~ K. The court shall conduct such hearings or proceedings as
4 it deems necessary to set restitution and payment schedules at the
5 time of sentencing or may bifurcate the sentencing and defer the
6 hearing or proceedings relating to the imposition of restitution as
7 justice may require. Amendments or alterations to the restitution
8 order may be made upon ~~the court's own~~ motion by the court, petition
9 by the crime victim or petition by the ~~offender~~ defendant. The
10 court shall determine whether the defendant should be required to
11 make restitution, in cash, for out-of-pocket expenses, damages,
12 losses, or injuries found to have been proximately caused by the
13 conduct of the defendant. In fixing the amount of restitution to be
14 paid in cash, the court shall assess the actual out-of-pocket
15 expenses, losses, damages, and injuries suffered by the victim named
16 in the charge and any other victims who may also have suffered out-
17 of-pocket expenses, losses, damages, and injuries proximately caused
18 by the same criminal conduct of the defendant, provided that in no
19 event shall restitution be ordered to be paid on account of
20 suffering.

21 ~~K. An offender~~ L. A defendant who files a meritless or
22 frivolous petition for amendment or alteration to the restitution
23 order shall pay the costs of the proceeding on the petition and
24 shall have added to the existing restitution order the additional

1 loss of earnings and out-of-pocket loss incurred by the crime victim
2 in responding to the petition.

3 ~~L.~~ M. The restitution request form shall be promulgated by the
4 District Attorneys Council and provided to all district attorney
5 offices.

6 ~~M.~~ N. If a defendant who is financially able refuses or
7 neglects to pay restitution as ordered by this section, payment may
8 be enforced:

9 1. By contempt of court as provided in subsection A of Section
10 566 of Title 21 of the Oklahoma Statutes with imprisonment or fine
11 or both;

12 2. In the same manner as prescribed in subsection ~~N~~ O of this
13 section for a defendant who is without means to make such
14 restitution payment; or

15 3. ~~Revocation~~ By revocation of the criminal sentence if the
16 sentence imposed was a suspended or deferred sentence or a community
17 sentence.

18 ~~N.~~ O. If the defendant is without means to pay the restitution,
19 the judge may direct the total amount due, or any portion thereof,
20 to be entered upon the court minutes and to be certified in the
21 district court of the county where it shall then be entered upon the
22 district court judgment docket and shall have the full force and
23 effect of a district court judgment in a civil case. Thereupon the
24 same remedies shall be available for the enforcement of the judgment

1 as are available to enforce other judgments; provided, however, the
2 judgment herein prescribed shall not be considered a debt nor
3 dischargeable in any bankruptcy proceeding.

4 ~~Θ~~ P. Whenever a person has been ordered to pay restitution as
5 provided in this section or any section of the Oklahoma Statutes for
6 a criminal penalty, the judge may order the defendant to a term of
7 community service, with or without compensation, to be credited at a
8 rate of Five Dollars (\$5.00) per day against the total amount due
9 for restitution. If the defendant fails to perform the required
10 community service authorized by this subsection or if the conditions
11 of community service are violated, the judge may impose a term of
12 imprisonment not to exceed five (5) days in the county jail for each
13 failure to comply.

14 ~~P~~ Q. Nothing in subsections ~~M~~ N through ~~Θ~~ P of this section
15 shall be construed to be additions to the original criminal penalty,
16 but shall be used by the court as sanctions and means of collection
17 for criminal restitution orders and restitution orders that have
18 been reduced to judgment.

19 SECTION 2. This act shall become effective November 1, 2007.

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21 51-1-5403 GRS 12/13/06

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