

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2549

By: Liotta

AS INTRODUCED

An Act relating to criminal procedure; authorizing issuance of warrant under certain circumstances; requiring recitation of certain information in warrant; providing for dismissal and expiration of warrant; prohibiting recurrent applications within certain time period; amending 22 O.S. 2001, Section 196, which relates to arrest without warrant by officer; authorizing enforcement of immigration laws; authorizing arrest of persons without a warrant upon certain confirmation; requiring arrested person be taken before a magistrate without delay; amending 22 O.S. 2001, Section 1101, as last amended by Section 1, Chapter 58, O.S.L. 2004 (22 O.S. Supp. 2005, Section 1101), which relates to bailable offenses; allowing denial of bail under certain circumstances; specifying certain burden of proof; creating certain rebuttable presumption; 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 171.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A warrant may be issued when the person has been arrested and the magistrate, having examined the peace officer under oath, finds probable cause to believe that the arrested person meets the requirements as provided in subsection B of Section 196 of Title 22 of the Oklahoma Statutes.

B. If a warrant is issued, the warrant shall recite the provisions set forth in subsection B of Section 196 of Title 22 of the Oklahoma Statutes and the applicable violation of federal criminal law previously confirmed with the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security.

C. Upon the person being taken into federal custody, the warrant shall be dismissed. Any warrant issued under this section shall expire within seventy-two (72) hours or when the person is taken into federal custody, whichever occurs first.

D. Recurrent applications for a warrant under this section shall not be permitted within a six-month period.

SECTION 2. AMENDATORY 22 O.S. 2001, Section 196, is amended to read as follows:

Section 196. A. A peace officer may, without a warrant, arrest a person:

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

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

3. When a felony has in fact been committed, and the peace 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 peace 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

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

B. All peace officers shall have the authority to enforce immigration laws of the United States pursuant to the provisions of this subsection. Any peace officer, in the course of acting upon reasonable cause that an individual has committed or is committing a crime, may arrest the person without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the person:

1. Is an alien illegally present in the United States; and

2. Has previously been convicted of a felony in the United States and was deported or left the United States after such conviction.

Upon receiving the confirmation, the peace officer shall, without unnecessary delay, take the person arrested before a magistrate and proceed pursuant to Section 1 of this act.

SECTION 3. AMENDATORY 22 O.S. 2001, Section 1101, as last amended by Section 1, Chapter 58, O.S.L. 2004 (22 O.S. Supp. 2005, Section 1101), is amended to read as follows:

Section 1101. A. ~~Bail~~ Except as otherwise provided by law, bail, by sufficient sureties, shall be admitted upon all arrests in criminal cases where the offense is not punishable by death and in such cases it may be taken by any of the persons or courts authorized by law to arrest, to imprison offenders or to perform

pretrial services, or by the clerk of the district court or his or her deputy, or by the judge of such courts.

B. In criminal cases where the defendant is currently an escaped prisoner from the Department of Corrections, the defendant must be processed back into the Department of Corrections prior to bail being set on new criminal charges.

C. All persons shall be bailable by sufficient sureties, except that bail may be denied for:

1. Capital offenses when the proof of guilt is evident, or the presumption thereof is great;

2. Violent offenses;

3. Offenses where the maximum sentence may be life imprisonment or life imprisonment without parole;

4. Felony offenses where the person charged with the offense has been convicted of two or more felony offenses arising out of different transactions; and

5. Controlled dangerous substances offenses where the maximum sentence may be at least ten (10) years' imprisonment.

On all offenses specified in paragraphs 2 through 5 of this subsection, the proof of guilt must be evident, or the presumption must be great, and it must be on the grounds that no condition of release would assure the safety of the community or any person.

D. There shall be a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the community if the person is being arrested pursuant to subsection B of Section 196 of this title.

SECTION 4. This act shall become effective November 1, 2006.

50-2-8622

GRS

01/03/06