

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1305

By: Johnson (Constance)

4
5
6 AS INTRODUCED

7 An Act relating to criminal sentencing and
8 restitution; amending 22 O.S. 2011, Section 991f,
9 which relates to definitions; authorizing certain
10 grace period under specified circumstances;
11 prohibiting certain actions during or after specified
12 grace period; requiring certain information be
13 provided to certain offender; and providing an
14 effective date.

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

16 SECTION 1. AMENDATORY 22 O.S. 2011, Section 991f, is
17 amended to read as follows:

18 Section 991f. A. For the purposes of any provision of Title 22
19 of the Oklahoma Statutes relating to criminal sentencing and
20 restitution orders and for the Restitution and Diversion Program:

21 1. "Restitution" means the sum to be paid by the defendant to
22 the victim of the criminal act to compensate that victim for up to
23 three times the amount of the economic loss suffered as a direct
24 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 to
13 pay restitution to any victim for economic loss or to pay to the
14 state any fines, fees or assessments, the order, for purposes of
15 validity and collection, shall not be limited to the maximum term of
16 imprisonment for which the offender could have been sentenced, nor
17 limited to any term of probation, parole, or extension thereof, nor
18 expire until fully satisfied. The court order for restitution,
19 fines, fees or assessments shall remain a continuing obligation of
20 the offender until fully satisfied, and the obligation shall not be
21 considered a debt, nor shall the obligation be dischargeable in any
22 bankruptcy proceeding. The court order shall continue in full force
23 and effect with the supervision of the state until fully satisfied,
24 and the state shall use all methods of collection authorized by law.

1 Provided, however, the court shall, upon request of the offender at
2 the time of his or her release from the custody of the Department of
3 Corrections, grant a grace period of up to one (1) year to begin a
4 court-ordered payment plan of any remaining obligation for
5 restitution, fines, fees or assessments if the court finds that the
6 offender is at or below the poverty level. If such a grace period
7 is granted, no interest shall be charged during the grace period,
8 nor shall payments increase upon the expiration of the grace period.
9 An offender shall be given information related to his or her ability
10 to request a grace period at the time of his or her release from
11 custody.

12 C. 1. Upon conviction for any crime wherein property has been
13 stolen, converted or otherwise unlawfully obtained, or its value
14 substantially decreased as a direct result of the crime, or wherein
15 the crime victim suffered injury, loss of income, or out-of-pocket
16 loss, the individuals criminally responsible shall be sentenced to
17 make restitution. Restitution may be ordered in addition to the
18 punishments prescribed by law.

19 2. The court shall order full restitution based upon the
20 following considerations:

21 a. the nature and amount of restitution shall be
22 sufficient to restore the crime victim to the
23 equivalent economic status existing prior to the
24 losses sustained as a direct result of the crime, and

1 may allow the crime victim to receive payment in
2 excess of the losses sustained; provided, the excess
3 amount of restitution shall not be more than treble
4 the actual economic loss incurred, and

5 b. the amount of restitution shall be established
6 regardless of the financial resources of the offender.

7 3. The court:

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

17 b. may order restitution in a lump sum or by such
18 schedules as may be established and thereafter
19 adjusted by agreement consistent with the order of the
20 court,

21 c. shall have the authority to amend or alter any order
22 of restitution made pursuant to this section providing
23 that the court shall state its reasons and conclusions
24

1 as a matter of record for any change or amendment to
2 any previous order,

3 d. may order interest upon any ordered restitution sum to
4 accrue at the rate of twelve percent (12%) per annum
5 until the restitution is paid in full. The court may
6 further order such interest to be paid to the victims
7 of the crime or proportion the interest payment
8 between the victims and the court fund, and/or the
9 Restitution and Diversion Program, in the discretion
10 of the court, and

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

14 D. If restitution to more than one person, agency or entity is
15 set at the same time, the court shall establish the following
16 priorities of payment:

17 1. The crime victim or victims; and

18 2. Any other government agency which has provided reimbursement
19 to the victim as a result of the offender's criminal conduct.

20 E. 1. The district attorney's office shall present the crime
21 victim's restitution claim to the court at the time of the
22 conviction of the offender or the restitution provisions shall be
23 included in the written plea agreement presented to the court, in
24

1 which case, the restitution claim shall be reviewed by the judge
2 prior to acceptance of the plea agreement.

3 2. At the initiation of the prosecution of the defendant, the
4 district attorney's office shall provide all identifiable crime
5 victims with written and oral information explaining their rights
6 and responsibilities to receive restitution established under this
7 section.

8 3. The district attorney's office shall provide all crime
9 victims, regardless of whether the crime victim makes a specific
10 request, with an official request for restitution form to be
11 completed and signed by the crime victim, and to include all
12 invoices, bills, receipts, and other evidence of injury, loss of
13 earnings and out-of-pocket loss. This form shall be filed with any
14 victim impact statement to be included in the judgment and sentence.
15 Every crime victim receiving the restitution claim form shall be
16 provided assistance and direction to properly complete the form.

17 4. The official restitution request form shall be presented in
18 all cases regardless of whether the case is brought to trial. In a
19 plea bargain, the district attorney in every case where the victim
20 has suffered economic loss, shall, as a part of the plea bargain,
21 require that the offender pay restitution to the crime victim. The
22 district attorney shall be authorized to act as a clearing house for
23 collection and disbursement of restitution payments made pursuant to
24 this section, and shall assess a fee of One Dollar (\$1.00) per

1 payment received from the defendant, except when the defendant is
2 sentenced to incarceration in the Department of Corrections.

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

8 G. The court shall, upon motion by the crime victim, redact
9 from the submitted documentation all personal information relating
10 to the crime victim that does not directly and necessarily establish
11 the authenticity of any document or substantiate the asserted amount
12 of the restitution claim.

13 H. The unexcused failure or refusal of the crime victim to
14 provide all or part of the requisite information prior to the
15 sentencing, unless disclosure is deferred by the court, shall
16 constitute a waiver of any grounds to appeal or seek future
17 amendment or alteration of the restitution order predicated on the
18 undisclosed available information. The court shall order the
19 offender to submit either as part of the pre-sentence investigation
20 or assessment and evaluation required for a community sentence or,
21 if no pre-sentence investigation is conducted, in advance of the
22 sentencing proceeding such information as the court may direct and
23 finds necessary to be disclosed for the purpose of ascertaining the
24 type and manner of restitution to be ordered.

1 I. The willful failure or refusal of the offender to provide
2 all or part of the requisite information prior to the sentencing,
3 unless disclosure is deferred by the court shall not deprive the
4 court of the authority to set restitution or set the schedule of
5 payment. The willful failure or refusal of the offender to provide
6 all or part of the requisite information prior to the sentencing,
7 unless disclosure is deferred by the court, shall constitute a
8 waiver of any grounds to appeal or seek future amendment or
9 alteration of the restitution order predicated on the undisclosed
10 information. The willful failure or refusal of the offender to
11 provide all or part of the requisite information prior to
12 sentencing, unless disclosure is deferred by the court, shall
13 constitute an act of contempt.

14 J. The court shall conduct such hearings or proceedings as it
15 deems necessary to set restitution and payment schedules at the time
16 of sentencing or may bifurcate the sentencing and defer the hearing
17 or proceedings relating to the imposition of restitution as justice
18 may require. Amendments or alterations to the restitution order may
19 be made upon the court's own motion, petition by the crime victim or
20 petition by the offender.

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

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

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

6 M. If a defendant who is financially able refuses or neglects
7 to pay restitution as ordered by this section, payment may be
8 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 of this
13 section for a defendant who is without means to make such
14 restitution payment; or

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

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

1 judgment herein prescribed shall not be considered a debt nor
2 dischargeable in any bankruptcy proceeding.

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

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

18 SECTION 2. This act shall become effective November 1, 2012.

19

20 53-2-2769 TEK 1/18/2012 9:39:52 AM

21

22

23

24