

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 2735

By: Menz

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6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2021, Section 1105, which relates to bail;
9 specifying time period for initial appearances for
certain offenses; providing construing provision; and
providing an effective date.

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

14 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1105, is
15 amended to read as follows:

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

1 B. No police officer or sheriff may release a person arrested
2 for a violation of an ex parte or final protective order as provided
3 in Sections 60.2 and 60.3 of this title, or arrested for an act
4 constituting domestic abuse as specified in Section 644 of Title 21
5 of the Oklahoma Statutes, or arrested for any act constituting
6 domestic abuse, stalking or harassment as defined by Section 60.1 of
7 this title, or arrested for an act constituting domestic assault and
8 battery or domestic assault and battery with a deadly weapon
9 pursuant to Section 644 of Title 21 of the Oklahoma Statutes,
10 without the violator appearing before a magistrate, judge or court.
11 The appearance before a magistrate, judge or court shall occur no
12 earlier than twenty-four (24) hours after arrest but no later than
13 seventy-two (72) hours after arrest; provided, such requirement
14 shall not be construed to constitute an unnecessary delay unless the
15 person arrested can establish prejudice by reason of the delay. To
16 the extent that any of the following information is available to the
17 court, the magistrate, judge or court shall consider, in addition to
18 any other circumstances, before determining bond and other
19 conditions of release as necessary for the protection of the alleged
20 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;

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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;

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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. This act shall become effective November 1, 2023.

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22 59-1-6866 GRS 12/14/22

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