

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1674

By: Cannaday

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5  
6 AS INTRODUCED

7 An Act relating to criminal procedure; requiring  
8 release of arrested persons under certain  
9 circumstances; providing procedures for electronic  
10 traffic citations; allowing for the continuance or  
11 rescheduling of arraignments; authorizing defendants  
12 to enter certain pleas; providing guidelines for  
13 payment of fines and costs; authorizing the issuance  
14 of arrest warrants and suspension of driving  
15 privileges under certain circumstances; providing  
16 notice procedures for closed traffic cases; defining  
17 term; providing procedures for arraignment; stating  
18 exceptions; providing custody guidelines for juvenile  
19 offenders; stating circumstances for which custodial  
20 arrest is not required; amending 22 O.S. 2001,  
21 Section 1115.5, as amended by Section 1, Chapter 392,  
22 O.S.L. 2003 (22 O.S. Supp. 2008, Section 1115.5),  
23 which relates to the State and Municipal Traffic,  
24 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:

1       A. In addition to other provisions of law for posting bail, any  
2 person, whether a resident of this state or a nonresident, who is  
3 arrested by a law enforcement officer solely for a misdemeanor  
4 violation of a state traffic law or municipal traffic ordinance,  
5 shall be released by the arresting officer upon personal  
6 recognizance if:

7       1. The arrested person has been issued a valid license to  
8 operate a motor vehicle by this state, another state jurisdiction  
9 within the United States, which is a participant in the Nonresident  
10 Violator Compact or any party jurisdiction of the Nonresident  
11 Violator Compact;

12       2. The arresting officer is satisfied as to the identity of the  
13 arrested person and certifies the date and time and the location of  
14 the violation, as evidenced by the electronic signature of the  
15 officer;

16       3. The arrested person acknowledges, as evidenced by the  
17 electronic signature of the person, a written promise to appear as  
18 provided for on the citation, unless the person is unconscious or  
19 injured and requires immediate medical treatment as determined by a  
20 treating physician; and

21       4. The violation does not constitute:

22           a. a felony,

23           b. negligent homicide,

24           c. driving or being in actual physical control of a motor

1 vehicle while impaired or under the influence of  
2 alcohol or other intoxicating substances, unless the  
3 person is unconscious or injured and requires  
4 immediate medical treatment as determined by a  
5 treating physician,

6 d. eluding or attempting to elude a law enforcement  
7 officer,

8 e. operating a motor vehicle without having been issued a  
9 valid driver license or while the driving privilege  
10 and driver license is under suspension, revocation,  
11 denial or cancellation,

12 f. an arrest based upon an outstanding warrant, or

13 g. a traffic violation coupled with any offense stated in  
14 subparagraphs a through f of this paragraph.

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

18 1. Designate the traffic charge;

19 2. Record information from the driver license of the arrested  
20 person on the citation form, including the name, address, date of  
21 birth, physical description, type of driver license, driver license  
22 number, issuing state, and expiration date;

23 3. Record the motor vehicle make, model and tag information;

24 4. Record the date and time on which, or before which, the

1 arrested person promises, as evidenced by the electronic signature  
2 of the person, to contact, pay, or appear at the court, as  
3 applicable to the court;

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

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

11 after which, the arresting officer shall then release the person  
12 upon personal recognizance based upon the acknowledged promise to  
13 appear. The citation shall contain a written notice to the arrested  
14 person that release upon personal recognizance based upon an  
15 acknowledged promise to appear, as evidenced by the electronic  
16 signature of the person, for arraignment is conditional and that  
17 failure to timely appear for arraignment shall result in the  
18 suspension of the driving privilege and driver license of the  
19 arrested person in this state, or in the home state of the  
20 nonresident pursuant to the Nonresident Violator Compact.

21 C. The court, or the court clerk as directed by the court, may  
22 continue or reschedule the date and time of arraignment at the  
23 discretion of the court or upon request of the arrested person or  
24 the attorney for that person. If the arraignment is continued or

1 rescheduled, the arrested person shall remain on personal  
2 recognizance and acknowledged promise to appear until such  
3 arraignment, in the same manner and with the same consequences as if  
4 the continued or rescheduled arraignment was entered on the citation  
5 by the arresting officer and electronically signed by the defendant.  
6 An arraignment may be continued or rescheduled more than one time.  
7 Provided, however, the court shall require an arraignment to be had  
8 within a reasonable time. It shall remain the duty of the defendant  
9 to appear for arraignment unless the citation is satisfied as  
10 provided for in subsection D of this section.

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

1 such plea shall be accepted by the court and the amount of the fine  
2 and costs shall be:

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

5 2. In case of a municipal violation, as prescribed by  
6 municipal ordinance for the violation charged; or

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

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

17 a. the defendant was issued a traffic citation and  
18 released upon personal recognizance after  
19 acknowledging a written promise to appear for  
20 arraignment as provided for in the citation,

21 b. the defendant has failed to appear for arraignment  
22 without good cause shown,

23 c. the defendant has not posted bail, paid a fine, or  
24 made any other arrangement with the court to satisfy

1                   the citation, and

2                   d.    the citation has not been satisfied as provided by  
3                   law.

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

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

15           a.    the defendant was arraigned, posted bail, paid a fine,  
16           was jailed, or otherwise settled the case,

17           b.    the defendant was not released upon personal  
18           recognizance upon an acknowledged written promise to  
19           appear as provided for in this section or if released,  
20           was not permitted to remain on such personal  
21           recognizance for arraignment,

22           c.    the violation relates to parking or standing, or

23           d.    a period of one hundred twenty (120) calendar days or  
24           more has elapsed from the date the citation was issued

1 by the arresting officer.

2 F. Following receipt of the notice and request from the court  
3 clerk for driving privilege and driver license suspension as  
4 provided for in subsection E of this section, the Department of  
5 Public Safety shall proceed as provided for in Section 1115.5 of  
6 Title 22 of the Oklahoma Statutes.

7 G. The municipal or district court clerk shall maintain a  
8 record of each request for driving privilege and driver license  
9 suspension submitted to the Department of Public Safety pursuant to  
10 the provisions of this section. When the court or court clerk  
11 receives appropriate bail or payment of the fine and costs, settles  
12 the citation, makes other arrangements with the defendant, or  
13 otherwise closes the case, the court clerk shall furnish proof  
14 thereof to the defendant, if the defendant personally appears, or  
15 shall mail such proof by first class mail, postage prepaid, to the  
16 defendant at the address noted on the citation or at such other  
17 address as is furnished by the defendant. Additionally, the court  
18 or court clerk shall notify the home jurisdiction of the defendant  
19 as listed on the citation, if such jurisdiction is a member of the  
20 Nonresident Violator Compact, and shall, in all other cases, notify  
21 the Department of the resolution of the case. The form of proof and  
22 the procedures for notification shall be approved by the Department  
23 of Public Safety. Provided however, failure by the court or court  
24 clerk to furnish such proof or notice in the manner provided for in

1 this subsection shall in no event create any civil liability upon  
2 the court, the court clerk, the State of Oklahoma or any political  
3 subdivision thereof, or any state department or agency or any  
4 employee thereof but duplicate proof shall be furnished to the  
5 person entitled to such proof or notice upon request.

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

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

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

17 1. If for a state traffic violation, as provided for in Section  
18 1108 of Title 22 of the Oklahoma Statutes;

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

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

24 B. If the defendant is not eligible for release upon personal

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

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

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

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

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

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

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

20 b. place any other traffic offender into custody:

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

23 (2) if custodial arrest may require impoundment of a  
24 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.

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

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

5 a. suspend the privilege of the person to operate a motor  
6 vehicle in this state; or

7 b. request suspension of the driving privilege of the  
8 person in the state which issued the license as  
9 provided by the Nonresident Violator Compact.

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

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

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

23 B. Following receipt of a request from another jurisdiction for  
24 the suspension of the driving privilege of an Oklahoma resident as

1 provided by the Nonresident Violator Compact, the Department of  
2 Public Safety, if the request appears to be valid, shall initiate  
3 suspension of the ~~person's~~ privilege of the person to operate a  
4 motor vehicle in this state. If suspended, such suspension shall  
5 remain in effect until the person meets the requirements of  
6 subsection C of this section.

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

11 a. making application therefore to the Department of  
12 Public Safety, and

13 b. showing proof from the court or court clerk that the  
14 person has entered an appearance in the case which was  
15 the basis for the suspension action and was released  
16 by the court as provided for by the Nonresident  
17 Violator Compact or consistent provisions, and

18 c. submitting with the application the fees, as provided  
19 for in Section 6-212 of Title 47 of the Oklahoma  
20 Statutes. The fees shall be remitted to the State  
21 Treasurer to be credited to the General Revenue Fund  
22 of the State Treasury;

23 2. Upon reinstatement, the Department of Public Safety may  
24 remove any record of the suspension and reinstatement as provided

1 for in this section from the ~~individual licensee's~~ file of the  
2 individual licensee and maintain an internal record of the  
3 suspension and reinstatement for fiscal and other purposes.

4 D. Any person whose driving privilege is suspended or subject  
5 to suspension in this state pursuant to the provisions of this  
6 section, at any time, may informally present specific reasons or  
7 documentation to the Department of Public Safety to show that such  
8 suspension may be unwarranted. The Department of Public Safety may  
9 stay the suspension or suspension action pending receipt of further  
10 information or documentation from the person or from the  
11 jurisdiction requesting such suspension, or pending review of the  
12 record, or other inquiry. If the Department of Public Safety  
13 determines the suspension is unwarranted, the suspension action  
14 shall be withdrawn or vacated without the requirement of a  
15 processing fee and a reinstatement fee and the Department of Public  
16 Safety shall accordingly notify the jurisdiction which requested the  
17 suspension. If, however, the request for suspension appears valid,  
18 the Department of Public Safety shall proceed with suspension of the  
19 ~~person's~~ driving privilege of the person and the person shall have  
20 the right to appeal as provided for by Section 6-211 of Title 47 of  
21 the Oklahoma Statutes. Provided, however, the court shall not  
22 consider modification, but shall either sustain or vacate the  
23 ~~Department of Public Safety's~~ order of suspension of the Department  
24

1 of Public Safety based upon the records on file with the Department  
2 of Public Safety, the law and other relevant evidence.

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

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