

EHB 1674

THE STATE SENATE
Monday, April 6, 2009

ENGROSSED

House Bill No. 1674

As Amended

ENGROSSED HOUSE BILL NO. 1674 - By: Cannaday and Tibbs of the House and Ballenger of the Senate.

[criminal procedure - electronic traffic citations - procedures - State and Municipal Traffic, Water Safety, and Wildlife Bail Bond Procedure Act - codification - 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

1 Violator Compact or any party jurisdiction of the Nonresident
2 Violator Compact;

3 2. The arresting officer is satisfied as to the identity of the
4 arrested person and certifies the date and time and the location of
5 the violation, as evidence by the electronic signature of the
6 officer;

7 3. The arrested person acknowledges, as evidenced by the
8 electronic signature of the person, a written promise to appear as
9 provided for on the citation, unless the person is unconscious or
10 injured and requires immediate medical treatment as determined by a
11 treating physician; and

12 4. The violation does not constitute:

13 a. a felony,

14 b. negligent homicide,

15 c. driving or being in actual physical control of a motor
16 vehicle while impaired or under the influence of
17 alcohol or other intoxicating substances, unless the
18 person is unconscious or injured and requires
19 immediate medical treatment as determined by a
20 treating physician,

21 d. eluding or attempting to elude a law enforcement
22 officer,

23 e. operating a motor vehicle without having been issued a

1 valid driver license or while the driving privilege
2 and driver license is under suspension, revocation,
3 denial or cancellation,
4 f. an arrest based upon an outstanding warrant, or
5 g. a traffic violation coupled with any offense stated in
6 subparagraphs a through f of this paragraph.

7 B. If the arrested person is eligible for release on personal
8 recognizance as provided for in subsection A of this section, then
9 the arresting officer shall on the citation:

- 10 1. Designate the traffic charge;
- 11 2. Record information from the driver license of the arrested
12 person on the citation form, including the name, address, date of
13 birth, physical description, type of driver license, driver license
14 number, issuing state, and expiration date;
- 15 3. Record the motor vehicle make, model and tag information;
- 16 4. Record the date and time on which, or before which, the
17 arrested person promises, as evidenced by the electronic signature
18 of the person, to contact, pay, or appear at the court, as
19 applicable to the court;
- 20 5. Record the electronic signature of the arrested person which
21 shall serve as evidence and acknowledgment of a promise to contact,
22 pay, or appear at the court, as provided for in the citation; and
- 23 6. Record the electronic signature of the arrested person which

1 shall serve as evidence to certify the date and time and the
2 location that the arrested person was served with a copy of the
3 citation and notice to appear,
4 after which, the arresting officer shall then release the person
5 upon personal recognizance based upon the acknowledged promise to
6 appear. The citation shall contain a written notice to the arrested
7 person that release upon personal recognizance based upon an
8 acknowledged promise to appear, as evidenced by the electronic
9 signature of the person, for arraignment is conditional and that
10 failure to timely appear for arraignment shall result in the
11 suspension of the driving privilege and driver license of the
12 arrested person in this state, or in the home state of the
13 nonresident pursuant to the Nonresident Violator Compact.

14 C. The court, or the court clerk as directed by the court, may
15 continue or reschedule the date and time of arraignment at the
16 discretion of the court or upon request of the arrested person or
17 the attorney for that person. If the arraignment is continued or
18 rescheduled, the arrested person shall remain on personal
19 recognizance and acknowledged promise to appear until such
20 arraignment, in the same manner and with the same consequences as if
21 the continued or rescheduled arraignment was entered on the citation
22 by the arresting officer and electronically signed by the defendant.
23 An arraignment may be continued or rescheduled more than one time.

1 Provided, however, the court shall require an arraignment to be had
2 within a reasonable time. It shall remain the duty of the defendant
3 to appear for arraignment unless the citation is satisfied as
4 provided for in subsection D of this section.

5 D. A defendant released upon personal recognizance may elect
6 to enter a plea of guilty or nolo contendere to the violation
7 charged at any time before the defendant is required to appear for
8 arraignment by indicating such plea on the copy of the citation
9 furnished to the defendant or on a legible copy, together with the
10 date of the plea and signature of the defendant. The defendant
11 shall be responsible for assuring full payment of the fine and costs
12 to the appropriate court clerk. Payment of the fine and costs may
13 be made by personal, cashier's, traveler's, certified or guaranteed
14 bank check, postal or commercial money order, or other form of
15 payment approved by the court in an amount prescribed as bail for
16 the offense. Provided, however, the defendant shall not use
17 currency for payment by mail. If the defendant has entered a plea
18 of guilty or nolo contendere as provided for in this subsection,
19 such plea shall be accepted by the court and the amount of the fine
20 and costs shall be:

21 1. As prescribed in Section 1115.3 of Title 22 of the Oklahoma
22 Statutes as bail for the violation;

23 2. In case of a municipal violation, as prescribed by

1 municipal ordinance for the violation charged; or

2 3. In the absence of such law or ordinance, then as prescribed
3 by the court.

4 E. 1. If, pursuant to the provisions of subsection D of this
5 section, the defendant does not timely elect to enter a plea of
6 guilty or nolo contendere and fails to timely appear for
7 arraignment, the court may issue a warrant for the arrest of the
8 defendant. The municipal or district court clerk, within one
9 hundred twenty (120) calendar days from the date the citation was
10 issued by the arresting officer, shall notify the Department of
11 Public Safety that:

12 a. the defendant was issued a traffic citation and
13 released upon personal recognizance after
14 acknowledging a written promise to appear for
15 arraignment as provided for in the citation,

16 b. the defendant has failed to appear for arraignment
17 without good cause shown,

18 c. the defendant has not posted bail, paid a fine, or
19 made any other arrangement with the court to satisfy
20 the citation, and

21 d. the citation has not been satisfied as provided by
22 law.

23 Additionally, the court clerk shall request the Department of Public

1 Safety to either suspend the driving privilege and driver license of
2 the defendant to operate a motor vehicle in this state, or notify
3 the home state of the defendant and request suspension of the
4 driving privilege and driver license of the defendant in accordance
5 with the provisions of the Nonresident Violator Compact. The notice
6 and request shall be on a form approved or furnished by the
7 Department of Public Safety.

8 2. The court clerk shall not process the notification and
9 request provided for in paragraph 1 of this subsection if, with
10 respect to such charges:

- 11 a. the defendant was arraigned, posted bail, paid a fine,
12 was jailed, or otherwise settled the case,
- 13 b. the defendant was not released upon personal
14 recognizance upon an acknowledged written promise to
15 appear as provided for in this section or if released,
16 was not permitted to remain on such personal
17 recognizance for arraignment,
- 18 c. the violation relates to parking or standing, or
- 19 d. a period of one hundred twenty (120) calendar days or
20 more has elapsed from the date the citation was issued
21 by the arresting officer.

22 F. Following receipt of the notice and request from the court
23 clerk for driving privilege and driver license suspension as

1 provided for in subsection E of this section, the Department of
2 Public Safety shall proceed as provided for in Section 1115.5 of
3 Title 22 of the Oklahoma Statutes.

4 G. The municipal or district court clerk shall maintain a
5 record of each request for driving privilege and driver license
6 suspension submitted to the Department of Public Safety pursuant to
7 the provisions of this section. When the court or court clerk
8 receives appropriate bail or payment of the fine and costs, settles
9 the citation, makes other arrangements with the defendant, or
10 otherwise closes the case, the court clerk shall furnish proof
11 thereof to the defendant, if the defendant personally appears, or
12 shall mail such proof by first class mail, postage prepaid, to the
13 defendant at the address noted on the citation or at such other
14 address as is furnished by the defendant. Additionally, the court
15 or court clerk shall notify the home jurisdiction of the defendant
16 as listed on the citation, if such jurisdiction is a member of the
17 Nonresident Violator Compact, and shall, in all other cases, notify
18 the Department of the resolution of the case. The form of proof and
19 the procedures for notification shall be approved by the Department
20 of Public Safety. Provided however, failure by the court or court
21 clerk to furnish such proof or notice in the manner provided for in
22 this subsection shall in no event create any civil liability upon
23 the court, the court clerk, the State of Oklahoma or any political

1 subdivision thereof, or any state department or agency or any
2 employee thereof but duplicate proof shall be furnished to the
3 person entitled to such proof or notice upon request.

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

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

10 A. If a person arrested for a traffic violation is released
11 upon personal recognizance as provided for in Section 1 of this act,
12 but subsequently posts bail and thereafter fails to timely appear as
13 provided for by law, the court may issue a warrant for the arrest of
14 the person and the case shall be processed as follows:

15 1. If for a state traffic violation, as provided for in Section
16 1108 of Title 22 of the Oklahoma Statutes;

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

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

22 B. If the defendant is not eligible for release upon personal
23 recognizance as provided for in Section 1 of this act, or if

1 eligible but refuses to acknowledge a written promise to appear, as
2 evidenced by the electronic signature of the person, the officer
3 shall deliver the person to an appropriate magistrate for
4 arraignment and the magistrate shall proceed as otherwise provided
5 for by law. If no magistrate is available, the defendant shall be:

6 1. Placed in the custody of the appropriate municipal or county
7 jailor or custodian, to be held until a magistrate is available or
8 bail is posted as provided for in Section 1115.4 of Title 22 of the
9 Oklahoma Statutes;

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

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

13 C. 1. Notwithstanding any other provision of law, a juvenile
14 may be held in custody pursuant to the provisions of this section,
15 but shall be incarcerated separately from any adult offender.

16 Provided however, the arresting officer shall not be required to:

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

19 b. place any other traffic offender into custody:

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

22 (2) if custodial arrest may require impoundment of a
23 vehicle containing livestock, perishable cargo,

1 or items requiring special maintenance or care,
2 or
3 (3) if extraordinary circumstances exist, which, in
4 the judgment of the arresting officer, custodial
5 arrest should not be made.

6 In such cases, the arresting officer may record the date and time on
7 the citation by which, or on which, the person shall appear or
8 contact the court, as applicable to the court, and release the
9 person. If the person fails to appear without good cause shown, the
10 court may issue a warrant for the arrest of the person.

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

- 13 a. create any duty on the part of the officer to release
14 a person from custody,
- 15 b. create any duty on the part of the officer to make any
16 inquiry or investigation relating to any condition
17 which may justify release under this subsection, or
- 18 c. create any liability upon any officer, or the state or
19 any political subdivision thereof, arising from the
20 decision to release or not to release such person from
21 custody pursuant to the provisions of this subsection.

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

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

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

13 A person whose license is subject to suspension pursuant to this
14 section may avoid the effective date of the suspension or, if
15 suspended, shall be eligible for reinstatement, if otherwise
16 eligible, upon meeting the requirements of subsection C of this
17 section.

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

21 3. The Department shall not be required to issue more than one
22 suspension of ~~a person's~~ the driving privilege of a person in the
23 event multiple requests for suspensions are received from a court

1 clerk based upon the failure of the person to appear at a particular
2 time and date on multiple charges.

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

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

- 15 a. making application therefore to the Department of
16 Public Safety, and
- 17 b. showing proof from the court or court clerk that the
18 person has entered an appearance in the case which was
19 the basis for the suspension action and was released
20 by the court as provided for by the Nonresident
21 Violator Compact or consistent provisions, and
- 22 c. submitting with the application the fees, as provided
23 for in Section 6-212 of Title 47 of the Oklahoma

1 Statutes. The fees shall be remitted to the State
2 Treasurer to be credited to the General Revenue Fund
3 of the State Treasury;

4 2. Upon reinstatement, the Department of Public Safety may
5 remove any record of the suspension and reinstatement as provided
6 for in this section from the ~~individual licensee's~~ file of the
7 individual licensee and maintain an internal record of the
8 suspension and reinstatement for fiscal and other purposes.

9 D. Any person whose driving privilege is suspended or subject
10 to suspension in this state pursuant to the provisions of this
11 section, at any time, may informally present specific reasons or
12 documentation to the Department of Public Safety to show that such
13 suspension may be unwarranted. The Department of Public Safety may
14 stay the suspension or suspension action pending receipt of further
15 information or documentation from the person or from the
16 jurisdiction requesting such suspension, or pending review of the
17 record, or other inquiry. If the Department of Public Safety
18 determines the suspension is unwarranted, the suspension action
19 shall be withdrawn or vacated without the requirement of a
20 processing fee and a reinstatement fee and the Department of Public
21 Safety shall accordingly notify the jurisdiction which requested the
22 suspension. If, however, the request for suspension appears valid,
23 the Department of Public Safety shall proceed with suspension of the

1 ~~person's~~ driving privilege of the person and the person shall have
2 the right to appeal as provided for by Section 6-211 of Title 47 of
3 the Oklahoma Statutes. Provided, however, the court shall not
4 consider modification, but shall either sustain or vacate the
5 ~~Department of Public Safety's~~ order of suspension of the Department
6 of Public Safety based upon the records on file with the Department
7 of Public Safety, the law and other relevant evidence.

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

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-31-09 - DO
10 PASS, As Amended.