

1 STATE OF OKLAHOMA

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

3 SENATE BILL 905

By: Nichols

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5
6 AS INTRODUCED

7 An Act relating to crimes and criminal procedure;
8 amending 21 O.S. 2001, Section 652, as amended by
9 Section 2, Chapter 200, O.S.L. 2005 (21 O.S. Supp.
10 2006, Section 652), which relates to shooting firearm
11 with intent to kill; increasing penalty range;
12 amending 21 O.S. 2001, Section 885, which relates to
13 incest; setting mandatory minimum term; increasing
14 imprisonment penalty; amending 22 O.S. 2001, Section
15 18, as last amended by Section 1, Chapter 406, O.S.L.
16 2004 (22 O.S. Supp. 2006, Section 18), which relates
17 to expungement of records; prohibiting expungement
18 for certain plea on certain offense; amending 22 O.S.
19 2001, Section 114, as amended by Section 1, Chapter
20 293, O.S.L. 2006 (22 O.S. Supp. 2006, Section 114),
21 which relates to restitution agreements; increasing
22 period of agreement; amending 22 O.S. 2001, Section
23 152, as last amended by Section 2, Chapter 215,
24 O.S.L. 2006 (22 O.S. Supp. 2006, Section 152), which
relates to limitations to prosecution; setting
limitation to prosecuting certain offense; amending
22 O.S. 2001, Section 305.1, which relates to
deferred prosecution programs; increasing period of
agreement; amending 22 O.S. 2001, Section 982a, which
relates to judicial review; prohibiting judicial
review of plea agreements without certain consent;
amending 22 O.S. 2001, Section 1015, as amended by
Section 1, Chapter 118, O.S.L. 2004 (22 O.S. Supp.
2006, Section 1015), which relates to executions;
permitting certain designee to be present at
execution; amending 57 O.S. 2001, Section 571, which
relates to definition of nonviolent offender;
including certain offense as violent offense;
providing an effective date; and declaring an
emergency.

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

2 SECTION 1. AMENDATORY 21 O.S. 2001, Section 652, as
3 amended by Section 2, Chapter 200, O.S.L. 2005 (21 O.S. Supp. 2006,
4 Section 652), is amended to read as follows:

5 Section 652. A. Every person who intentionally and wrongfully
6 shoots another with or discharges any kind of firearm, with intent
7 to kill any person, including an unborn child as defined in Section
8 1-730 of Title 63 of the Oklahoma Statutes, shall upon conviction be
9 guilty of a felony punishable by imprisonment in the State
10 Penitentiary not exceeding life.

11 B. Every person who uses any vehicle to facilitate the
12 intentional discharge of any kind of firearm, crossbow or other
13 weapon in conscious disregard for the safety of any other person or
14 persons, including an unborn child as defined in Section 1-730 of
15 Title 63 of the Oklahoma Statutes, shall upon conviction be guilty
16 of a felony punishable by imprisonment in the ~~State Penitentiary~~
17 custody of the Department of Corrections for a term ~~of~~ not less than
18 two (2) years nor ~~more than twenty (20) years~~ exceeding life.

19 C. Any person who commits any assault and battery upon another,
20 including an unborn child as defined in Section 1-730 of Title 63 of
21 the Oklahoma Statutes, by means of any deadly weapon, or by such
22 other means or force as is likely to produce death, or in any manner
23 attempts to kill another, including an unborn child as defined in
24 Section 1-730 of Title 63 of the Oklahoma Statutes, or in resisting

1 the execution of any legal process, shall upon conviction be guilty
2 of a felony punishable by imprisonment in the State Penitentiary not
3 exceeding twenty (20) years.

4 D. The provisions of this section shall not apply to:

5 1. Acts which cause the death of an unborn child if those acts
6 were committed during a legal abortion to which the pregnant woman
7 consented; or

8 2. Acts which are committed pursuant to usual and customary
9 standards of medical practice during diagnostic testing or
10 therapeutic treatment.

11 E. Under no circumstances shall the mother of the unborn child
12 be prosecuted for causing the death of the unborn child unless the
13 mother has committed a crime that caused the death of the unborn
14 child.

15 SECTION 2. AMENDATORY 21 O.S. 2001, Section 885, is
16 amended to read as follows:

17 Section 885. Persons who, being within the degrees of
18 consanguinity within which marriages are by the laws of the state
19 declared incestuous and void, intermarry with each other, or commit
20 adultery or fornication with each other, shall be guilty of a felony
21 punishable by imprisonment in the ~~State Penitentiary not exceeding~~
22 ~~ten (10)~~ custody of the Department of Corrections for not less than
23 three (3) years nor more than twenty (20) years.
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1 SECTION 3. AMENDATORY 22 O.S. 2001, Section 18, as last
2 amended by Section 1, Chapter 406, O.S.L. 2004 (22 O.S. Supp. 2006,
3 Section 18), is amended to read as follows:

4 Section 18. Persons authorized to file a motion for
5 expungement, as provided herein, must be within one of the following
6 categories:

7 1. The person has been acquitted;

8 2. The conviction was reversed with instructions to dismiss by
9 an appellate court of competent jurisdiction, or an appellate court
10 of competent jurisdiction reversed the conviction and the district
11 attorney subsequently dismissed the charge;

12 3. The factual innocence of the person was established by the
13 use of deoxyribonucleic acid (DNA) evidence subsequent to
14 conviction;

15 4. The person was arrested and no charges of any type,
16 including charges for an offense different than that for which the
17 person was originally arrested are filed or charges are dismissed
18 within one (1) year of the arrest, or all charges are dismissed on
19 the merits; however, this provision shall not apply if the person
20 entered a plea of guilty or nolo contendere to any alcohol related
21 driving offense;

22 5. The statute of limitations on the offense had expired and no
23 charges were filed;

24

1 6. The person was under eighteen (18) years of age at the time
2 the offense was committed and the person has received a full pardon
3 for the offense;

4 7. The offense was a misdemeanor, the person has not been
5 convicted of any other misdemeanor or felony, no felony or
6 misdemeanor charges are pending against the person, and at least ten
7 (10) years have passed since the judgment was entered;

8 8. The offense was a nonviolent felony, as defined in Section
9 571 of Title 57 of the Oklahoma Statutes, the person has received a
10 full pardon for the offense, the person has not been convicted of
11 any other misdemeanor or felony, no felony or misdemeanor charges
12 are pending against the person, and at least ten (10) years have
13 passed since the conviction; or

14 9. The person has been charged or arrested or is the subject of
15 an arrest warrant for a crime that was committed by another person
16 who has appropriated or used the person's name or other
17 identification without the person's consent or authorization.

18 For purposes of ~~this act~~ Section 18 et seq. of this title,
19 "expungement" shall mean the sealing of criminal records. Records
20 expunged pursuant to paragraph 9 of this section shall be sealed to
21 the public but not to law enforcement agencies for law enforcement
22 purposes.

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1 SECTION 4. AMENDATORY 22 O.S. 2001, Section 114, as
2 amended by Section 1, Chapter 293, O.S.L. 2006 (22 O.S. Supp. 2006,
3 Section 114), is amended to read as follows:

4 Section 114. A. The district attorney may enter into a written
5 restitution agreement with the defendant to defer prosecution on a
6 false or bogus check for a period to be determined by the district
7 attorney, not to exceed ~~two (2)~~ three (3) years, pending restitution
8 being made to the victim of the bogus check as provided in this
9 section.

10 B. Each restitution agreement shall include a provision
11 requiring the defendant to pay to the victim a Twenty-five Dollar
12 (\$25.00) fee and to the district attorney a fee equal to the amount
13 which would have been assessed as court costs upon filing of the
14 case in district court plus Twenty-five Dollars (\$25.00) for each
15 check covered by the restitution agreement; provided, every check in
16 an amount of Fifty Dollars (\$50.00) or more shall require a separate
17 fee to be paid to the district attorney in an amount equal to the
18 amount which would be assessed as court costs for the filing of a
19 felony case in district court plus Twenty-five Dollars (\$25.00).
20 This money shall be deposited in a special fund with the county
21 treasurer to be known as the "Bogus Check Restitution Program Fund".
22 This fund shall be used by the district attorney to defray any
23 lawful expense of the district attorney's office. The district
24 attorney shall keep records of all monies deposited to and disbursed

1 from this fund. The records of the fund shall be audited at the
2 same time the records of county funds are audited.

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

15 D. Restitution paid by the defendant to the Oklahoma Tax
16 Commission shall include the face amount of the check plus the
17 administrative service fee authorized pursuant to Section 218 of
18 Title 68 of the Oklahoma Statutes. If the defendant delivers such
19 restitution funds to the office of the district attorney instead of
20 paying restitution directly to the Oklahoma Tax Commission, the
21 district attorney shall deposit such funds in a depository account
22 in the office of the county treasurer to be disbursed to the
23 Oklahoma Tax Commission by warrant signed by the district attorney
24 or a member of the staff assigned to the Bogus Check Restitution

1 Program or shall transmit the restitution funds directly to the
2 Oklahoma Tax Commission.

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

6 F. The victim may authorize an administrative service fee to be
7 paid by such victim to the district attorney or other third-party
8 vendor to facilitate electronic transfer of checks to the Bogus
9 Check Restitution Program.

10 G. The district attorney is authorized to contract for a per-
11 item fee with a third-party vendor to facilitate electronic transfer
12 of checks into the Bogus Check Restitution Program.

13 SECTION 5. AMENDATORY 22 O.S. 2001, Section 152, as last
14 amended by Section 2, Chapter 215, O.S.L. 2006 (22 O.S. Supp. 2006,
15 Section 152), is amended to read as follows:

16 Section 152. A. Prosecutions for the crimes of bribery,
17 embezzlement of public money, bonds, securities, assets or property
18 of the state or any county, school district, municipality or other
19 subdivision thereof, or of any misappropriation of public money,
20 bonds, securities, assets or property of the state or any county,
21 school district, municipality or other subdivision thereof,
22 falsification of public records of the state or any county, school
23 district, municipality or other subdivision thereof, and conspiracy
24 to defraud the State of Oklahoma or any county, school district,

1 municipality or other subdivision thereof in any manner or for any
2 purpose shall be commenced within seven (7) years after the
3 discovery of the crime; provided, however, prosecutions for the
4 crimes of embezzlement or misappropriation of public money, bonds,
5 securities, assets or property of any school district, including
6 those relating to student activity funds, or the crime of
7 falsification of public records of any independent school district,
8 the crime of criminal conspiracy, the crime of embezzlement,
9 pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma
10 Statutes, or the financial exploitation of a vulnerable adult,
11 pursuant to Sections 843.1 and, 843.3 and 843.4 of Title 21 of the
12 Oklahoma Statutes ~~and Section 1 of this act~~, shall be commenced
13 within five (5) years after the discovery of the crime.

14 B. Prosecutions for criminal violations of any state income tax
15 laws shall be commenced within five (5) years after the commission
16 of such violation.

17 C. 1. Prosecutions for the crime of rape or forcible sodomy,
18 sodomy, lewd or indecent proposals or acts against children,
19 involving minors in pornography pursuant to Section 886, 888, 1111,
20 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the
21 Oklahoma Statutes, and child abuse pursuant to Section 7115 of Title
22 10 of the Oklahoma Statutes, shall be commenced within twelve (12)
23 years after the discovery of the crime.

24

1 2. However, prosecutions for the crimes listed in paragraph 1
2 of this subsection may be commenced at any time after the commission
3 of the offense if:

4 a. the victim notified law enforcement within twelve (12)
5 years after the discovery of the crime,

6 b. physical evidence is collected and preserved that is
7 capable of being tested to obtain a profile from
8 deoxyribonucleic acid (DNA), and

9 c. the identity of the offender is subsequently
10 established through the use of a DNA profile using
11 evidence listed in subparagraph b of this paragraph.

12 A prosecution under this exception must be commenced within three
13 (3) years from the date on which the identity of the suspect is
14 established by DNA testing.

15 D. Prosecutions for criminal violations of any provision of the
16 Oklahoma Wildlife Conservation Code shall be commenced within three
17 (3) years after the commission of such offense.

18 E. Prosecutions for the crime of criminal fraud or workers'
19 compensation fraud pursuant to Section 1541.1, 1541.2, 1662 or 1663
20 of Title 21 of the Oklahoma Statutes shall commence within three (3)
21 years after the discovery of the crime, but in no event greater than
22 seven (7) years after the commission of the crime.

23 F. Prosecution for the crime of false or bogus check, Section
24 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma

1 Statutes, shall be commenced within five (5) years after the
2 commission of such offense.

3 G. Prosecution for the crime of solicitation for murder in the
4 first degree pursuant to Section 701.16 of Title 21 of the Oklahoma
5 Statutes shall be commenced within seven (7) years after the
6 discovery of the crime. For purposes of this subsection,
7 "discovery" means the date upon which the crime is made known to
8 anyone other than a person involved in the solicitation.

9 H. Prosecution for the crime of accessory after the fact must
10 be commenced within the same time limitation as that of the felony
11 for which the person acted as an accessory.

12 I. In all other cases a prosecution for a public offense must
13 be commenced within three (3) years after its commission.

14 ~~I.~~ J. As used in paragraph 1 of subsection C of this section,
15 "discovery" means the date that a physical or sexually related crime
16 involving a victim under the age of eighteen (18) years of age is
17 reported to a law enforcement agency, up to and including one (1)
18 year from the eighteenth birthday of the child.

19 SECTION 6. AMENDATORY 22 O.S. 2001, Section 305.1, is
20 amended to read as follows:

21 Section 305.1 Before the filing of an information against a
22 person accused of committing a crime, the State of Oklahoma, through
23 its district attorney, may agree with an accused to defer the filing
24

1 of a criminal information for a period not to exceed ~~two (2)~~ three
2 (3) years.

3 The State of Oklahoma may include any person in a deferred
4 prosecution program if it is in the best interests of the accused
5 and not contrary to the public interest. Each district attorney
6 shall adopt and promulgate guidelines which shall indicate what
7 factors shall be considered in including an accused in the deferred
8 prosecution program. The guidelines shall insure that the State of
9 Oklahoma considers in each case at least the following factors:

10 1. Whether the State of Oklahoma has sufficient evidence to
11 achieve conviction;

12 2. The nature of the offense with priority given to first
13 offenders and nonviolent crimes;

14 3. Any special characteristics of the accused;

15 4. Whether the accused will cooperate and benefit from a
16 deferred prosecution program;

17 5. Whether available programs are appropriate to the accused
18 person's needs;

19 6. Whether the services for the accused are more readily
20 available from the community or from the corrections system;

21 7. Whether the accused constitutes a substantial danger to
22 others;

23 8. The impact of the deferred prosecution on the community;

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1 9. The recommendations of the law enforcement agency involved
2 in the case;

3 10. The opinions of the victim; and

4 11. Any mitigating or aggravating circumstances.

5 SECTION 7. AMENDATORY 22 O.S. 2001, Section 982a, is
6 amended to read as follows:

7 Section 982a. A. Any time within twelve (12) months after a
8 sentence is imposed or within twelve (12) months after probation has
9 been revoked, the court imposing sentence or revocation of probation
10 may modify such sentence or revocation by directing that another
11 penalty be imposed, if the court is satisfied that the best
12 interests of the public will not be jeopardized. This section shall
13 not apply to convicted felons who have been in confinement in any
14 state prison system for any previous felony conviction during the
15 ten-year period preceding the date that the sentence this section
16 applies to was imposed. Further, without the consent of the
17 district attorney, this section shall not apply to sentences imposed
18 to a plea agreement.

19 B. The Department of Corrections shall provide the court
20 imposing sentence or revocation of probation with the report by the
21 Lexington Assessment and Reception Center and any other information
22 the Department can supply on the inmate. The court shall consider
23 such reports when modifying the sentence or revocation of probation.

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1 C. If the court considers modification of the sentence or
2 revocation of probation, a hearing shall be made in open court. The
3 clerk of the court imposing sentence or revocation of probation
4 shall give notice of the hearing and provide a copy of the report by
5 the Lexington Assessment and Reception Center to the inmate, the
6 inmate's legal counsel and the district attorney of the county in
7 which the inmate was convicted not less than twenty-one (21) days
8 prior to the hearing.

9 D. If an appeal is taken which results in a modification of the
10 sentence or revocation of probation of the defendant, such sentence
11 may be further modified in the manner hereinbefore described within
12 twelve (12) months after the receipt by the clerk of the district
13 court of the mandate from the Supreme Court or the Court of Criminal
14 Appeals.

15 SECTION 8. AMENDATORY 22 O.S. 2001, Section 1015, as
16 amended by Section 1, Chapter 118, O.S.L. 2004 (22 O.S. Supp. 2006,
17 Section 1015), is amended to read as follows:

18 Section 1015. A. A judgment of death must be executed at the
19 Oklahoma State Penitentiary at McAlester, Oklahoma, said prison to
20 be designated by the court by which judgment is to be rendered.

21 B. The judgment of execution shall take place under the
22 authority of the Director of the Oklahoma Department of Corrections
23 and the warden must be present along with other necessary prison and
24 corrections officials to carry out the execution. The warden must

1 invite the presence of a physician and the district attorney of the
2 county in which the crime occurred or his or her designee, the judge
3 who presided at the trial issuing the sentence of death, the chief
4 of police of the municipality in which the crime occurred, if
5 applicable, and the sheriff of the county wherein the conviction was
6 had, to witness the execution; in addition, the Cabinet Secretary of
7 Safety and Security must be invited and other correctional personnel
8 deemed appropriate and approved by the Director. The warden shall,
9 at the request of the defendant, permit the presence of such
10 ministers of the defendant's choice, not exceeding two, and any
11 persons, relatives or friends, not to exceed five, as the defendant
12 may name; provided, reporters from recognized members of the news
13 media will be admitted upon proper identification, application and
14 approval of the warden.

15 C. In the event the defendant has been sentenced to death in
16 one or more criminal proceedings in this state, or has been
17 sentenced to death in this state and by one or more courts of
18 competent jurisdiction in another state or pursuant to federal
19 authority, or any combination thereof, and this state has priority
20 to execute the defendant, the warden must invite the prosecuting
21 attorney or his or her designee, the judge, and the chief law
22 enforcement official from each jurisdiction where any death sentence
23 has issued. The above mentioned officials shall be allowed to
24 witness the execution or view the execution by closed circuit

1 television as determined by the Director of the Department of
2 Corrections.

3 D. A place shall be provided at the Oklahoma State Penitentiary
4 at McAlester so that individuals who are eighteen (18) years of age
5 or older and who are members of the immediate family of any deceased
6 victim of the defendant may witness the execution. The immediate
7 family members shall be allowed to witness the execution from an
8 area that is separate from the area to which other nonfamily member
9 witnesses are admitted, provided, however, if there are multiple
10 deceased victims, the Department shall not be required to provide
11 separate areas for each family of each deceased victim. If
12 facilities are not capable or sufficient to provide all immediate
13 family members with a direct view of the execution, the Department
14 of Corrections may broadcast the execution by means of a closed
15 circuit television system to an area in which other immediate family
16 members may be located.

17 Immediate family members may request individuals not directly
18 related to the deceased victim but who serve a close supporting role
19 or professional role to the deceased victim or an immediate family
20 member, including, but not limited to, a minister or licensed
21 counselor. The warden in consultation with the Director shall
22 approve or disapprove such requests. Provided further, the
23 Department may set a limit on the number of witnesses or viewers
24 within occupancy limits.

1 As used in this section, "members of the immediate family" means
2 the spouse, a child by birth or adoption, a stepchild, a parent, a
3 grandparent, a grandchild, a sibling of a deceased victim, or the
4 spouse of any immediate family member specified in this subsection.

5 E. Any surviving victim of the defendant who is eighteen (18)
6 years of age or older may view the execution by closed circuit
7 television with the approval of both the Director of the Department
8 of Corrections and the warden. The Director and warden shall
9 prioritize persons to view the execution, including immediate family
10 members, surviving victims, and supporting persons, and may set a
11 limit on the number of viewers within occupancy limits. Any
12 surviving victim approved to view the execution of their perpetrator
13 may have an accompanying support person as provided for members of
14 the immediate family of a deceased victim. As used in this
15 subsection, "surviving victim" means any person who suffered serious
16 harm or injury due to the criminal acts of the defendant of which
17 the defendant has been convicted in a court of competent
18 jurisdiction.

19 SECTION 9. AMENDATORY 57 O.S. 2001, Section 571, is
20 amended to read as follows:

21 Section 571. As used in the Oklahoma Statutes, unless another
22 definition is specified:

23 1. "Capacity" means the actual available bedspace as certified
24 by the State Board of Corrections subject to applicable federal and

1 state laws and the rules and regulations promulgated under such
2 laws;

3 2. "Nonviolent offense" means any felony offense except the
4 following, or any attempts to commit or conspiracy or solicitation
5 to commit the following crimes:

- 6 a. assault, battery, or assault and battery with a
7 dangerous weapon;
- 8 b. aggravated assault and battery on a police officer,
9 sheriff, highway patrolman, or any other officer of
10 the law;
- 11 c. poisoning with intent to kill;
- 12 d. shooting with intent to kill;
- 13 e. assault with intent to kill;
- 14 f. assault with intent to commit a felony;
- 15 g. assaults while masked or disguised;
- 16 h. murder in the first degree;
- 17 i. murder in the second degree;
- 18 j. manslaughter in the first degree;
- 19 k. manslaughter in the second degree;
- 20 l. kidnapping;
- 21 m. burglary in the first degree;
- 22 n. burglary with explosives;
- 23 o. kidnapping for extortion;
- 24 p. maiming;

- 1 q. robbery;
- 2 r. robbery in the first degree;
- 3 s. robbery in the second degree;
- 4 t. armed robbery;
- 5 u. robbery by two (2) or more persons;
- 6 v. robbery with dangerous weapon or imitation firearm;
- 7 w. child beating;
- 8 x. wiring any equipment, vehicle or structure with
- 9 explosives;
- 10 y. forcible sodomy;
- 11 z. rape in the first degree;
- 12 aa. rape in the second degree;
- 13 bb. rape by instrumentation;
- 14 cc. lewd or indecent proposition or lewd or indecent act
- 15 with a child;
- 16 dd. use of a firearm or offensive weapon to commit or
- 17 attempt to commit a felony;
- 18 ee. pointing firearms;
- 19 ff. rioting;
- 20 gg. inciting to riot;
- 21 hh. arson in the first degree;
- 22 ii. injuring or burning public buildings;
- 23 jj. sabotage;
- 24 kk. criminal syndicalism;

- 1 ll. extortion;
- 2 mm. obtaining signature by extortion;
- 3 nn. seizure of a bus, discharging firearm or hurling
- 4 missile at bus; ~~or~~
- 5 oo. mistreatment of a mental patient; or
- 6 pp. using a vehicle to facilitate the discharge of a
- 7 weapon pursuant to Section 652 of Title 21 of the Oklahoma
- 8 Statutes.

9 SECTION 10. This act shall become effective July 1, 2007.

10 SECTION 11. It being immediately necessary for the preservation

11 of the public peace, health and safety, an emergency is hereby

12 declared to exist, by reason whereof this act shall take effect and

13 be in full force from and after its passage and approval.

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