

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 1931

6 By: Osburn

7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22  
9 O.S. 2011, Sections 1105 and 1108.1, which relate to  
10 bailable offenses and personal recognizance bonds;  
11 making persons arrested for certain crimes ineligible  
12 for personal recognizance bonds; prohibiting use of  
13 charitable bail organizations for posting bond for  
14 persons arrested for certain crimes; prohibiting  
15 personal recognizance bonds for certain criminal  
16 cases; and providing an effective date.

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

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

20 Section 1105. A. Except as otherwise provided by this section,  
21 upon the allowance of bail and the execution of the requisite  
22 recognizance, bond, or undertaking to the state, the magistrate,  
23 judge, or court, shall, if the defendant is in custody, make and  
24 sign an order for discharge. The court, in its discretion, may  
prescribe by court rule the conditions under which the court clerk

1 or deputy court clerk, or the sheriff or deputy sheriff, may prepare  
2 and execute an order of release on behalf of the court.

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

18 1. Whether the person has a history of domestic violence or a  
19 history of other violent acts;

20 2. The mental health of the person;

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

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

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

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

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

7           a. the duration of the alleged violent incident,

8           b. whether the alleged violent incident involved serious  
9 physical injury,

10          c. whether the alleged violent incident involved sexual  
11 assault,

12          d. whether the alleged violent incident involved  
13 strangulation,

14          e. whether the alleged violent incident involved abuse  
15 during the pregnancy of the alleged victim,

16          f. whether the alleged violent incident involved the  
17 abuse of pets, or

18          g. whether the alleged violent incident involved forcible  
19 entry to gain access to the alleged victim;

20           8. Whether a separation of the person from the alleged victim  
21 or a termination of the relationship between the person and the  
22 alleged victim has recently occurred or is pending;

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

4 10. Whether the person has expressed suicidal or homicidal  
5 ideations; and

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

8 C. A person arrested for a violation of an ex parte or final  
9 protective order as provided in Sections 60.2 and 60.3 of this  
10 title, or arrested for an act constituting domestic abuse as  
11 specified in Section 644 of Title 21 of the Oklahoma Statutes, or  
12 arrested for any act constituting domestic abuse, stalking or  
13 harassment as defined by Section 60.1 of this title, or arrested for  
14 an act constituting domestic assault and battery or domestic assault  
15 and battery with a deadly weapon pursuant to Section 644 of Title 21  
16 of the Oklahoma Statutes, shall not be eligible for a personal  
17 recognizance bond pursuant to Section 1108.1 of this title and shall  
18 be prohibited from having a cash bond posted on his or her behalf by  
19 any charitable bail organization.

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

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

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

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

19 SECTION 2. AMENDATORY 22 O.S. 2011, Section 1108.1, is  
20 amended to read as follows:

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

1 event forfeiture proceedings are commenced and result in a final  
2 order of forfeiture by the authorizing and issuing judge of the  
3 district court.

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

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

21 D. The district attorney or the Administrator of the District  
22 Court Cost Collection Division as determined by administration order  
23 in each judicial district shall initiate the forfeiture action and  
24 collection of forfeitures and shall receive one-third (1/3) of all

1 sums collected from the ten percent (10%) premium, not to include  
2 costs as defined in subsection B of this section, to offset the  
3 costs of administering the program.

4 E. This section does not apply to ~~traffie~~u:

5 1. Traffic or wildlife cases;

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

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

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

12 SECTION 3. This act shall become effective November 1, 2020.

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