

THE HOUSE OF REPRESENTATIVES
Monday, February 16, 2009

House Bill No. 1413

HOUSE BILL NO. 1413 - By: NELSON of the House.

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

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

1 SECTION 1. AMENDATORY 22 O.S. 2001, Section 152, as last amended by
2 Section 1, Chapter 434, O.S.L. 2008 (22 O.S. Supp. 2008, Section 152), is amended to
3 read as follows:
4 Section 152. A. Prosecutions for the crimes of bribery, embezzlement of public
5 money, bonds, securities, assets or property of the state or any county, school district,
6 municipality or other subdivision thereof, or of any misappropriation of public money,
7 bonds, securities, assets or property of the state or any county, school district,
8 municipality or other subdivision thereof, falsification of public records of the state or
9 any county, school district, municipality or other subdivision thereof, and conspiracy to
10 defraud the State of Oklahoma or any county, school district, municipality or other
11 subdivision thereof in any manner or for any purpose shall be commenced within seven
12 (7) years after the discovery of the crime; provided, however, prosecutions for the crimes

1 of embezzlement or misappropriation of public money, bonds, securities, assets or
2 property of any school district, including those relating to student activity funds, or the
3 crime of falsification of public records of any independent school district, the crime of
4 criminal conspiracy, the crime of embezzlement, pursuant to Sections 1451 through 1462
5 of Title 21 of the Oklahoma Statutes, the crime of False Personation or Identity Theft,
6 pursuant to Sections 1531 through 1533.3 of Title 21 of the Oklahoma Statutes, or the
7 financial exploitation of a vulnerable adult, pursuant to Sections 843.1, 843.3 and 843.4
8 of Title 21 of the Oklahoma Statutes, shall be commenced within five (5) years after the
9 discovery of the crime.

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

12 C. 1. Prosecutions for the crime of rape or forcible sodomy, sodomy, lewd or
13 indecent proposals or acts against children, involving minors in pornography pursuant to
14 Section 886, 888, 1111, 1111.1, 1113, 1114, 1021.2, 1021.3 or 1123 of Title 21 of the
15 Oklahoma Statutes, child abuse pursuant to Section 7115 of Title 10 of the Oklahoma
16 Statutes, and child trafficking pursuant to Section 866 of Title 21 of the Oklahoma
17 Statutes shall be commenced within twelve (12) years after the discovery of the crime.

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

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

- 1 b. physical evidence is collected and preserved that is capable of being
2 tested to obtain a profile from deoxyribonucleic acid (DNA), and
3 c. the identity of the offender is subsequently established through the use
4 of a DNA profile using evidence listed in subparagraph b of this
5 paragraph.

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

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

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

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

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

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

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

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

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

12 Section 991f-1.1 A. Each district attorney shall create within the district attorney’s
13 office a Restitution and Diversion Program and assign sufficient staff and resources for
14 the efficient operation of such program. The purpose of the Restitution and Diversion
15 Program is to allow the district attorney the discretion to divert criminal complaints
16 involving property crimes from criminal court and to monitor restitution payments. At
17 the discretion of the district attorney, the program may be administered by the Bogus
18 Check Restitution Program operated by the county.

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

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

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

- 5 a. whether the criminal complaint alleges an offense involving property,
- 6 b. whether the alleged offense was committed in an aggressive, violent,
7 premeditated or willful manner,
- 8 c. the prospects for adequate protection of the public if the accused
9 person is processed through deferred prosecution in the Restitution
10 and Diversion Program,
- 11 d. the number of criminal complaints against the defendant previously
12 received by the district attorney,
- 13 e. whether or not there are other criminal complaints currently pending
14 against the defendant,
- 15 f. the strength of the evidence of the particular criminal complaint, and
16 g. the wishes of the victim.

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

- 20 1. The date the act which is the subject of the complaint occurred;
- 21 2. The name of the victim;

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

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

4 D. The district attorney may enter into a written agreement with the accused
5 person to defer prosecution on the criminal complaint for a period to be determined by
6 the district attorney, not to exceed ~~two (2)~~ three (3) years pending restitution being made
7 to the victim of the complaint and payment of necessary fees.

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

19 F. 1. Restitution to be paid by the accused person to the victim shall include out-of-
20 pocket expenses the victim incurred as a direct result of the crime having been
21 committed. A restitution agreement may include provisions for restitution in an amount
22 up to treble the amount of property involved except such restitution shall not apply to

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

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

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

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

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

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

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

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

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

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

16 3. "Restitution" is defined by Section 991f of ~~Title 22 of the Oklahoma Statutes~~ this
17 title; and

18 4. "Economic loss" is defined by Section 991f of ~~Title 22 of the Oklahoma Statutes~~
19 this title.

20 J. The victim shall promptly provide to the Restitution and Diversion Program all
21 documentation and evidence of compensation or reimbursement from insurance

1 companies or agencies of this state, any other state, or the federal government received
2 as a direct result of the crime for injury, loss of earnings or out-of-pocket loss.

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

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-12-09 - DO PASS.