ENGROSSED HOUSE
BILL NO. 2771

By: Smithson and Nance of the House

and

Corn of the Senate

An Act relating to public safety; amending 22 O.S. 2001, Sections 1114.3, Section 2, Chapter 461, O.S.L. 2003, 1115.1, 1115.2 and 1115.3 (22 O.S. Supp. 2005, Section 1114.3A), which relate to bail; modifying delivery requirement of citations; providing gender-neutral language; modifying guidelines for release upon personal recognizance; specifying information to be recorded on citations; modifying notification exceptions; updating statutory references; deleting release and arrest procedures for certain violations; providing statutory references; amending 47 O.S. 2001, Section 6-117, as last amended by Section 3, Chapter 199, O.S.L. 2005 (47 O.S. Supp. 2005, Section 6-117), which relates to driver licenses; authorizing development of procedures for automatic notification to employers under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 1114.3, is amended to read as follows:

Section 1114.3 A. Upon issuing a traffic citation required to be filed in district court, the arresting officer or the law enforcement agency employing the arresting officer shall deliver <u>or forward</u> the "Complaint Information" and "Abstract of Court Record" parts of the citation<u>, in electronic or written format</u>:

1. To the district court clerk without the endorsement of the district attorney or an assistant district attorney. It shall be the duty of the district court clerk to deliver the "Complaint Information" to the district attorney who shall endorse or decline

and file the "Complaint Information" with the district court clerk; or

2. If the officer has ~~written~~ issued a citation which could result in the district attorney filing an information, to the district attorney who shall endorse or decline and file both parts of the citation with the district court clerk.

B. Upon receipt of a traffic citation by the district court clerk, the district court clerk shall deliver the original "Complaint Information" to the district attorney. The district court clerk's office shall maintain the "Abstract of Court Record" part of the citation until the final disposition of the case.

C. After final disposition of the case by the district attorney, including a case which is declined, the district court clerk shall clearly mark the "Abstract of Court Record" part of the citation with the disposition information of the case and forward the "Abstract of Court Record" to the Department of Public Safety, as provided in Section 18-101 of Title 47 of the Oklahoma Statutes. The "Abstract of Court Record" copy of the citation shall not be obscured by any official stamp of the district court or the district court clerk's office.

D. Forwarding of the "Abstract of Court Record" copy of a citation by electronic means to the Department of Public Safety shall be in a manner and format as approved by the Department, and shall include the information required by Section 18-101 of Title 47 of the Oklahoma Statutes.

E. A traffic citation that is certified by the arresting officer, the complainant, the district attorney, or the assistant district attorney shall constitute an information against the person arrested and served with the traffic citation.

SECTION 2. AMENDATORY Section 2, Chapter 461, O.S.L. 2003 (22 O.S. Supp. 2005, Section 1114.3A), is amended to read as follows:

Section 1114.3A A. Upon issuing a citation other than a traffic citation as provided for in Section 1114.3 of ~~Title 22 of the Oklahoma Statutes~~ this title, that is required to be filed in district court, the arresting Highway ~~Patrolmen~~ Patrol officer or the Department of Public Safety shall deliver or forward the "Complaint Information" or "Abstract of Court Record" of the citation ~~to~~, in electronic or written format:

1. ~~The~~ To the district court clerk without the endorsement of the district attorney or an assistant district attorney. It shall be the duty of the district court clerk to deliver the "Complaint Information" to the district attorney who shall endorse or decline and file the "Complaint Information" with the district court clerk; or

2. ~~The~~ To the district attorney, if the ~~Patrolman~~ Highway Patrol officer has ~~written~~ issued a citation which could result in the district attorney filing an information. The district attorney shall endorse or decline and file both parts of the citation with the district court clerk.

B. Upon receipt of a citation by the district court clerk, the district court clerk shall deliver the original "Complaint Information" to the district attorney. The district court clerk's office shall maintain the "Abstract of Court Record" part of the citation until the final disposition of the case.

C. After final disposition of the case by the district attorney, including a case which is declined, the district court clerk shall clearly mark the "Abstract of Court Record" part of the citation with the disposition information of the case and forward the "Abstract of Court Record" to the Department of Public Safety, in the same manner as for a traffic citation as prescribed in Section 18-101 of Title 47 of the Oklahoma Statutes. The "Abstract of Court Record" part of the citation shall not be obscured by any

official stamp of the district court or the district court clerk's office.

D. Forwarding of the "Abstract of Court Record" part of a citation by electronic means to the Department of Public Safety shall be allowable in a manner and format approved by the Department.

E. A citation that is certified by the arresting ~~Patrolman~~ Highway Patrol officer, the district attorney or an assistant district attorney shall constitute an information against the person arrested and served with a citation.

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 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 on which, or before which, the arrested person promises to contact, pay, or appear at the court, as applicable to the court; and

5. Permit the arrested person to sign a written promise to contact, pay, or appear at the court, 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. AMENDATORY 22 O.S. 2001, Section 1115.2, is amended to read as follows:

Section 1115.2 A. If a person arrested for a traffic violation is released upon personal recognizance as provided for in Section ~~2~~ 1115.1 of this ~~act~~ title, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the court may issue a warrant for the person's arrest and the case shall be processed as follows:

1. If for a state traffic violation, as provided for in Section 1108 of ~~Title 22 of the Oklahoma Statutes~~ this title; or

2. If for a violation filed in a municipal court not of record, as provided for in Section 27-118 of Title 11 of the Oklahoma Statutes; or

3. If for a violation filed in a municipal court of record, as provided for in Section 28-127 of Title 11 of the Oklahoma Statutes.

B. If the defendant is not eligible for release upon personal recognizance as provided for in Section ~~2~~ 1115.1 of this ~~act~~ title, or if eligible but refuses to sign a written promise to appear, the officer shall deliver the person to an appropriate magistrate for arraignment and the magistrate shall proceed as otherwise provided for by law. If no magistrate is available, the defendant shall be placed in the custody of the appropriate municipal or county jailor or custodian, to be held until a magistrate is available or bail is posted as provided for in Section ~~4~~ 1115.3 of this ~~act~~ title or as otherwise provided for by law or ordinance~~;~~.

C. ~~1. If a resident or nonresident is arrested for any overweight violation, a violation of a special permit exceeding authorized permit weight, or a violation relating to the transportation of hazardous material, the arresting officer may release the defendant if:~~

~~a. in case of a state violation, the defendant deposits with the arresting officer appropriate bail or payment of the fine and costs in an amount and in the form as provided for in Section 4 of this act, except currency, or~~

~~b. in case of a municipal violation, then as may be provided by local authority;~~

~~2. In the event the defendant is additionally arrested for any violation for which personal recognizance is authorized pursuant to Section 2 of this act, the arresting officer, for such additional~~

~~violation, may either release the defendant upon such recognizance or require bail as provided for in this subsection;~~

~~3. If the defendant is unable to post bail with the arresting officer, then the officer shall proceed as otherwise provided for in this section.~~

~~D.~~ 1. Notwithstanding any other provision of law, a juvenile may be held in custody pursuant to the provisions of this section, but shall be incarcerated separately from any adult offender. Provided however, the arresting officer shall not be required to:

a. place a juvenile into custody as provided for in this section, or

b. place any other traffic offender into custody:

(1) who is injured, disabled, or otherwise incapacitated, or

(2) if custodial arrest may require impoundment of a vehicle containing livestock, perishable cargo, or items requiring special maintenance or care, or

(3) if extraordinary circumstances exist, which, in the judgment of the arresting officer, custodial arrest should not be made.

In such cases, the arresting officer may designate the date and time ~~for arraignment~~ on the citation <u>by which, or on which, the person shall appear or contact the court, as applicable to the court,</u> and release the person. If the person fails to appear without good cause shown, the court may issue a warrant for the person's arrest.

2. The provisions of this subsection shall not be construed to:

a. create any duty on the part of the officer to release a person from custody, or

b. create any duty on the part of the officer to make any inquiry or investigation relating to any condition which may justify release under this subsection, or

c. create any liability upon any officer, or the state or any political subdivision thereof, arising from the decision to release or not to release such person from custody pursuant to the provisions of this subsection.

SECTION 5. AMENDATORY 22 O.S. 2001, Section 1115.3, is amended to read as follows:

Section 1115.3 A. The court shall prescribe the amount of bail for the following state traffic-related offenses:

1. Any felony;

2. Negligent homicide;

3. Driving or being in actual physical control of a motor vehicle while impaired by or under the influence of alcohol or other intoxicating substances;

4. Eluding or attempting to elude a law enforcement officer;

5. Driving while license is under suspension, revocation, denial or cancellation;

6. Failure to stop or remain at the scene of an accident; and

7. Any other traffic violation for which a defendant is delivered to the judge of the court as magistrate pursuant to the provisions of Section 1115.2 of this title, or other law.

B. The amount of bail for an overweight offense shall be ~~as provided for in subsection C of Section 1115.2 of this title together with~~ the amount of fine and costs, including any penalty assessment provided for in the Oklahoma Statutes and the ~~fingerprinting fee~~ fees provided for in ~~Section 1~~ Sections 1313.2, 1313.3, 1313.4 and 1313.5 of ~~this act~~ Title 20 of the Oklahoma Statutes.

C. The amount of bail for other state traffic-related offenses shall be the amount of fine and costs including any penalty

assessments provided for in the Oklahoma Statutes and the ~~fingerprinting fee~~ fees provided for in ~~Section 1~~ Sections 1313.2, 1313.3, 1313.4 and 1313.5 of ~~this act~~ Title 20 of the Oklahoma Statutes.

D. The amount of bail for a state wildlife-related or water safety-related offense shall be the amount of fine and costs including any penalty assessment provided for in the Oklahoma Statutes and the ~~fingerprinting fee~~ fees provided for in ~~Section 1~~ Sections 1313.2, 1313.3, 1313.4 and 1313.5 of ~~this act~~ Title 20 of the Oklahoma Statutes.

E. On or before September 1 of each year, the Administrative Office of the Courts shall prepare a schedule of amounts to be received as bail for each offense pursuant to subsections A, B, C and D of this section and shall distribute the schedule to the Department of Public Safety, each district court clerk in this state and to other interested parties upon request.

F. The district court clerk, unless otherwise directed by the court, shall accept bail or the payment of a fine and costs in the form of currency or personal, cashier's, traveler's, certified or guaranteed bank check, or postal or commercial money order for the amount prescribed in this section for bail.

G. The district court clerk shall accept as bail a guaranteed arrest bond certificate issued by a surety company, an automobile club or trucking association, if:

1. the issuer is authorized to do business in this state by the State Insurance Commissioner;

2. the certificate is issued to and signed by the arrested person;

3. the certificate contains a printed statement that appearance of such person is guaranteed and the issuer, in the event of failure of such person to appear in court at the time of trial, will pay any fine or forfeiture imposed; and

4. the limit provided on the certificate equals or exceeds the amount of bail provided for in this section.

SECTION 6. AMENDATORY 47 O.S. 2001, Section 6-117, as last amended by Section 3, Chapter 199, O.S.L. 2005 (47 O.S. Supp. 2005, Section 6-117), is amended to read as follows:

Section 6-117. A. The Department of Public Safety shall file every application for a driver license or identification card received by the Department and shall maintain suitable indexes containing:

1. All applications denied and on each thereof note the reasons for the denial;

2. All applications granted;

3. The name of every person whose driving privilege has been suspended, revoked, cancelled, or disqualified by the Department and after each such name note the reasons for the action. Any notation of suspension of the driving privilege of a person for reason of nonpayment of a fine shall be removed from the driving record after the person has paid the fine and the driving privilege of the person is reinstated as provided for by law; and

4. The county of residence, the name, date of birth, and mailing address of each person residing in that county who is eighteen (18) years of age or older, and who is the holder of a current driver license or a current identification card issued by the Department of Public Safety for the purpose of ascertaining names of all persons qualified for jury service as required by Section 18 of Title 38 of the Oklahoma Statutes.

B. The Department shall file all collision reports and abstracts of court records of convictions received by it pursuant to the laws of this state and maintain convenient records of the records and reports or make suitable notations in order that an individual record of a person showing the convictions of the person and the traffic collisions in which the person has been involved

shall be readily ascertainable and available for the consideration of the Department of Public Safety upon any application for a driver license or renewal of a driver license and at other suitable times. Any abstract, index or other entry relating to a driving record according to the licensing authority in another state or a province of Canada may be posted upon the driving record of any resident of this state when notice thereof is received by documentation or by electronic transmission. The individual record of a person shall not include any collision reports and abstracts of court records involving a collision in which the person was not issued a citation or if a citation is issued and the person was not convicted.

C. 1. The Commissioner and the officers of the Department as the Commissioner may designate are hereby authorized to prepare under the seal of the Department and deliver upon request a copy of any collision report on file with the Department, charging a fee of Seven Dollars ($7.00). However, the Department shall not be required to furnish personal information from the collision report which is contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725.

2. Notwithstanding the provisions of paragraph 1 of this subsection, the Department is authorized to enter into contracts to supply information regarding vehicles reported to be involved in collisions. For each vehicle, the information shall be limited to that which only describes the vehicle and the collision. The Department shall not be required to provide any information regarding the owner or operator of the vehicle or any information which would conflict with Section 2-110 or Section 1109 of this title.

D. The Department of Public Safety or any motor license agent upon request shall prepare and furnish to any authorized person a Motor Vehicle Report of any person subject to the provisions of the motor vehicle laws of this state. However, the Department shall not

be required to furnish personal information from a driving record contrary to the provisions of the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725. The Motor Vehicle Report shall be a summary of the driving record of the person and shall include the enumeration of any motor vehicle collisions, reference to convictions for violations of motor vehicle laws, and any action taken against the privilege of the person to operate a motor vehicle, as shown by the files of the Department for the three (3) years preceding the date of the request. The Department shall not be required to release to any person, in whole or in part and in any format, a driving index, as described in subsection A of this section, except as otherwise provided for by law. For each Motor Vehicle Report furnished by the Department of Public Safety, the Department shall collect the sum of Ten Dollars ($10.00). For each Motor Vehicle Report furnished by a motor license agent, the agent shall collect the sum of Ten Dollars ($10.00), Eight Dollars ($8.00) of which shall be paid to the Oklahoma Tax Commission for deposit in the General Revenue Fund in the State Treasury and Two Dollars ($2.00) of which shall be retained by the motor license agent. Persons sixty-five (65) years of age or older shall not be required to pay a fee for their own Motor Vehicle Report furnished by the Department or a motor license agent. For purposes of this subsection, a Motor Vehicle Report shall include a report which indicates that no driving record is on file with the Department of Public Safety for the information received by the Department in the request for the Motor Vehicle Report.

E. The Department of Public Safety may develop procedures whereby an employer of a person:

1. Who has a Class A, B or C driver license; and

2. Who operates a commercial motor vehicle in the course of his or her employment with the employer,

may automatically be notified, pursuant to a fee schedule established by the Department, should the driving record of a person reflect a traffic conviction in any court or an administrative action by the Department which alters the status of the commercial driving privileges of the person.

F. All monies received by the Commissioner of Public Safety and the officers and employees of the Department shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury except as otherwise provided for by law.

SECTION 7. This act shall become effective November 1, 2006.

Passed the House of Representatives the 6th day of March, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate