

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1418

By: Smith

AS INTRODUCED

An Act relating to criminal procedure; creating the Pretrial Release Act; providing short title; authorizing pretrial release for misdemeanor or felony offenses prior to formal charge or indictment; providing exception; setting criteria for use in determining pretrial release bail and bond; providing certain prohibitions to release on personal recognizance bond; requiring district attorney consent for a personal recognizance bond in certain cases; requiring the court to have reliable information in certain form at pretrial release hearing; authorizing use of pretrial services programs; providing procedure to present new evidence in request for personal recognizance bond; authorizing denial of certain motion without hearing; authorizing evaluation of certain persons by pretrial services programs prior to consideration; allowing standing order for pretrial evaluation within all or part of judicial districts; authorizing pretrial services programs to serve district courts; requiring an advisory board for certain programs; setting term and membership; requiring a plan to be approved by the chief judge; exempting preexisting pretrial services programs; establishing criteria for pretrial services programs; establishing methods of supervision for pretrial service programs; requiring an annual report of pretrial services programs; setting contents of report; 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 450 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Pretrial Release Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Following arrest for a misdemeanor or felony offense and before formal charges have been filed or an indictment made the arrested person may be released by the judge upon bail and bond as provided in the Pretrial Release 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. In all other cases a pretrial bail and bond may be set at the discretion of the judge. In determining the amount of pretrial release bail and the type of bond to be furnished by the arrested person, the judge setting the same shall consider the following:

1. The person's employment status and history and current financial condition;
2. The nature and extent of the person's family relationships;
3. The person's past and present residences;
4. The person's character and reputation;
5. Identity of persons who agree to assist the arrested person in attending court at the proper time;
6. The nature of the offense for which the person was arrested or is presently charged and the apparent probability of conviction and the likely sentence to be imposed;
7. The person's prior criminal record, if any, and, if the person previously has been released pending trial, whether he or she appeared as required;
8. Any facts indicating the possibility of violations of law if the person is released without restrictions;
9. Any facts indicating a likelihood that there will be an intimidation or harassment of possible witnesses by the person; and

10. Any facts tending to indicate that the person has strong ties to the community and is not likely to flee the jurisdiction.

C. Unless the district attorney consents, no person shall be released on personal recognizance when:

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

2. The person has a record of conviction of a felony within five (5) years, prior to the release hearing;

3. 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 that he or she failed to appear on bond in any case involving a felony in the preceding five (5) years;

4. No person shall be released on personal recognizance until and unless the judge ordering the release 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. Such information shall be submitted either orally or in writing without unnecessary delay;

5. At the time of application, the person is presently on release under surety bond for a felony unless the surety thereon is notified and afforded an opportunity to surrender the person into custody on such terms as the judge deems just;

6. The person is accused of unlawfully using or distributing controlled substances on the grounds of any public or private elementary, middle, or secondary school, or within one thousand (1,000) feet of the perimeter of any such school grounds on any street, alley, parkway, sidewalk, public park, playground, or other area of premises which is accessible to the public, or within any private dwelling which is accessible to the public for the purpose of the sale, distribution, use, or exchange of controlled substances in violation of law, or in any school bus engaged in the

transportation of persons who are students at any public or private elementary, middle, or secondary school;

7. The person is accused of soliciting, inducing, encouraging, intimidating, employing, or procuring a child to act as an agent to assist in the unlawful distribution, manufacture, dispensing, sale, or possession for the purposes of sale of any controlled substance; and

8. That person fails to appear while free on any pretrial release bail or bond in conjunction with a misdemeanor or felony arrest and who is subsequently arrested shall not be eligible for a personal recognizance bond for that case in which he or she failed to appear; except that, if the person can provide satisfactory evidence to the court that the failure to appear was due to circumstances or events beyond the control of the person, the court shall have the discretion to grant a personal recognizance bond.

D. 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 fine only, the amount of bail shall not exceed the amount of the maximum penalty.

E. If a pretrial services program as described in Section 3 of this act exists in the judicial district in which the person is being held, the judge setting the amount of bail and the type of bond to be furnished by the person may utilize the services provided by such program in entering an order concerning pretrial release.

F. Pursuant to the Pretrial Release Act, if the person has been required by the judge to furnish a secured bond and the person is unable within two (2) days to furnish security, if the person believes that, upon the presentation of evidence not heard or considered by the judge, he or she would be entitled to release on

personal recognizance, such person may file a written motion for reconsideration that shall set forth the matters not theretofore considered by the judge who entered the order for bond in the first instance. The judge may summarily deny the motion or promptly conduct a hearing thereon.

G. Upon an order for pretrial release, the person shall be released from custody within twelve (12) hours or less.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 450.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The chief judge of any judicial district may order any person who is applying for pretrial release to be evaluated by a pretrial services program established pursuant to this section. The pretrial services program shall make a recommendation after an evaluation regarding whether there should be a pretrial release of any particular person and the supervisory condition recommended. The chief judge of the district may make a standing order in any or all of the counties of such chief judge's district outlining the criteria of cases which may automatically be evaluated for pretrial release.

B. Any county or city and county acting jointly may establish a pretrial services program which may be utilized by the district court of such jurisdiction. Any pretrial services program shall be established pursuant to a plan formulated by a community advisory board created for such purpose and appointed by the chief judge of the judicial district. Membership upon such community advisory board shall be for two (2) years and may be renewed thereafter. Members shall include, but shall not be limited to, a representative of a local law enforcement agency, a representative of the district attorney, a representative of the public defender, and a representative of the citizens at large. The plan formulated by the community advisory board shall be approved by the chief judge of the

judicial district prior to the establishment and utilization of the pretrial services program. The requirements of this section shall not apply to any pretrial services program established and in existence prior to the effective date of this act.

C. Any pretrial services program approved pursuant to subsection B of this section shall meet the following criteria:

1. Such program shall establish a procedure for the screening of persons who are detained due to an arrest for the alleged commission of a crime so that such information may be provided to the judge who is setting the amount of bail and type of bond. The program shall provide such information as will provide the court with the ability to make a more appropriate initial bond decision which is based upon facts relating to the person's risk of danger to the community and the risk of failure to appear for court;

2. The pretrial services program shall make all reasonable attempts to provide the court with such information delineated in paragraph 1 of this section as is appropriate to each person considered for pretrial release.

D. Any pretrial services program may also include different methods and levels of community-based supervision as a condition of pretrial release. The program may use established supervision methods for persons who are released prior to trial in order to decrease unnecessary pretrial incarceration. The program may include any of the following conditions for pretrial release or any combination thereof:

1. Periodic telephone contact with the person;
2. Periodic office visits by the person released to the pretrial services program;
3. Periodic home visits to the person's home;
4. Periodic drug testing of the person as may be ordered as a condition of pretrial release;

5. Mental health or substance abuse treatment for the person, including residential treatment as may be ordered as a condition of pretrial release;

6. Domestic violence counseling for the person as may be ordered as a condition of pretrial release;

7. Electronic monitoring of the person; and

8. Pretrial work release of the person.

E. Each pretrial services program established pursuant to this section shall provide an annual report to the chief judge of the judicial district which it serves. The judicial district shall present the annual reports, submitted from each pretrial services program utilized in the jurisdiction, to the House and Senate Judiciary and Appropriation Committees of the Legislature by February 1. The report shall include but is not limited to the following information:

1. The number of interviews conducted with persons considered for pretrial release;

2. The number and nature of recommendations made;

3. The number of persons under pretrial release supervision who failed to appear; and

4. Any additional information requested by the Legislature or deemed appropriate by the reporting judicial district or that the court desires to report.

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

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.