

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 HOUSE BILL 2295

By: Roberts (Dustin) of the
House

5
6 and

7 **Leewright** of the Senate

8
9 AS INTRODUCED

10 An Act relating to criminal procedures; amending 22
11 O.S. 2011, Sections 1105, 1105.3, as last amended by
12 Section 1, Chapter 2, O.S.L. 2018 and 1108.1 (22 O.S.
13 Supp. 2020, Section 1105.3), which relate to bailable
14 offenses and personal recognizance bonds; making
15 persons arrested for certain crimes ineligible for
16 personal recognizance bonds; updating internal
17 statutory references; excluding persons detained or
18 accused of committing certain offenses from being
19 released pursuant to court order; prohibiting
20 personal recognizance bonds for certain criminal
21 cases; and providing an effective date.

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

23 SECTION 1. AMENDATORY 22 O.S. 2011, Section 1105, is
24 amended to read as follows:

25 Section 1105. A. Except as otherwise provided by this section,
26 upon the allowance of bail and the execution of the requisite
27 recognizance, bond, or undertaking to the state, the magistrate,

1 judge, or court, shall, if the defendant is in custody, make and
2 sign an order for discharge. The court, in its discretion, may
3 prescribe by court rule the conditions under which the court clerk
4 or deputy court clerk, or the sheriff or deputy sheriff, may prepare
5 and execute an order of release on behalf of the court.

6 B. No police officer or sheriff may release a person arrested
7 for a violation of an ex parte or final protective order as provided
8 in Sections 60.2 and 60.3 of this title, or arrested for an act
9 constituting domestic abuse as specified in Section 644 of Title 21
10 of the Oklahoma Statutes, or arrested for any act constituting
11 domestic abuse, stalking or harassment as defined by Section 60.1 of
12 this title, or arrested for an act constituting domestic assault and
13 battery or domestic assault and battery with a deadly weapon
14 pursuant to Section 644 of Title 21 of the Oklahoma Statutes,
15 without the violator appearing before a magistrate, judge or court.
16 To the extent that any of the following information is available to
17 the court, the magistrate, judge or court shall consider, in
18 addition to any other circumstances, before determining bond and
19 other conditions of release as necessary for the protection of the
20 alleged victim, the following:

- 21 1. Whether the person has a history of domestic violence or a
22 history of other violent acts;
- 23 2. The mental health of the person;

1 3. Whether the person has a history of violating the orders of
2 any court or governmental entity;

3 4. Whether the person is potentially a threat to any other
4 person;

5 5. Whether the person has a history of abusing alcohol or any
6 controlled substance;

7 6. Whether the person has access to deadly weapons or a history
8 of using deadly weapons;

9 7. The severity of the alleged violence that is the basis of
10 the alleged offense including, but not limited to:

11 a. the duration of the alleged violent incident,

12 b. whether the alleged violent incident involved serious
13 physical injury,

14 c. whether the alleged violent incident involved sexual
15 assault,

16 d. whether the alleged violent incident involved
17 strangulation,

18 e. whether the alleged violent incident involved abuse
19 during the pregnancy of the alleged victim,

20 f. whether the alleged violent incident involved the
21 abuse of pets, or

22 g. whether the alleged violent incident involved forcible
23 entry to gain access to the alleged victim;

24

1 8. Whether a separation of the person from the alleged victim
2 or a termination of the relationship between the person and the
3 alleged victim has recently occurred or is pending;

4 9. Whether the person has exhibited obsessive or controlling
5 behaviors toward the alleged victim including, but not limited to,
6 stalking, surveillance, or isolation of the alleged victim;

7 10. Whether the person has expressed suicidal or homicidal
8 ideations; and

9 11. Any information contained in the complaint and any police
10 reports, affidavits, or other documents accompanying the complaint.

11 C. A person arrested for:

12 1. A violation of an ex parte or final protective order as
13 provided in Sections 60.2 and 60.3 of this title;

14 2. An act constituting domestic abuse, domestic assault and
15 battery or domestic assault and battery with a deadly weapon as
16 specified in Section 644 of Title 21 of the Oklahoma Statutes; or

17 3. An act constituting domestic abuse, stalking or harassment
18 as defined by Section 60.1 of this title,
19 shall not be eligible for a personal recognizance bond pursuant to
20 Section 1108.1 of this title.

21 D. No police officer or sheriff may release a person arrested
22 for any violation of subsection G of Section 2-401 of Title 63 of
23 the Oklahoma Statutes, without the violator appearing before a
24 magistrate, judge, or court. In determining bond and other

1 conditions of release, the magistrate, judge, or court shall
2 consider any evidence that the person is in any manner dependent
3 upon a controlled dangerous substance or has a pattern of regular,
4 illegal use of any controlled dangerous substance. A rebuttable
5 presumption that no conditions of release on bond would assure the
6 safety of the community or any person therein shall arise if the
7 state shows by clear and convincing evidence:

8 1. The person was arrested for a violation of subsection G of
9 Section 2-401 of Title 63 of the Oklahoma Statutes, relating to
10 manufacturing or attempting to manufacture a controlled dangerous
11 substance, or possessing any of the substances listed in subsection
12 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the
13 intent to manufacture a controlled dangerous substance; and

14 2. The person is in any manner dependent upon a controlled
15 dangerous substance or has a pattern of regular illegal use of a
16 controlled dangerous substance, and the violation referred to in
17 paragraph 1 of this subsection was committed or attempted in order
18 to maintain or facilitate the dependence or pattern of illegal use
19 in any manner.

20 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1105.3, as
21 last amended by Section 1, Chapter 2, O.S.L. 2018 (22 O.S. Supp.
22 2020, Section 1105.3), is amended to read as follows:
23
24

1 Section 1105.3 A. Any county pursuant to the provisions of
2 ~~this act~~ the Pretrial Release Act may establish and fund a pretrial
3 program to be utilized by the district court in that jurisdiction.

4 B. When a pretrial release program is established pursuant to
5 ~~this act~~ the Pretrial Release Act and private bail has not been
6 furnished, the judge may order a person to be evaluated through the
7 pretrial program. After conducting an evaluation of the person
8 applying for pretrial release, the pretrial program shall make a
9 recommendation to the court. The recommendation shall indicate any
10 special supervisory conditions for pretrial release. The judge
11 shall consider the recommendations and may grant or deny pretrial
12 release. The presiding judge of the judicial district may issue a
13 standing order outlining criteria for cases that may automatically
14 be evaluated for pretrial release by a pretrial program operating in
15 the jurisdiction. The standing order may include amounts for bail
16 and types of bonds deemed appropriate for certain offenses.

17 C. Except as otherwise authorized by the provisions of this
18 subsection, persons accused of or detained for any of the following
19 offenses or conditions shall not be eligible for pretrial release by
20 any pretrial program:

21 1. Aggravated driving under the influence of an intoxicating
22 substance;

23 2. Any felony driving under the influence of an intoxicating
24 substance;

- 1 3. Any offense prohibited by the Trafficking In Illegal Drugs
- 2 Act;
- 3 4. Any person having a violent felony conviction within the
- 4 past ten (10) years;
- 5 5. Appeal bond;
- 6 6. Arson in the first degree, including attempts to commit
- 7 arson in the first degree;
- 8 7. Assault and battery on a police officer;
- 9 8. Bail jumping;
- 10 9. Bribery of a public official;
- 11 10. Burglary in the first or second degree;
- 12 11. Civil contempt proceedings;
- 13 12. Distribution of a controlled dangerous substance, including
- 14 the sale or possession of a controlled dangerous substance with
- 15 intent to distribute or conspiracy to distribute;
- 16 13. Domestic abuse, domestic assault or domestic assault and
- 17 battery with a dangerous weapon, or domestic assault and battery
- 18 with a deadly weapon;
- 19 14. Driving under the influence of intoxicating substance where
- 20 property damage or personal injury occurs;
- 21 15. Felony discharging a firearm from a vehicle;
- 22 16. Felony sex offenses;
- 23 17. Fugitive bond or a governor's fugitive warrant;
- 24 18. Immigration charges;

- 1 19. Kidnapping;
- 2 20. Juvenile or youthful offender detention;
- 3 21. Manslaughter;
- 4 22. Manufacture of a controlled dangerous substance;
- 5 23. Murder in the first degree, including attempts or
- 6 conspiracy to commit murder in the first degree;
- 7 24. Murder in the second degree, including attempts or
- 8 conspiracy to commit murder in the second degree;
- 9 25. Negligent homicide;
- 10 26. Out-of-county holds;
- 11 27. Persons currently on pretrial release who are arrested on a
- 12 new felony offense;
- 13 28. Possession, manufacture, use, sale or delivery of an
- 14 explosive device;
- 15 29. Possession of a controlled dangerous substance on Schedule
- 16 I or II of the Controlled Dangerous Substances Act;
- 17 30. Possession of a firearm or other offensive weapon during
- 18 the commission of a felony;
- 19 31. Possession of a stolen vehicle;
- 20 32. Rape in the first degree, including attempts to commit rape
- 21 in the first degree;
- 22 33. Rape in the second degree, including attempts to commit
- 23 rape in the second degree;
- 24 34. Robbery by force or fear;

1 35. Robbery with a firearm or dangerous weapon, including
2 attempts to commit robbery with a firearm or dangerous weapon;

3 36. Sexual assault or violent offenses against children;

4 37. Shooting with intent to kill;

5 38. Stalking or violation of a Victim Protection Order;

6 39. Two or more prior felony convictions; or

7 40. Unauthorized use of a motor vehicle.

8 D. A Other than a person accused of or detained for an offense
9 provided for in paragraph 13 or paragraph 38 of subsection C of this
10 section, a person not eligible for pretrial release pursuant to the
11 provisions of subsection C of this section may be released upon
12 order of a district judge, associate district judge or special judge
13 under conditions prescribed by the judge, which may include an order
14 to require the defendant, as a condition of pretrial release, to use
15 or participate in any monitoring or testing including, but not
16 limited to, a Global Positioning System (GPS) monitoring device and
17 urinalysis testing. The court may further order the defendant to
18 pay costs and expenses related to any supervision, monitoring or
19 testing.

20 E. Every pretrial services program operating pursuant to the
21 provisions of ~~this act~~ the Pretrial Release Act shall meet the
22 following minimum criteria:

23 1. The program shall establish a procedure for screening and
24 evaluating persons who are detained or have been arrested for the

1 alleged commission of a crime. The program shall obtain criminal
2 history records on detained persons through the National Crime
3 Information Center (NCIC). The information obtained from the
4 screening and evaluation process must be submitted in a written
5 report without unnecessary delay to the judge who is assigned to
6 hear pretrial release applications when the person is eligible for
7 pretrial release;

8 2. The program shall provide reliable information to the judge
9 relating to the person applying for pretrial release so a reasonable
10 decision can be made concerning the amount and type of bail
11 appropriate for pretrial release. The information provided shall be
12 based upon facts relating to the person's risk of danger to the
13 community and the risk of failure to appear for court; and

14 3. The program shall make all reasonable attempts to provide
15 the court with information appropriate to each person considered for
16 pretrial release.

17 F. A pretrial program established pursuant to ~~this act~~ the
18 Pretrial Release Act may provide different methods and levels of
19 community-based supervision to meet any court-ordered conditions of
20 release. The program may use existing supervision methods for
21 persons who are released prior to trial. Pretrial programs which
22 employ peace officers certified by the Council on Law Enforcement
23 Education and Training (CLEET) are authorized to enforce court-
24 ordered conditions of release.

1 G. Each pretrial program established pursuant to ~~this act~~ the
2 Pretrial Release Act shall provide a quarterly report to the
3 presiding judge of the judicial district of the jurisdiction in
4 which it operates. A copy of the report shall be filed of record
5 with the court clerk of the jurisdiction. Each report shall
6 include, but is not limited to, the following information:

7 1. The total number of persons screened, evaluated or otherwise
8 considered for pretrial release;

9 2. The total number and nature of recommendations made;

10 3. The number of persons admitted to pretrial release that
11 failed to appear; and

12 4. Any other information deemed appropriate by the reporting
13 judicial district or that the program desires to report.

14 H. Every pretrial release program established pursuant to this
15 section shall utilize the services of local providers; provided,
16 however, any program in continuous existence since July 1, 1999,
17 shall be exempt from the provisions of this subsection.

18 SECTION 3. AMENDATORY 22 O.S. 2011, Section 1108.1, is
19 amended to read as follows:

20 Section 1108.1 A. Own recognizance bonds set in a penal amount
21 shall be posted by executing an own recognizance indenture contract
22 which shall be executed and maintained by the district court clerk.
23 The indenture shall constitute an inchoate obligation to pay in the
24 event forfeiture proceedings are commenced and result in a final

1 order of forfeiture by the authorizing and issuing judge of the
2 district court.

3 B. Setting aside of forfeitures shall be governed by the same
4 rules and procedures applicable to cash, property or surety bonds~~;~~;
5 provided that~~,~~, if the forfeiture is set aside, the district court
6 shall exempt from forfeiture set aside all reasonable costs of
7 recovery to return the defendant to custody, and an administrative
8 fee to be retained by the court fund in a sum not to exceed ten
9 percent (10%) of the total penal bond amount plus all costs incurred
10 in processing the forfeiture proceeding to include costs of notices,
11 warrants, service and execution.

12 C. The final judgment of forfeiture shall constitute a judgment
13 enforceable through all procedures available for the collection of a
14 civil judgment, provided that the judgment shall be considered a
15 debt in the nature of defalcation as defined by the United States
16 Bankruptcy Code, and shall not be subject to other forms of debtor
17 relief. The judgment shall be subject to collection as costs in the
18 underlying action regardless of final disposition or determination
19 of guilt.

20 D. The district attorney or the Administrator of the District
21 Court Cost Collection Division as determined by administration order
22 in each judicial district shall initiate the forfeiture action and
23 collection of forfeitures and shall receive one-third (1/3) of all
24 sums collected from the ten-percent ~~(10%)~~ premium, not to include

costs as defined in subsection B of this section, to offset the costs of administering the program.

E. This section does not apply to ~~traffic~~:

1. Traffic or wildlife cases;

2. Cases concerning violations of emergency ex parte or final protective orders, as provided in Sections 60.2 and 60.3 of this title;

3. Domestic abuse cases, as provided in Section 644 of Title 21 of the Oklahoma Statutes; and

4. Stalking or harassment cases, as provided in Section 1173 of Title 21 of the Oklahoma Statutes.

SECTION 4. This act shall become effective November 1, 2021.

COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
dated 02/25/2021 - DO PASS, As Coauthored.