

ENROLLED SENATE
BILL NO. 1625

By: Smith of the Senate

and

Hastings of the House

An Act relating to criminal procedure; stating requirements for posting certain bonds; stating effect of indenture under particular circumstances; stating governing rules for setting aside of forfeitures; requiring court to exempt certain costs from forfeiture; stating effect of final judgment of forfeiture; requiring certain persons initiate forfeiture action and collection of forfeiture; excepting certain cases from specific forfeiture action; defining personal recognizance bonds for specific citations; authorizing certain sanctions by court for failure to pay bonds; stating duty of court clerk under certain circumstances; authorizing court to take specific action under certain circumstances; requiring license suspension in specified cases; making certain collection a condition precedent to license reinstatement; stating effect of failure to appear; prohibiting order of forfeiture under certain circumstances; authorizing court to take certain action upon specific finding; providing for disposition of certain matter; requiring court to provide certain information to designated entities; authorizing offender to show cause for certain acts within designated time period; providing for final and unappealable order under certain circumstances; authorizing court to set aside certain actions; requiring offender to post appearance bond under specific circumstances; subjecting offender to certain sanctions for specific actions; prohibiting forfeiture in particular cases; assessing certain costs; providing for codification; and providing an effective date.

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 1108.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

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 or wildlife cases.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1108.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Personal recognizance bonds in traffic and wildlife tickets are defined as bonds in lieu of arrest indicating a written promise to pay or appear by a date certain before a district or municipal court. The offender affixing his or her signature on a uniform citation shall evidence the creation of a personal recognizance bond. Upon expiration of the pay or appear date, the court clerk shall notify the offender by mailing a notice of intent to request the court to authorize any or all of the following sanctions:

1. A warrant for the arrest of the offender;
2. Suspension of the offender's driver license and, if applicable, any license issued by the Department of Wildlife Conservation; and
3. A judgment equal to the bond schedule published for the violation plus the costs of all notices and collection costs incurred, in lieu of fines and cost. A failure to appear shall have the same weight as a plea of nolo contendere.

B. The court clerk shall inform the court if the offender has not responded to the uniform citation and notice within thirty (30) days of the mailing of the notice to the address on the uniform citation. The court may issue a warrant for the offender's failure to appear, reduce the financial obligation to judgment equal to the amount of the bond schedule plus all costs incurred in mailing notices, and a ten percent (10%) surcharge to the court fund for the necessity of processing by the court clerk, said judgment to be for the purpose of paying an assessment in lieu of fines and costs, or both. License suspension shall be requested in all cases.

C. Collection of judgment in lieu of fines and costs shall be collected only as a condition precedent to the reinstatement of any license suspended by the offender's default upon his or her duty to pay or appear on the uniform citation. Failure to appear on the uniform citation shall be considered a default in the nature of a plea of nolo contendere resulting in a finding of guilt based upon the facts appearing solely on the face of the citation. The filing of a properly completed citation with the court shall constitute prima facie evidence of the merits of the case. If the court finds that the prima facie evidence is insufficient to show probable cause, no forfeiture shall be ordered. Upon such finding, the court may either dismiss the ticket without costs or issue a warrant for the arrest of the offender and the suspension of any applicable licenses. Upon the arrest or appearance of the offender, the matter shall be set for disposition upon the next applicable term or docket of the court. The court shall annotate on the uniform citation the action that was taken, and that information shall be forwarded by the court clerk as part of the abstract provided to the Department of Public Safety and the Department of Wildlife Conservation, if applicable.

D. At the court appearance, the offender may show cause to the court for his failure to pay or appear, if the appearance occurs within one (1) year of the court's action as within one (1) year of the action set forth in subsection C of this section. If no action is taken by the appearance of the offender within one (1) year, the order shall be final and unappealable. If the offender appears within one (1) year and shows to the court by clear and convincing evidence that his or her failure to pay or appear was through no willful fault or failure on his or her part, the court may set aside its prior actions and set the matter for hearing if to do so would be in the public's best interest and in the interest of justice. In such event, the offender shall post an appearance bond as provided in Section 1105 of this title, subject to all sanctions provided therein for failure to appear or comply with reasonable bond conditions. No forfeiture shall take place as to such cases, however all costs of notices and recovery shall be assessed as further costs of the action.

SECTION 3. This act shall become effective November 1, 2004.

Passed the Senate the 2nd day of March, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the 14th day of April, 2004.

Presiding Officer of the House
of Representatives