STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2192

By: Balkman of the House

and

Nichols of the Senate

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2001, Section 196, which relates to arrest without a warrant by officer; stating exception; amending 22 O.S. 2001, Section 209, which relates to citation to appear; requiring citation be issued under certain circumstances; amending 22 O.S. 2001, Section 1115.1, which relates to release on personal recognizance; specifying location of release; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 196, is amended to read as follows:

Section 196. ~~A~~ Except as provided in Sections 209 and 1115.1 of this title, a peace officer may, without a warrant, arrest a person:

1. For a public offense, committed or attempted in the officer's presence;

2. When the person arrested has committed a felony, although not in the officer's presence;

3. When a felony has in fact been committed, and the officer has reasonable cause to believe the person arrested to have committed it;

4. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested;

5. When the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident upon the public highways, streets or turnpikes and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act, Sections 2-101 et seq. of Title 63 of the Oklahoma Statutes;

6. Anywhere, including a place of residence of the person, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Section 60.1 of this title, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this ~~section~~ paragraph without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim;

7. When a peace officer, in accordance with the provisions of Section 60.9 of this title, is acting on a violation of a protective order offense; or

8. When the officer has probable cause to believe that the person has threatened another person as defined in subsection B of Section ~~14~~ 1378 of ~~this act~~ Title 21 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 209, is amended to read as follows:

Section 209. ~~(1)~~ A. A law enforcement officer who has arrested a person on a misdemeanor charge or violation of city ordinance, without a warrant, may issue a citation to such person to appear in court. However, in the case of an arrest of a person solely for failure to use a child passenger restraint system or failure to use a seat belt, the law enforcement officer shall issue a citation to the person to appear in court.

~~(2)~~ B. In issuing a citation hereunder the officer shall proceed as follows:

~~(a) He~~ 1. The officer shall prepare a written citation to appear in court, containing the name and address of the cited person and the offense charged, and stating when the person shall appear in court. Unless the person requests an earlier date, the time specified in the citation to appear shall be at least five (5) days after the issuance of the citation~~.~~;

~~(b)~~ 2. One copy of the citation to appear shall be delivered to the person cited, and such person shall sign a duplicate written citation which shall be retained by the officer~~.~~;

~~(c)~~ 3. The officer shall thereupon release the cited person from any custody~~.~~; and

~~(d)~~ 4. As soon as practicable, the officer shall file one copy of the citation with the court specified therein and shall deliver one copy to the prosecuting attorney.

~~(3)~~ C. In any case in which the judicial officer finds sufficient grounds for issuing a warrant, ~~he~~ the judicial officer may issue a summons commanding the defendant to appear in lieu of a warrant.

~~(4)~~ D. If a person summoned fails to appear in response to the summons, a warrant for ~~his~~ the arrest of the person shall issue, and any person who willfully fails to appear in response to a summons is guilty of a misdemeanor.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 1115.1, is amended to read as follows:

Section 1115.1 A. In addition to other provisions of law for posting bail, any person, whether a resident of this state or a nonresident, who is arrested by a law enforcement officer solely for a misdemeanor violation of a state traffic law or municipal traffic ordinance, shall be released at the scene by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by this state, another state jurisdiction

within the United States, which is a participant in the Nonresident Violator Compact or any party jurisdiction of the Nonresident Violator Compact;

2. The arresting officer is satisfied as to the identity of the arrested person;

3. The arrested person signs a written promise to appear as provided for on the citation, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician; and

4. The violation does not constitute:

a. a felony, or

b. negligent homicide, or

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of alcohol or other intoxicating substances, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician, or

d. eluding or attempting to elude a law enforcement officer, or

e. operating a motor vehicle without having been issued a valid driver license, or while the driving privilege and driver license is under suspension, revocation, denial or cancellation, or

f. an arrest based upon an outstanding warrant, or

g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph, or

h. an overweight violation, or the violation of a special permit exceeding the authorized permit weight, or

i. a violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection A of this section, then the arresting officer shall:

1. Designate the traffic charge;

2. Record information from the arrested person's driver license on the citation form, including the name, address, date of birth, personal description, type of driver license, driver license number, issuing state, and expiration date;

3. Record the motor vehicle make, model and tag information;

4. Record the arraignment date and time on the citation; and

5. Permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driving privilege and driver license in this state, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment upon request of the arrested person or the attorney for that person. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time. Provided, however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant

to appear for arraignment unless the citation is satisfied as provided for in subsection D of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before the defendant is required to appear for arraignment by indicating such plea on the copy of the citation furnished to the defendant or on a legible copy thereof, together with the date of the plea and signature. The defendant shall be responsible for assuring full payment of the fine and costs to the appropriate court clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be:

1. As prescribed in Section 1115.3 of this title as bail for the violation; or

2. In case of a municipal violation, as prescribed by municipal ordinance for the violation charged; or

3. In the absence of such law or ordinance, then as prescribed by the court.

E. 1. If, pursuant to the provisions of subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant and the municipal or district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the Department of Public Safety that:

a. the defendant was issued a traffic citation and released upon personal recognizance after signing a written promise to appear for arraignment as provided for in the citation,

b. the defendant has failed to appear for arraignment without good cause shown,

c. the defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation, and

d. the citation has not been satisfied as provided by law.

Additionally, the court clerk shall request the Department of Public Safety to either suspend the defendant's driving privilege and driver license to operate a motor vehicle in this state, or notify the defendant's home state and request suspension of the defendant's driving privilege and driver license in accordance with the provisions of the Nonresident Violator Compact. Such notice and request shall be on a form approved or furnished by the Department of Public Safety.

2. The court clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case, or

b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment, or

c. the violation relates to parking or standing, an overweight violation, an overweight permit or the transportation of hazardous materials, or

d. a period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. Following receipt of the notice and request from the court clerk for driving privilege and driver license suspension as provided for in subsection E of this section, the Department of Public Safety shall proceed as provided for in Section 1115.5 of this title.

G. The municipal or district court clerk shall maintain a record of each request for driving privilege and driver license suspension submitted to the Department of Public Safety pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to such defendant, if the defendant personally appears, or shall mail such proof by first class mail, postage prepaid, to the defendant at the address noted on the citation or at such other address as is furnished by the defendant. Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation, if such jurisdiction is a member of the Nonresident Violator Compact, and shall, in all other cases, notify the Department, of the resolution of the case. The form of proof and the procedures for notification shall be approved by the Department of Public Safety. Provided, however, the court or court clerk's failure to furnish such proof or notice in the manner provided for in this subsection shall in no event create any civil liability upon the court, the court clerk, the State of Oklahoma or any political subdivision thereof, or any state department or agency or any employee thereof but duplicate proof shall be furnished to the person entitled thereto upon request.

SECTION 4. This act shall become effective November 1, 2002.

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