ENGROSSED HOUSE
BILL NO. 1398

BY: ISTOOK and VAUGHN (Ray)
of the HOUSE

and

SMITH of the SENATE

AN ACT RELATING TO CRIMINAL PROCEDURE; AMENDING 22 O.S. 1981, SECTIONS 1101 AND 1102, WHICH RELATE TO BAIL; MODIFYING BAILABLE AND NONBAILABLE OFFENSES; DEFINING TERM; PROVIDING PROCEDURES RELATED TO SUCH OFFENSES; AUTHORIZING THE DENIAL OF BAIL; PROVIDING PROCEDURES FOR DETERMINING WHETHER TO DENY BAIL; PROVIDING TIME LIMITATIONS; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 22 O.S. 1981, Section 1101, is amended to read as follows:

Section 1101. A. Bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases, except it may be denied where:

1. the offense is ~~not~~ punishable by death ~~and in such cases~~; or

2. the offense is a violent offense; or

3. the offense is punishable by life imprisonment or by life imprisonment without parole; or

4. the offense is a felony offense and the person charged has been convicted of two or more felony offenses involving separate transactions; or

5. the offense is a controlled dangerous substance offense punishable by imprisonment of ten (10) years or more.

B. When bail is allowed, it may be taken by any of the persons or courts authorized by law to arrest or imprison offenders, or by the clerk of the district court or his deputy, or by the judge of such courts.

C. For purposes of this section, a "violent offense" means any felony offense other than those which are defined as nonviolent offenses in Section 571 of Title 57 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 22 O.S. 1981, Section 1102, is amended to read as follows:

Section 1102. Bail, by sufficient sureties, may be admitted upon all arrests in criminal cases where the punishment may be death, unless the proof is evident or the presumption great; and in such cases it shall be ~~taken~~ decided only by the ~~Criminal~~ Court of Criminal Appeals or a district ~~or superior~~ court, or by a justice or judge thereof, who shall exercise their discretion therein, having regard to the nature and circumstances of the offense, and of the evidence and to the usages of law; but if the case has been tried by jury, and the jury have disagreed on their verdict, then the above presumption is removed, and ~~the defendant shall thereupon be entitled to bail~~ there shall be a new hearing on the issue of bail, unless it shall appear to the court or judge thereof, by due proof, that such disagreement was occasioned by the misconduct of the jury.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

In cases where bail is denied, other than cases provided for in Section 1102 of Title 22 of the Oklahoma Statutes, such denial shall

be decided by the Court of Criminal Appeals or a district court, or by a justice or judge thereof, who shall exercise their discretion therein, having regard to the nature and circumstances of the offense, and of the evidence and to the usages of law. In determining whether to deny bail, immediately upon the first appearance by the accused before the court, the court shall conduct a hearing at which the accused shall be permitted to be represented by counsel, to cross-examine witnesses, to present evidence, and to testify in their own behalf. The court shall consider the nature and circumstances of the charges, the weight of the evidence, the history and characteristics of the accused, and the nature and seriousness of the danger to any person or to the community. In considering the history and characteristics of the accused, the court shall take into account the available information concerning the character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings of the accused, and whether, at the time of the current offense or arrest, the accused was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under federal, state or local law. If the court finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, the court may order the denial of bail. Such an order shall be immediately appealable to the Court of Criminal Appeals. An appeal by the accused of an order denying bail shall not be a stay of the trial. In such instances where bail is denied, the judge or justice shall state his findings of fact and the reasons for his decision in writing, supported by clear and convincing evidence. Denial of bail shall not overcome the presumption of innocence of the accused at trial.

If the case has been tried by jury, and the jury have disagreed on their verdict, there shall be a new hearing on the issue of denial of bail, unless it shall appear to the court or judge thereof, by due proof, that such disagreement was occasioned by the misconduct of the jury.

The trial for any person denied bail pursuant to the provisions of this section shall occur within seventy (70) days after the denial of bail by the court, unless the court within the seventy-day period reviews the order denying bail, and finds good cause why trial should not be held within said seventy (70) days. If upon review, the court affirms the order to deny bail, such decision shall be reviewed by the court at least each seventy (70) days, until either trial is commenced or bail is granted.

SECTION 4. This act shall become effective July 1, 1991.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 7th day of March, 1991.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate