

CS for SB 1625

1 THE STATE SENATE
2 Monday, February 23, 2004

3 Committee Substitute for
4 Senate Bill No. 1625

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1625 - By: SMITH of the
6 Senate and HASTINGS of the House.

7 [criminal procedure - bonds - codification - effective
8 date]

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

10 SECTION 1. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1108.1 of Title 22, unless there
12 is created a duplication in numbering, reads as follows:

13 A. Own recognizance bonds set in a penal amount shall be posted
14 by executing an own recognizance indenture contract which shall be
15 executed and maintained by the district court clerk. The indenture
16 shall constitute an inchoate obligation to pay in the event
17 forfeiture proceedings are commenced and result in a final order of
18 forfeiture by the authorizing and issuing judge of the district
19 court.

20 B. Setting aside of forfeitures shall be governed by the same
21 rules and procedures applicable to cash, property or surety bonds,
22 provided that if the forfeiture is set aside, the district court
23 shall exempt from forfeiture set aside all reasonable costs of
24 recovery to return the defendant to custody, and an administrative

1 fee to be retained by the court fund in a sum not to exceed ten
2 percent (10%) of the total penal bond amount plus all costs incurred
3 in processing the forfeiture proceeding to include costs of notices,
4 warrants, service and execution.

5 C. The final judgment of forfeiture shall constitute a judgment
6 enforceable through all procedures available for the collection of a
7 civil judgment, provided that the judgment shall be considered a
8 debt in the nature of defalcation as defined by the United States
9 Bankruptcy Code, and shall not be subject to other forms of debtor
10 relief. The judgment shall be subject to collection as costs in the
11 underlying action regardless of final disposition or determination
12 of guilt.

13 D. The district attorney or the Administrator of the District
14 Court Cost Collection Division as determined by administration order
15 in each judicial district shall initiate the forfeiture action and
16 collection of forfeitures and shall receive one-third (1/3) of all
17 sums collected from the ten percent (10%) premium, not to include
18 costs as defined in subsection B of this section, to offset the
19 costs of administering the program.

20 E. This section does not apply to traffic or wildlife cases.

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

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

9 1. A warrant for the arrest of the offender;

10 2. Suspension of the offender's driver license and, if
11 applicable, any license issued by the Department of Wildlife
12 Conservation; and

13 3. A judgment equal to the bond schedule published for the
14 violation plus the costs of all notices and collection costs
15 incurred, in lieu of fines and cost. A failure to appear shall have
16 the same weight as a plea of nolo contendere.

17 B. The court clerk shall inform the court if the offender has
18 not responded to the uniform citation and notice within thirty (30)
19 days of the mailing of the notice to the address on the uniform
20 citation. The court may issue a warrant for the offender's failure
21 to appear, reduce the financial obligation to judgment equal to the
22 amount of the bond schedule plus all costs incurred in mailing
23 notices, and a ten percent (10%) surcharge to the court fund for the

1 necessity of processing by the court clerk, said judgment to be for
2 the purpose of paying an assessment in lieu of fines and costs, or
3 both. License suspension shall be requested in all cases.

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-17-04 - DO
20 PASS, As Amended and Coauthored.