

# An Act

ENROLLED HOUSE  
BILL NO. 2295

By: Roberts (Dustin) of the  
House

and

Leewright and Pederson of  
the Senate

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

SUBJECT: Criminal procedure

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

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

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

B. No police officer or sheriff may release a person arrested for a violation of an ex parte or final protective order as provided

in Sections 60.2 and 60.3 of this title, or arrested for an act constituting domestic abuse as specified in Section 644 of Title 21 of the Oklahoma Statutes, or arrested for any act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title, or arrested for an act constituting domestic assault and battery or domestic assault and battery with a deadly weapon pursuant to Section 644 of Title 21 of the Oklahoma Statutes, without the violator appearing before a magistrate, judge or court. To the extent that any of the following information is available to the court, the magistrate, judge or court shall consider, in addition to any other circumstances, before determining bond and other conditions of release as necessary for the protection of the alleged victim, the following:

1. Whether the person has a history of domestic violence or a history of other violent acts;
2. The mental health of the person;
3. Whether the person has a history of violating the orders of any court or governmental entity;
4. Whether the person is potentially a threat to any other person;
5. Whether the person has a history of abusing alcohol or any controlled substance;
6. Whether the person has access to deadly weapons or a history of using deadly weapons;
7. The severity of the alleged violence that is the basis of the alleged offense including, but not limited to:
  - a. the duration of the alleged violent incident,
  - b. whether the alleged violent incident involved serious physical injury,
  - c. whether the alleged violent incident involved sexual assault,
  - d. whether the alleged violent incident involved strangulation,

- e. whether the alleged violent incident involved abuse during the pregnancy of the alleged victim,
- f. whether the alleged violent incident involved the abuse of pets, or
- g. whether the alleged violent incident involved forcible entry to gain access to the alleged victim;

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

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

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

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

C. A person arrested for:

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

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

3. An act constituting domestic abuse, stalking or harassment as defined by Section 60.1 of this title,

shall not be eligible for a personal recognizance bond pursuant to Section 1108.1 of this title.

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

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

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

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

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

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

B. When a pretrial release program is established pursuant to ~~this act~~ the Pretrial Release Act and private bail has not been furnished, the judge may order a person to be evaluated through the pretrial program. After conducting an evaluation of the person applying for pretrial release, the pretrial program shall make a recommendation to the court. The recommendation shall indicate any special supervisory conditions for pretrial release. The judge shall consider the recommendations and may grant or deny pretrial release. The presiding judge of the judicial district may issue a standing order outlining criteria for cases that may automatically be evaluated for pretrial release by a pretrial program operating in the jurisdiction. The standing order may include amounts for bail and types of bonds deemed appropriate for certain offenses.

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

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

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

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

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

5. Appeal bond;

6. Arson in the first degree, including attempts to commit arson in the first degree;

7. Assault and battery on a police officer;

8. Bail jumping;

9. Bribery of a public official;

10. Burglary in the first or second degree;

11. Civil contempt proceedings;

12. Distribution of a controlled dangerous substance, including the sale or possession of a controlled dangerous substance with intent to distribute or conspiracy to distribute;

13. Domestic abuse, domestic assault or domestic assault and battery with a dangerous weapon, or domestic assault and battery with a deadly weapon;

14. Driving under the influence of intoxicating substance where property damage or personal injury occurs;

15. Felony discharging a firearm from a vehicle;

16. Felony sex offenses;

17. Fugitive bond or a governor's fugitive warrant;

18. Immigration charges;
19. Kidnapping;
20. Juvenile or youthful offender detention;
21. Manslaughter;
22. Manufacture of a controlled dangerous substance;
23. Murder in the first degree, including attempts or conspiracy to commit murder in the first degree;
24. Murder in the second degree, including attempts or conspiracy to commit murder in the second degree;
25. Negligent homicide;
26. Out-of-county holds;
27. Persons currently on pretrial release who are arrested on a new felony offense;
28. Possession, manufacture, use, sale or delivery of an explosive device;
29. Possession of a controlled dangerous substance on Schedule I or II of the Controlled Dangerous Substances Act;
30. Possession of a firearm or other offensive weapon during the commission of a felony;
31. Possession of a stolen vehicle;
32. Rape in the first degree, including attempts to commit rape in the first degree;
33. Rape in the second degree, including attempts to commit rape in the second degree;
34. Robbery by force or fear;
35. Robbery with a firearm or dangerous weapon, including attempts to commit robbery with a firearm or dangerous weapon;

36. Sexual assault or violent offenses against children;
37. Shooting with intent to kill;
38. Stalking or violation of a Victim Protection Order;
39. Two or more prior felony convictions; or
40. Unauthorized use of a motor vehicle.

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

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

1. The program shall establish a procedure for screening and evaluating persons who are detained or have been arrested for the alleged commission of a crime. The program shall obtain criminal history records on detained persons through the National Crime Information Center (NCIC). The information obtained from the screening and evaluation process must be submitted in a written report without unnecessary delay to the judge who is assigned to hear pretrial release applications when the person is eligible for pretrial release;

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

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

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

G. Each pretrial program established pursuant to ~~this act~~ the Pretrial Release Act shall provide a quarterly report to the presiding judge of the judicial district of the jurisdiction in which it operates. A copy of the report shall be filed of record with the court clerk of the jurisdiction. Each report shall include, but is not limited to, the following information:

1. The total number of persons screened, evaluated or otherwise considered for pretrial release;
2. The total number and nature of recommendations made;
3. The number of persons admitted to pretrial release that failed to appear; and
4. Any other information deemed appropriate by the reporting judicial district or that the program desires to report.

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

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

Section 1108.1 A. Own recognizance bonds set in a penal amount shall be posted by executing an own recognizance indenture contract which shall be executed and maintained by the district court clerk. The indenture shall constitute an inchoate obligation to pay in the event forfeiture proceedings are commenced and result in a final

order of forfeiture by the authorizing and issuing judge of the district court.

B. Setting aside of forfeitures shall be governed by the same rules and procedures applicable to cash, property or surety bonds; provided that, if the forfeiture is set aside, the district court shall exempt from forfeiture set aside all reasonable costs of recovery to return the defendant to custody, and an administrative fee to be retained by the court fund in a sum not to exceed ten percent (10%) of the total penal bond amount plus all costs incurred in processing the forfeiture proceeding to include costs of notices, warrants, service and execution.

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

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

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

1. Traffic or wildlife cases;

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

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

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

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

Passed the House of Representatives the 10th day of March, 2021.

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Presiding Officer of the House  
of Representatives

Passed the Senate the 20th day of April, 2021.

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Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_