

1 ENGROSSED HOUSE
2 BILL NO. 1413

By: Nelson of the House

3 and

4 Sparks of the Senate
5
6

7 An Act relating to criminal procedure; amending 22
8 O.S. 2001, Section 152, as last amended by Section 1,
9 Chapter 434, O.S.L. 2008 (22 O.S. Supp. 2008, Section
10 152), which relates to statute of limitations for
11 crimes; applying certain statute of limitations to
12 specified offense; amending 22 O.S. 2001, Section
13 991f-1.1, which relates to the Restitution and
14 Diversion Program; extending deferred prosecution
15 period; and providing an effective date.

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

17 SECTION 1. AMENDATORY 22 O.S. 2001, Section 152, as last
18 amended by Section 1, Chapter 434, O.S.L. 2008 (22 O.S. Supp. 2008,
19 Section 152), is amended to read as follows:

20 Section 152. A. Prosecutions for the crimes of bribery,
21 embezzlement of public money, bonds, securities, assets or property
22 of the state or any county, school district, municipality or other
23 subdivision thereof, or of any misappropriation of public money,
24 bonds, securities, assets or property of the state or any county,
school district, municipality or other subdivision thereof,
falsification of public records of the state or any county, school

1 district, municipality or other subdivision thereof, and conspiracy
2 to defraud the State of Oklahoma or any county, school district,
3 municipality or other subdivision thereof in any manner or for any
4 purpose shall be commenced within seven (7) years after the
5 discovery of the crime; provided, however, prosecutions for the
6 crimes of embezzlement or misappropriation of public money, bonds,
7 securities, assets or property of any school district, including
8 those relating to student activity funds, or the crime of
9 falsification of public records of any independent school district,
10 the crime of criminal conspiracy, the crime of embezzlement,
11 pursuant to Sections 1451 through 1462 of Title 21 of the Oklahoma
12 Statutes, the crime of False Personation or Identity Theft, pursuant
13 to Sections 1531 through 1533.3 of Title 21 of the Oklahoma
14 Statutes, or the financial exploitation of a vulnerable adult,
15 pursuant to Sections 843.1, 843.3 and 843.4 of Title 21 of the
16 Oklahoma Statutes, shall be commenced within five (5) years after
17 the discovery of the crime.

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

21 C. 1. Prosecutions for the crime of rape or forcible sodomy,
22 sodomy, lewd or indecent proposals or acts against children,
23 involving minors in pornography pursuant to Section 886, 888, 1111,
24 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the

1 Oklahoma Statutes, child abuse pursuant to Section 7115 of Title 10
2 of the Oklahoma Statutes, and child trafficking pursuant to Section
3 866 of Title 21 of the Oklahoma Statutes shall be commenced within
4 twelve (12) years after the discovery of the crime.

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

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

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

13 c. the identity of the offender is subsequently
14 established through the use of a DNA profile using
15 evidence listed in subparagraph b of this paragraph.

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

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

22 E. Prosecutions for the crime of criminal fraud or workers'
23 compensation fraud pursuant to Section 1541.1, 1541.2, 1662 or 1663
24 of Title 21 of the Oklahoma Statutes shall commence within three (3)

1 years after the discovery of the crime, but in no event greater than
2 seven (7) years after the commission of the crime.

3 F. Prosecution for the crime of false or bogus check, Section
4 1541.1, 1541.2, 1541.3 or 1541.4 of Title 21 of the Oklahoma
5 Statutes, shall be commenced within five (5) years after the
6 commission of such offense.

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

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

15 I. Prosecution for the crime of accessory after the fact must
16 be commenced within the same statute of limitations as that of the
17 felony for which the person acted as an accessory.

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

23 SECTION 2. AMENDATORY 22 O.S. 2001, Section 991f-1.1, is
24 amended to read as follows:

1 Section 991f-1.1 A. Each district attorney shall create within
2 the district attorney's office a Restitution and Diversion Program
3 and assign sufficient staff and resources for the efficient
4 operation of such program. The purpose of the Restitution and
5 Diversion Program is to allow the district attorney the discretion
6 to divert criminal complaints involving property crimes from
7 criminal court and to monitor restitution payments. At the
8 discretion of the district attorney, the program may be administered
9 by the Bogus Check Restitution Program operated by the county.

10 B. 1. Referral of a criminal complaint to the Restitution and
11 Diversion Program shall be at the discretion of the district
12 attorney. This act shall not limit the power of the district
13 attorney to prosecute criminal complaints.

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

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

20 a. whether the criminal complaint alleges an offense
21 involving property,

22 b. whether the alleged offense was committed in an
23 aggressive, violent, premeditated or willful manner,
24

- 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,

1 not to exceed ~~two (2)~~ three (3) years pending restitution being made
2 to the victim of the complaint and payment of necessary fees.

3 E. Each restitution agreement shall include a provision
4 requiring the accused person to pay to the district attorneys office
5 a fee equal to the amount which would have been assessed as court
6 costs upon the filing of the case in district court plus Twenty-five
7 Dollars (\$25.00) for each criminal complaint covered by the
8 agreement. This fee may be deposited in a special fund with the
9 county treasurer to be known as the "Restitution and Diversion
10 Program Fund" or in the Bogus Check Restitution Fund. The monies
11 deposited in the Restitution and Diversion Program Fund shall be
12 used by the district attorney to make any lawful expenditure
13 associated with the district attorney's office. The district
14 attorney shall keep records of all monies deposited to and disbursed
15 from these funds. The records of these funds shall be audited at
16 the same time the records of county funds are audited.

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

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

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

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

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

19 2. By September 15 of each year, the District Attorneys Council
20 shall publish an annual report for the previous fiscal year of the
21 Restitution and Diversion Program. A copy of the report shall be
22 distributed to the President Pro Tempore of the Senate and the
23 Speaker of the House of Representatives and the chairs of the House
24 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 I. For the purposes of the Restitution and Diversion Program,
9 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~~ this title;

22 3. "Restitution" is defined by Section 991f of ~~Title 22 of the~~
23 ~~Oklahoma Statutes~~ this title; and
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1 4. "Economic loss" is defined by Section 991f of ~~Title 22 of~~
2 ~~the Oklahoma Statutes~~ this title.

3 J. 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 3. This act shall become effective November 1, 2009.

10 Passed the House of Representatives the 23rd day of February,
11 2009.

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Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2009.

Presiding Officer of the Senate