

ENROLLED HOUSE
BILL NO. 1674

By: Cannaday and Tibbs of the
House

and

Ballenger of the Senate

An Act relating to criminal procedure; requiring release of arrested persons under certain circumstances; providing procedures for electronic traffic citations; allowing for the continuance or rescheduling of arraignments; authorizing defendants to enter certain pleas; providing guidelines for payment of fines and costs; authorizing the issuance of arrest warrants and suspension of driving privileges under certain circumstances; providing notice procedures for closed traffic cases; defining term; providing procedures for arraignment; stating exceptions; providing custody guidelines for juvenile offenders; stating circumstances for which custodial arrest is not required; amending 22 O.S. 2001, Section 1115.5, as amended by Section 1, Chapter 392, O.S.L. 2003 (22 O.S. Supp. 2008, Section 1115.5), which relates to the State and Municipal Traffic, Water Safety, and Wildlife Bail Bond Procedure Act; providing statutory reference; 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 1115.1A of Title 22, unless there is created a duplication in numbering, reads as follows:

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 and certifies the date and time and the location of the violation, as evidenced by the electronic signature of the officer;

3. The arrested person acknowledges, as evidenced by the electronic signature of the person, 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,
- b. negligent homicide,
- 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,
- d. eluding or attempting to elude a law enforcement officer,
- 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,

- 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.

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 on the citation:

1. Designate the traffic charge;

2. Record information from the driver license of the arrested person on the citation form, including the name, address, date of birth, physical 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 date and time on which, or before which, the arrested person promises, as evidenced by the electronic signature of the person, to contact, pay, or appear at the court, as applicable to the court;

5. Record the electronic signature of the arrested person which shall serve as evidence and acknowledgment of a promise to contact, pay, or appear at the court, as provided for in the citation; and

6. Record the electronic signature of the arrested person which shall serve as evidence to certify the date and time and the location that the arrested person was served with a copy of the citation and notice to appear,

after which, the arresting officer shall then release the person upon personal recognizance based upon the acknowledged promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon an acknowledged promise to appear, as evidenced by the electronic signature of the person, for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the driving privilege and driver license of the arrested person in this state, or in the home state of the nonresident 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 at the

discretion of the court or 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 acknowledged 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 electronically 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, together with the date of the plea and signature of the defendant. 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 Title 22 of the Oklahoma Statutes as bail for the violation;

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. 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 acknowledging 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 driving privilege and driver license of the defendant to operate a motor vehicle in this state, or notify the home state of the defendant and request suspension of the driving privilege and driver license of the defendant in accordance with the provisions of the Nonresident Violator Compact. The 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,
- b. the defendant was not released upon personal recognizance upon an acknowledged written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment,
- c. the violation relates to parking or standing, 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 Title 22 of the Oklahoma Statutes.

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 the 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, failure by the court or court clerk 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 to such proof or notice upon request.

H. For purposes of this section, "electronic signature" shall have the same meaning as defined in Section 15-102 of Title 12A of the Oklahoma Statutes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1115.2B of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If a person arrested for a traffic violation is released upon personal recognizance as provided for in Section 1 of this act, but subsequently posts bail and thereafter fails to timely appear as provided for by law, the court may issue a warrant for the arrest of the person 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;

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 1 of this act, or if eligible but refuses to acknowledge a written promise to appear, as evidenced by the electronic signature of the person, 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:

1. 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 1115.4 of Title 22 of the Oklahoma Statutes;

2. Released upon personal recognizance by the arresting officer as provided in subsection A of Section 1 of this act; or

3. Processed as otherwise provided for by law or ordinance.

C. 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,

b. place any other traffic offender into custody:

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

(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 record the date and time on the citation by which, or on which, the person shall appear or contact the court, as applicable to the court, and release the person. If the person fails to appear without good cause shown, the court may issue a warrant for the arrest of the person.

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,
- 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 3. AMENDATORY 22 O.S. 2001, Section 1115.5, as amended by Section 1, Chapter 392, O.S.L. 2003 (22 O.S. Supp. 2008, Section 1115.5), is amended to read as follows:

Section 1115.5 A. 1. Following receipt of notification and a request for driving privilege suspension from a municipal or district court clerk as provided for in Section 1115.1 of this title or Section 1 of this act, the Department of Public Safety shall:

- a. suspend the privilege of the person to operate a motor vehicle in this state; or
- b. request suspension of the driving privilege of the person in the state which issued the license as provided by the Nonresident Violator Compact.

A person whose license is subject to suspension pursuant to this section may avoid the effective date of the suspension or, if suspended, shall be eligible for reinstatement, if otherwise

eligible, upon meeting the requirements of subsection C of this section.

2. The Department of Public Safety may decline to initiate such suspension action if the request is discovered to be improper or questionable.

3. The Department shall not be required to issue more than one suspension of ~~a person's~~ the driving privilege of a person in the event multiple requests for suspensions are received from a court clerk based upon the failure of the person to appear at a particular time and date on multiple charges.

B. Following receipt of a request from another jurisdiction for the suspension of the driving privilege of an Oklahoma resident as provided by the Nonresident Violator Compact, the Department of Public Safety, if the request appears to be valid, shall initiate suspension of the ~~person's~~ privilege of the person to operate a motor vehicle in this state. If suspended, such suspension shall remain in effect until the person meets the requirements of subsection C of this section.

C. 1. A person whose license is subject to suspension in this state pursuant to the provisions of this section may avoid the effective date of suspension, or if suspended in this state, shall be eligible for reinstatement, if otherwise eligible, upon:

- a. making application therefore to the Department of Public Safety, and
- b. showing proof from the court or court clerk that the person has entered an appearance in the case which was the basis for the suspension action and was released by the court as provided for by the Nonresident Violator Compact or consistent provisions, and
- c. submitting with the application the fees, as provided for in Section 6-212 of Title 47 of the Oklahoma Statutes. The fees shall be remitted to the State Treasurer to be credited to the General Revenue Fund of the State Treasury;

2. Upon reinstatement, the Department of Public Safety may remove any record of the suspension and reinstatement as provided for in this section from the ~~individual licensee's~~ file of the

individual licensee and maintain an internal record of the suspension and reinstatement for fiscal and other purposes.

D. Any person whose driving privilege is suspended or subject to suspension in this state pursuant to the provisions of this section, at any time, may informally present specific reasons or documentation to the Department of Public Safety to show that such suspension may be unwarranted. The Department of Public Safety may stay the suspension or suspension action pending receipt of further information or documentation from the person or from the jurisdiction requesting such suspension, or pending review of the record, or other inquiry. If the Department of Public Safety determines the suspension is unwarranted, the suspension action shall be withdrawn or vacated without the requirement of a processing fee and a reinstatement fee and the Department of Public Safety shall accordingly notify the jurisdiction which requested the suspension. If, however, the request for suspension appears valid, the Department of Public Safety shall proceed with suspension of the ~~person's~~ driving privilege of the person and the person shall have the right to appeal as provided for by Section 6-211 of Title 47 of the Oklahoma Statutes. Provided, however, the court shall not consider modification, but shall either sustain or vacate the ~~Department of Public Safety's~~ order of suspension of the Department of Public Safety based upon the records on file with the Department of Public Safety, the law and other relevant evidence.

SECTION 4. This act shall become effective November 1, 2009.

Passed the House of Representatives the 12th day of March, 2009.

Presiding Officer of the House of
Representatives

Passed the Senate the 14th day of April, 2009.

Presiding Officer of the Senate