

ENROLLED SENATE  
BILL NO. 1430

By: Smith of the Senate

and

Hastings of the House

An Act relating to criminal procedure; requiring bail to be set by court; providing exception; recognizing existing provisions for bail upon formal charging or indictment; authorizing reaffirmation of bail upon formal charging; authorizing presiding judge to establish a pretrial bail schedule; exempting certain offenses; requiring publication and review of certain bail schedule; enumerating circumstance to be considered in setting amount of pretrial bail and type of pretrial bond; requiring pretrial bail to be set in dollar amount; directing the court to take certain action when a person fails to appear; authorizing bond to be reduced to judgement for failure to appear under certain circumstance; authorizing forfeiture of private bail under certain circumstance; prohibiting pretrial release on personal recognizance under certain circumstances; listing prohibited circumstance for certain release; providing criteria for setting dollar amount of bail and type of bond; directing pretrial release upon court order within certain time; authorizing certain evaluation of certain persons by a pretrial program; providing exception to use of pretrial program; setting time to provide private bail; authorizing certain evaluation when private bail not furnished; requiring submission of recommendation to court following evaluation; authorizing judge to grant or deny release; authorizing standing orders for automatic evaluation of certain persons by certain program; authorizing standing order for pretrial bail and bond; allowing county or city and county to establish pretrial programs; requiring certain advisory board; providing for membership, appointment, terms of membership, and vacancy in term; requiring approval from certain authorities before operation of pretrial program; setting minimal criteria for pretrial programs; authorizing pretrial programs to provide community-based supervision; requiring certain reports annually; requiring certain report be filed with court clerk; stating contents of reports; requiring certain programs to use local providers; providing certain exception; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Following an arrest for a misdemeanor or felony offense and before formal charges have been filed or an indictment made, the arrested person shall have bail set by the court as provided in this act; provided there are no provisions of law to the contrary.

B. When formal charges or an indictment has been filed, bail shall be set according to law and the pretrial bond, if any, may be reaffirmed unless additional security is required. Every judicial district may, upon the order of the presiding judge for the district, establish a pretrial bail schedule for felony or misdemeanor offenses, except for traffic offenses included in subsections B, C and D of Section 1115.3 of Title 22 of the Oklahoma Statutes and those offenses specifically excluded herein. The bail schedule established pursuant to the authority of this act shall exclude any offense for which bail is not allowed by law. The bail schedule authorized by this act shall be set in accordance with guidelines relating to bail and shall be published and reviewed by March 1st of each year by the courts and district attorney of the judicial district.

C. In determining the type of bond to be furnished by the arrested person, the judge setting the same shall, when available, consider the following:

1. The person's employment status, employment history, and current financial situation;
2. The nature and extent of the person's family relationships;
3. The person's past and present residences;
4. Identity of persons who agree to assist the arrested person in attending court at the proper time;
5. The nature of the offense for which the person is arrested and any pending charges;
6. The person's prior criminal record, if any, and, if the person previously has been released pending trial, whether the person appeared as required;
7. Any facts indicating a likelihood that there will be an intimidation or harassment of possible witnesses by the person; and
8. Any facts indicating the person has strong ties to the community and is not likely to flee the jurisdiction.

D. The pretrial bail shall be set in a numerical dollar amount. If the person fails to appear in court as required the judge shall:

1. Rescind the bond and proceed to enter a judgment against the defendant for the dollar amount of the pretrial bail if no private bail was given at the time of release; or

2. Rescind and forfeit the private bail if cash, property or surety bail was furnished at the time of release as set forth in Section 1301 et seq. of Title 59 of the Oklahoma Statutes.

E. A person shall not be released on personal recognizance:

1. When the person is presently at liberty on bail or bond of any kind in another criminal action involving a felony;

2. When the person has a prior felony conviction within ten (10) years of the pretrial release hearing;

3. When the person is eighteen (18) years of age or older, or is a juvenile charged as an adult or youthful offender, and the person's criminal record indicates failure to appear on bail or bond in any case involving a felony in the preceding ten (10) years;

4. Until the judge ordering the release on personal recognizance has received reliable information concerning the accused. The information shall be prepared or verified by a person designated by the court, or substantiated by sworn testimony at a hearing before the judge. The information may be submitted orally or in writing and shall be presented without unnecessary delay;

5. Until the bail or bond surety is notified and afforded an opportunity to surrender the person into custody when the person is presently under any surety bail or bond for a prior felony offense;

6. When the person is accused of unlawful possession, purchase or sale of a controlled substance within the prohibited distance of school property in violation of subsection C of Section 2-402 of Title 63 of the Oklahoma Statutes;

7. When the person is accused of unlawful use or distribution of a controlled substance within any private dwelling that is accessible to the public for the purpose of sale, distribution, use or exchange of controlled substances in violation of law;

8. When the person is accused of unlawful use or distribution of a controlled substance in any school bus engaged in the transportation of students of any public or private elementary, middle or secondary school;

9. When the person is accused of unlawful solicitation, use, employment or procurement of a child to transport, sell, distribute, manufacture, or possession for the purposes of sale of any controlled substance in violation of Section 2-419.1 of Title 63 of the Oklahoma Statutes; and

10. When the person fails to appear while subject to a any bail or bond for a misdemeanor or felony arrest and the person is subsequently arrested for any other offense or upon warrant for failure to appear; provided, however, the court shall have

discretion to grant a personal recognizance release when the person proves by a preponderance of the evidence that the failure to appear was due to circumstances or events beyond the person's control.

F. In determining the amount of bail and the type of bond, the judge shall be governed by the following:

1. The amount of bail and type of bond shall not be oppressive; and

2. When a person is charged with an offense punishable by a fine only, the amount of bail shall not exceed the maximum amount of the fine.

G. When a pretrial program authorized by Section 2 of this act exists in the judicial district where the person is being held, the judge may utilize the services of said program when ordering pretrial release, except when private bail has been furnished.

H. Pursuant to this act, when a person is required by the judge to provide private bail and the person is unable to furnish the private bail within forty-eight (48) hours, the person shall be evaluated by a pretrial release program established pursuant to Section 2 of this act.

I. Upon an order for pretrial release, the person shall be released from custody within six (6) hours or less.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. When a pretrial release program is established pursuant to this act and private bail has not been furnished, the judge may order a person to be evaluated by said 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 whether any special supervisory conditions are recommended. 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 in any or all of the counties in that jurisdiction outlining the criteria for cases that may automatically be evaluated for pretrial release by a pretrial program operating in the jurisdiction. The standing order may include recommended amounts for bail and types of bonds deemed appropriate for certain offenses.

B. Any county, by and through the board of county commissioners, or a city and county acting jointly, may establish and fund a pretrial program to be utilized by the district court or municipal court in that jurisdiction. Any pretrial program established pursuant to this act shall establish a community advisory board. The community advisory board shall make recommendations to the board of county commissioners for the operation of the program. The community advisory board shall consist of at least five (5) members to be appointed by the presiding judge of the judicial district. Appointments shall

include, but shall not be limited to: a representative of a local law enforcement agency, a representative of the district attorney, a private criminal defense attorney, a representative of the public defender, and local citizens or citizen members of the local community sentencing system planning council. The term of membership shall be two (2) years and may be renewed thereafter. Any vacancy occurring in a term of membership shall be filled for the unexpired term. Pretrial programs must be approved by the presiding judge of the judicial district and the board of county commissioners before operating within the jurisdiction.

C. Every pretrial services program operating in this state shall meet the following minimal 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 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 delineated in subsections C and E of Section 1 of this act as is appropriate to each person considered for pretrial release.

D. A pretrial program established pursuant to this 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.

E. By January 1 of each year, each pretrial program established pursuant to this act shall provide a report to the presiding judge of the judicial district of the jurisdiction in which it operates. A copy of said 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 admitted to pretrial bail or bond;

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

3. The total number recommendations made;

4. The total amount of pretrial bail ordered and the total amounts ordered as secured and unsecured bail;

5. The number of persons admitted to pretrial release that failed to appear;

6. The total amount of pretrial bail or bond rescinded and reduced to judgement and the total amount of surety bail forfeited; and

7. Any other information deemed appropriate by the reporting judicial district, requested by the Legislature, or that the program desires to report.

F. 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. This act shall become effective July 1, 2000.

SECTION 4. 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 Senate the 26th day of May, 2000.

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President of the Senate

Passed the House of Representatives the 26th day of May, 2000.

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Speaker of the House of Representatives

