

1 **SENATE FLOOR VERSION**

2 March 30, 2021

3 ENGROSSED HOUSE
4 BILL NO. 2295

By: Roberts (Dustin) of the
House

5 and

6 Leewright of the Senate

7
8
9 An Act relating to criminal procedure; amending 22
10 O.S. 2011, Sections 1105, 1105.3, as last amended by
11 Section 1, Chapter 2, O.S.L. 2018 and 1108.1 (22 O.S.
12 Supp. 2020, Section 1105.3), which relate to bailable
13 offenses and personal recognizance bonds; making
14 persons arrested for certain crimes ineligible for
15 personal recognizance bonds; updating internal
16 statutory references; excluding persons detained or
17 accused of committing certain offenses from being
18 released pursuant to court order; prohibiting
19 personal recognizance bonds for certain criminal
20 cases; and providing an effective date.

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

22 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1105, is
23 amended to read as follows:

24 Section 1105. A. Except as otherwise provided by this section,
upon the allowance of bail and the execution of the requisite
recognizance, bond, or undertaking to the state, the magistrate,
judge, or court, shall, if the defendant is in custody, make and
sign an order for discharge. The court, in its discretion, may

1 prescribe by court rule the conditions under which the court clerk
2 or deputy court clerk, or the sheriff or deputy sheriff, may prepare
3 and execute an order of release on behalf of the court.

4 B. No police officer or sheriff may release a person arrested
5 for a violation of an ex parte or final protective order as provided
6 in Sections 60.2 and 60.3 of this title, or arrested for an act
7 constituting domestic abuse as specified in Section 644 of Title 21
8 of the Oklahoma Statutes, or arrested for any act constituting
9 domestic abuse, stalking or harassment as defined by Section 60.1 of
10 this title, or arrested for an act constituting domestic assault and
11 battery or domestic assault and battery with a deadly weapon
12 pursuant to Section 644 of Title 21 of the Oklahoma Statutes,
13 without the violator appearing before a magistrate, judge or court.
14 To the extent that any of the following information is available to
15 the court, the magistrate, judge or court shall consider, in
16 addition to any other circumstances, before determining bond and
17 other conditions of release as necessary for the protection of the
18 alleged victim, the following:

19 1. Whether the person has a history of domestic violence or a
20 history of other violent acts;

21 2. The mental health of the person;

22 3. Whether the person has a history of violating the orders of
23 any court or governmental entity;

24

1 4. Whether the person is potentially a threat to any other
2 person;

3 5. Whether the person has a history of abusing alcohol or any
4 controlled substance;

5 6. Whether the person has access to deadly weapons or a history
6 of using deadly weapons;

7 7. The severity of the alleged violence that is the basis of
8 the alleged offense including, but not limited to:

9 a. the duration of the alleged violent incident,

10 b. whether the alleged violent incident involved serious
11 physical injury,

12 c. whether the alleged violent incident involved sexual
13 assault,

14 d. whether the alleged violent incident involved
15 strangulation,

16 e. whether the alleged violent incident involved abuse
17 during the pregnancy of the alleged victim,

18 f. whether the alleged violent incident involved the
19 abuse of pets, or

20 g. whether the alleged violent incident involved forcible
21 entry to gain access to the alleged victim;

22 8. Whether a separation of the person from the alleged victim
23 or a termination of the relationship between the person and the
24 alleged victim has recently occurred or is pending;

1 9. Whether the person has exhibited obsessive or controlling
2 behaviors toward the alleged victim including, but not limited to,
3 stalking, surveillance, or isolation of the alleged victim;

4 10. Whether the person has expressed suicidal or homicidal
5 ideations; and

6 11. Any information contained in the complaint and any police
7 reports, affidavits, or other documents accompanying the complaint.

8 C. A person arrested for:

9 1. A violation of an ex parte or final protective order as
10 provided in Sections 60.2 and 60.3 of this title;

11 2. An act constituting domestic abuse, domestic assault and
12 battery or domestic assault and battery with a deadly weapon as
13 specified in Section 644 of Title 21 of the Oklahoma Statutes; or

14 3. An act constituting domestic abuse, stalking or harassment
15 as defined by Section 60.1 of this title,
16 shall not be eligible for a personal recognizance bond pursuant to
17 Section 1108.1 of this title.

18 D. No police officer or sheriff may release a person arrested
19 for any violation of subsection G of Section 2-401 of Title 63 of
20 the Oklahoma Statutes, without the violator appearing before a
21 magistrate, judge, or court. In determining bond and other
22 conditions of release, the magistrate, judge, or court shall
23 consider any evidence that the person is in any manner dependent
24 upon a controlled dangerous substance or has a pattern of regular,

1 illegal use of any controlled dangerous substance. A rebuttable
2 presumption that no conditions of release on bond would assure the
3 safety of the community or any person therein shall arise if the
4 state shows by clear and convincing evidence:

5 1. The person was arrested for a violation of subsection G of
6 Section 2-401 of Title 63 of the Oklahoma Statutes, relating to
7 manufacturing or attempting to manufacture a controlled dangerous
8 substance, or possessing any of the substances listed in subsection
9 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the
10 intent to manufacture a controlled dangerous substance; and

11 2. The person is in any manner dependent upon a controlled
12 dangerous substance or has a pattern of regular illegal use of a
13 controlled dangerous substance, and the violation referred to in
14 paragraph 1 of this subsection was committed or attempted in order
15 to maintain or facilitate the dependence or pattern of illegal use
16 in any manner.

17 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1105.3, as
18 last amended by Section 1, Chapter 2, O.S.L. 2018 (22 O.S. Supp.
19 2020, Section 1105.3), is amended to read as follows:

20 Section 1105.3. A. Any county pursuant to the provisions of
21 ~~this act~~ the Pretrial Release Act may establish and fund a pretrial
22 program to be utilized by the district court in that jurisdiction.

23 B. When a pretrial release program is established pursuant to
24 ~~this act~~ the Pretrial Release Act and private bail has not been

1 furnished, the judge may order a person to be evaluated through the
2 pretrial program. After conducting an evaluation of the person
3 applying for pretrial release, the pretrial program shall make a
4 recommendation to the court. The recommendation shall indicate any
5 special supervisory conditions for pretrial release. The judge
6 shall consider the recommendations and may grant or deny pretrial
7 release. The presiding judge of the judicial district may issue a
8 standing order outlining criteria for cases that may automatically
9 be evaluated for pretrial release by a pretrial program operating in
10 the jurisdiction. The standing order may include amounts for bail
11 and types of bonds deemed appropriate for certain offenses.

12 C. Except as otherwise authorized by the provisions of this
13 subsection, persons accused of or detained for any of the following
14 offenses or conditions shall not be eligible for pretrial release by
15 any pretrial program:

16 1. Aggravated driving under the influence of an intoxicating
17 substance;

18 2. Any felony driving under the influence of an intoxicating
19 substance;

20 3. Any offense prohibited by the Trafficking In Illegal Drugs
21 Act;

22 4. Any person having a violent felony conviction within the
23 past ten (10) years;

24 5. Appeal bond;

- 1 6. Arson in the first degree, including attempts to commit
- 2 arson in the first degree;
- 3 7. Assault and battery on a police officer;
- 4 8. Bail jumping;
- 5 9. Bribery of a public official;
- 6 10. Burglary in the first or second degree;
- 7 11. Civil contempt proceedings;
- 8 12. Distribution of a controlled dangerous substance, including
- 9 the sale or possession of a controlled dangerous substance with
- 10 intent to distribute or conspiracy to distribute;
- 11 13. Domestic abuse, domestic assault or domestic assault and
- 12 battery with a dangerous weapon, or domestic assault and battery
- 13 with a deadly weapon;
- 14 14. Driving under the influence of intoxicating substance where
- 15 property damage or personal injury occurs;
- 16 15. Felony discharging a firearm from a vehicle;
- 17 16. Felony sex offenses;
- 18 17. Fugitive bond or a governor's fugitive warrant;
- 19 18. Immigration charges;
- 20 19. Kidnapping;
- 21 20. Juvenile or youthful offender detention;
- 22 21. Manslaughter;
- 23 22. Manufacture of a controlled dangerous substance;
- 24

- 1 23. Murder in the first degree, including attempts or
2 conspiracy to commit murder in the first degree;
- 3 24. Murder in the second degree, including attempts or
4 conspiracy to commit murder in the second degree;
- 5 25. Negligent homicide;
- 6 26. Out-of-county holds;
- 7 27. Persons currently on pretrial release who are arrested on a
8 new felony offense;
- 9 28. Possession, manufacture, use, sale or delivery of an
10 explosive device;
- 11 29. Possession of a controlled dangerous substance on Schedule
12 I or II of the Controlled Dangerous Substances Act;
- 13 30. Possession of a firearm or other offensive weapon during
14 the commission of a felony;
- 15 31. Possession of a stolen vehicle;
- 16 32. Rape in the first degree, including attempts to commit rape
17 in the first degree;
- 18 33. Rape in the second degree, including attempts to commit
19 rape in the second degree;
- 20 34. Robbery by force or fear;
- 21 35. Robbery with a firearm or dangerous weapon, including
22 attempts to commit robbery with a firearm or dangerous weapon;
- 23 36. Sexual assault or violent offenses against children;
- 24 37. Shooting with intent to kill;

1 38. Stalking or violation of a Victim Protection Order;

2 39. Two or more prior felony convictions; or

3 40. Unauthorized use of a motor vehicle.

4 D. A Other than a person accused of or detained for an offense
5 provided for in paragraph 13 or paragraph 38 of subsection C of this
6 section, a person not eligible for pretrial release pursuant to the
7 provisions of subsection C of this section may be released upon
8 order of a district judge, associate district judge or special judge
9 under conditions prescribed by the judge, which may include an order
10 to require the defendant, as a condition of pretrial release, to use
11 or participate in any monitoring or testing including, but not
12 limited to, a Global Positioning System (GPS) monitoring device and
13 urinalysis testing. The court may further order the defendant to
14 pay costs and expenses related to any supervision, monitoring or
15 testing.

16 E. Every pretrial services program operating pursuant to the
17 provisions of ~~this act~~ the Pretrial Release Act shall meet the
18 following minimum criteria:

19 1. The program shall establish a procedure for screening and
20 evaluating persons who are detained or have been arrested for the
21 alleged commission of a crime. The program shall obtain criminal
22 history records on detained persons through the National Crime
23 Information Center (NCIC). The information obtained from the
24 screening and evaluation process must be submitted in a written

1 report without unnecessary delay to the judge who is assigned to
2 hear pretrial release applications when the person is eligible for
3 pretrial release;

4 2. The program shall provide reliable information to the judge
5 relating to the person applying for pretrial release so a reasonable
6 decision can be made concerning the amount and type of bail
7 appropriate for pretrial release. The information provided shall be
8 based upon facts relating to the person's risk of danger to the
9 community and the risk of failure to appear for court; and

10 3. The program shall make all reasonable attempts to provide
11 the court with information appropriate to each person considered for
12 pretrial release.

13 F. A pretrial program established pursuant to ~~this act~~ the
14 Pretrial Release Act may provide different methods and levels of
15 community-based supervision to meet any court-ordered conditions of
16 release. The program may use existing supervision methods for
17 persons who are released prior to trial. Pretrial programs which
18 employ peace officers certified by the Council on Law Enforcement
19 Education and Training (CLEET) are authorized to enforce court-
20 ordered conditions of release.

21 G. Each pretrial program established pursuant to ~~this act~~ the
22 Pretrial Release Act shall provide a quarterly report to the
23 presiding judge of the judicial district of the jurisdiction in
24 which it operates. A copy of the report shall be filed of record

1 with the court clerk of the jurisdiction. Each report shall
2 include, but is not limited to, the following information:

3 1. The total number of persons screened, evaluated or otherwise
4 considered for pretrial release;

5 2. The total number and nature of recommendations made;

6 3. The number of persons admitted to pretrial release that
7 failed to appear; and

8 4. Any other information deemed appropriate by the reporting
9 judicial district or that the program desires to report.

10 H. Every pretrial release program established pursuant to this
11 section shall utilize the services of local providers; provided,
12 however, any program in continuous existence since July 1, 1999,
13 shall be exempt from the provisions of this subsection.

14 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1108.1, is
15 amended to read as follows:

16 Section 1108.1. A. Own recognizance bonds set in a penal
17 amount shall be posted by executing an own recognizance indenture
18 contract which shall be executed and maintained by the district
19 court clerk. The indenture shall constitute an inchoate obligation
20 to pay in the event forfeiture proceedings are commenced and result
21 in a final order of forfeiture by the authorizing and issuing judge
22 of the district court.

23 B. Setting aside of forfeitures shall be governed by the same
24 rules and procedures applicable to cash, property or surety bonds⁷;

1 provided that, if the forfeiture is set aside, the district court
2 shall exempt from forfeiture set aside all reasonable costs of
3 recovery to return the defendant to custody, and an administrative
4 fee to be retained by the court fund in a sum not to exceed ten
5 percent (10%) of the total penal bond amount plus all costs incurred
6 in processing the forfeiture proceeding to include costs of notices,
7 warrants, service and execution.

8 C. The final judgment of forfeiture shall constitute a judgment
9 enforceable through all procedures available for the collection of a
10 civil judgment, provided that the judgment shall be considered a
11 debt in the nature of defalcation as defined by the United States
12 Bankruptcy Code, and shall not be subject to other forms of debtor
13 relief. The judgment shall be subject to collection as costs in the
14 underlying action regardless of final disposition or determination
15 of guilt.

16 D. The district attorney or the Administrator of the District
17 Court Cost Collection Division as determined by administration order
18 in each judicial district shall initiate the forfeiture action and
19 collection of forfeitures and shall receive one-third (1/3) of all
20 sums collected from the ~~ten percent (10%)~~ ten-percent premium, not
21 to include costs as defined in subsection B of this section, to
22 offset the costs of administering the program.

23 E. This section does not apply to ~~traffic~~ traffice:

24 1. Traffic or wildlife cases;

1 2. Cases concerning violations of emergency ex parte or final
2 protective orders, as provided in Sections 60.2 and 60.3 of this
3 title;

4 3. Domestic abuse cases, as provided in Section 644 of Title 21
5 of the Oklahoma Statutes; and

6 4. Stalking or harassment cases, as provided in Section 1173 of
7 Title 21 of the Oklahoma Statutes.

8 SECTION 4. This act shall become effective November 1, 2021.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
10 March 30, 2021 - DO PASS

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