

1 **SENATE FLOOR VERSION**

February 13, 2024

2 **AS AMENDED**

3 SENATE BILL NO. 1783

By: Howard

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5
6 An Act relating to criminal procedure; amending 22
7 O.S. 2021, Sections 1105.2 and 1105.3, which relate
8 to the Pretrial Release Act; authorizing use of
9 certain treatment programs for pretrial release;
10 authorizing order for electronic monitoring under
11 certain circumstances; stating function of certain
12 programs; authorizing release of certain person to
13 certain program; requiring certain notice;
14 authorizing dismissal of certain charges; amending 22
15 O.S. 2021, Section 1175.6a, which relates to
16 restoration of competence; requiring court to make
17 certain determination; requiring certain findings;
18 creating rebuttable presumption for certain release;
19 authorizing motion to revoke own recognizance bond;
20 and providing an effective date.

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

22 SECTION 1. AMENDATORY 22 O.S. 2021, Section 1105.2, is
23 amended to read as follows:

24 Section 1105.2. A. Following an arrest for a misdemeanor or
felony offense and before formal charges have been filed or an
indictment made, the arrested person may have bail set by the court
as provided in this act; provided there are no provisions of law to
the contrary.

1 B. When formal charges or an indictment has been filed, bail
2 shall be set according to law and the pretrial bond, if any, may be
3 reaffirmed unless additional security is required. Every judicial
4 district may, upon the order of the presiding judge for the
5 district, establish a pretrial bail schedule for felony or
6 misdemeanor offenses, except for traffic offenses included in
7 subsections B, C and D of Section 1115.3 of Title 22 of the Oklahoma
8 Statutes and those offenses specifically excluded herein. The bail
9 schedule established pursuant to the authority of this act shall
10 exclude any offense for which bail is not allowed by law. The bail
11 schedule authorized by this act shall be set in accordance with
12 guidelines relating to bail and shall be published and reviewed by
13 March 1 of each year by the courts and district attorney of the
14 judicial district.

15 C. The pretrial bail shall be set in a numerical dollar amount.
16 If the person fails to appear in court as required the judge shall:

17 1. Rescind the bond and proceed to enter a judgment against the
18 defendant for the dollar amount of the pretrial bail if no private
19 bail was given at the time of release; provided, however, the court
20 clerk shall follow the procedures as set forth in Section 1301 et
21 seq. of Title 59 of the Oklahoma Statutes in collecting the
22 forfeiture amount against the person who fails to appear in court;
23 or

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1 2. Rescind and forfeit the private bail if cash, property or
2 surety bail was furnished at the time of release as set forth in
3 Section 1301 et seq. of Title 59 of the Oklahoma Statutes.

4 D. ~~When a pretrial program exists in the judicial district~~
5 ~~where the person is being held, the~~ The judge may utilize the
6 services of the pretrial release program or an assisted outpatient
7 treatment program as defined in Section 1-103 of Title 43A of the
8 Oklahoma Statutes when ordering pretrial release, if such programs
9 exist in the judicial district where the person is being held,
10 except when private bail has been furnished.

11 E. Upon an order for pretrial release or release on bond, the
12 person shall be released from custody without undue delay.

13 F. ~~The~~ If a pretrial program or assisted outpatient treatment
14 program is unavailable in the judicial district where the person is
15 being held but the person would be better served by being released
16 into the community pending trial, the court ~~may~~ shall require the
17 person to be placed on an electronic monitoring device as a
18 condition of pretrial release. In a judicial district where such
19 programs are available, the court may require the person to be
20 placed on an electronic monitoring device as a condition of release
21 or upon the recommendation of such program.

22 G. In instances where an electronic monitoring device has been
23 ordered, the court may impose payment of a supervision fee. Payment
24 of the fee, in whole or according to a court-ordered installment

1 schedule, shall be a condition of pretrial release. The court clerk
2 shall collect the supervision fees.

3 SECTION 2. AMENDATORY 22 O.S. 2021, Section 1105.3, is
4 amended to read as follows:

5 Section 1105.3. A. Any county pursuant to the provisions of
6 the Pretrial Release Act may establish and fund a pretrial program
7 to be utilized by the district court in that jurisdiction.

8 B. When a pretrial release program is established pursuant to
9 the Pretrial Release Act and private bail has not been furnished,
10 the judge may order a person to be evaluated through the pretrial
11 program. Such program shall serve as an alternative to bail for
12 persons not released on their own recognizance but who do not serve
13 a public safety risk. After conducting an evaluation of the person
14 applying for pretrial release, the pretrial program shall make a
15 recommendation to the court. The recommendation shall indicate any
16 special supervisory conditions for pretrial release including but
17 not limited to electronic monitoring. The judge shall consider the
18 recommendations and may grant or deny pretrial release. The
19 presiding judge of the judicial district may issue a standing order
20 outlining criteria for cases that may automatically be evaluated for
21 pretrial release by a pretrial program operating in the
22 jurisdiction. The standing order may include amounts for bail and
23 types of bonds deemed appropriate for certain offenses.

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1 C. Except as otherwise authorized by the provisions of this
2 subsection, persons accused of or detained for any of the following
3 offenses or conditions shall not be eligible for pretrial release by
4 any pretrial program:

5 1. Aggravated driving under the influence of an intoxicating
6 substance;

7 2. Any felony driving under the influence of an intoxicating
8 substance;

9 3. Any offense prohibited by the Trafficking In Illegal Drugs
10 Act;

11 4. Any person having a violent felony conviction within the
12 past ten (10) years;

13 5. Appeal bond;

14 6. Arson in the first degree, including attempts to commit
15 arson in the first degree;

16 7. Assault and battery on a police officer;

17 8. Bail jumping;

18 9. Bribery of a public official;

19 10. Burglary in the first or second degree;

20 11. Civil contempt proceedings;

21 12. Distribution of a controlled dangerous substance, including
22 the sale or possession of a controlled dangerous substance with
23 intent to distribute or conspiracy to distribute;

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- 1 13. Domestic abuse, domestic assault or domestic assault and
2 battery with a dangerous weapon, or domestic assault and battery
3 with a deadly weapon;
- 4 14. Driving under the influence of intoxicating substance where
5 property damage or personal injury occurs;
- 6 15. Felony discharging a firearm from a vehicle;
- 7 16. Felony sex offenses;
- 8 17. Fugitive bond or a governor's fugitive warrant;
- 9 18. Immigration charges;
- 10 19. Kidnapping;
- 11 20. Juvenile or youthful offender detention;
- 12 21. Manslaughter;
- 13 22. Manufacture of a controlled dangerous substance;
- 14 23. Murder in the first degree, including attempts or
15 conspiracy to commit murder in the first degree;
- 16 24. Murder in the second degree, including attempts or
17 conspiracy to commit murder in the second degree;
- 18 25. Negligent homicide;
- 19 26. Out-of-county holds;
- 20 27. Persons currently on pretrial release who are arrested on a
21 new felony offense;
- 22 28. Possession, manufacture, use, sale or delivery of an
23 explosive device;
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1 29. Possession of a controlled dangerous substance on Schedule
2 I or II of the Controlled Dangerous Substances Act;

3 30. Possession of a firearm or other offensive weapon during
4 the commission of a felony;

5 31. Possession of a stolen vehicle;

6 32. Rape in the first degree, including attempts to commit rape
7 in the first degree;

8 33. Rape in the second degree, including attempts to commit
9 rape in the second degree;

10 34. Robbery by force or fear;

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

13 36. Sexual assault or violent offenses against children;

14 37. Shooting with intent to kill;

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

16 39. Two or more prior felony convictions; or

17 40. Unauthorized use of a motor vehicle.

18 D. 1. Other than a person accused of or detained for an
19 offense provided for in paragraph 13 or paragraph 38 of subsection C
20 of this section, a person not eligible for pretrial release pursuant
21 to the provisions of subsection C of this section may be released
22 upon order of a district judge, associate district judge or special
23 judge under conditions prescribed by the judge, which may include
24 release to an assisted outpatient treatment program as defined in

1 Section 1-103 of Title 43A of the Oklahoma Statutes, and an order to
2 require the defendant, as a condition of pretrial release, to use or
3 participate in any monitoring or testing including, but not limited
4 to, a Global Positioning System (GPS) monitoring device and
5 urinalysis testing. The court may further order the defendant to
6 pay costs and expenses related to any supervision, monitoring or
7 testing.

8 2. A court may release a person requiring treatment as defined
9 in Section 1-103 of Title 43A of the Oklahoma Statutes to an
10 assisted outpatient treatment program for a period of time as
11 recommended by the treatment provider. Once treatment is complete,
12 the provider shall notify the court and the district attorney of the
13 person's release from treatment. If the person successfully
14 completes the treatment program, the district attorney may dismiss
15 the case.

16 E. Every pretrial services program operating pursuant to the
17 provisions of the Pretrial Release Act shall meet the following
18 minimum criteria:

19 1. The program shall establish a procedure for screening and
20 evaluating persons who are detained or have been arrested for the
21 alleged commission of a crime. The program shall obtain criminal
22 history records on detained persons through the National Crime
23 Information Center (NCIC). The information obtained from the
24 screening and evaluation process must be submitted in a written

1 report without unnecessary delay to the judge who is assigned to
2 hear pretrial release applications when the person is eligible for
3 pretrial release;

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

10 3. The program shall make all reasonable attempts to provide
11 the court with information appropriate to each person considered for
12 pretrial release.

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

21 G. Each pretrial program established pursuant to the Pretrial
22 Release Act shall provide a quarterly report to the presiding judge
23 of the judicial district of the jurisdiction in which it operates.
24 A copy of the report shall be filed of record with the court clerk

1 of the jurisdiction. Each report shall include, but is not limited
2 to, the following information:

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

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

6 3. The number of persons admitted to pretrial release that
7 failed to appear; and

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

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

14 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1175.6a, is
15 amended to read as follows:

16 Section 1175.6a. A. If the person is found to be incompetent
17 prior to conviction because he or she is a person requiring
18 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
19 Statutes, but capable of achieving competence with treatment within
20 a reasonable period of time as defined by Section 1175.1 of this
21 title, the court shall suspend the criminal proceedings and order
22 the Department of Mental Health and Substance Abuse Services to
23 provide treatment, therapy or training which is calculated to allow
24 the person to achieve competency. The Department may designate a

1 willing entity to provide such competency restoration services on
2 behalf of the Department, provided the entity has qualified
3 personnel. ~~The~~

4 B. For all bailable offenses as defined in Section 1101 of this
5 title, the court shall determine if all parties have considered the
6 release of the person pending trial on his or her own recognizance
7 to participate in outpatient restoration or assisted outpatient
8 treatment unless the court finds on the record that:

9 1. Restoration to competence will not reasonably assure the
10 person's return to court or continued participation in treatment.
11 In making a finding pursuant to this paragraph, the court may
12 consider any prior record of failing to appear as required in the
13 last two (2) years that was not during or directly prior to a period
14 of being found incompetent, or any other pending criminal case of
15 the arrested person;

16 2. The person will obstruct or attempt to obstruct justice, or
17 threaten, injure, or intimidate or attempt to threaten, injure, or
18 intimidate a prospective witness or juror; or

19 3. The person poses an imminent and articulable threat to the
20 safety of any person including himself or herself.

21 C. There shall be a rebuttable presumption for releasing the
22 person pending trial on his or her own recognizance to participate
23 in outpatient restoration or assisted outpatient treatment if the

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1 person is charged with an offense carrying a sentence of ninety (90)
2 days or less.

3 D. If a person released to outpatient restoration or assisted
4 outpatient treatment does not engage in treatment, the state may
5 move the court to immediately revoke the person's own recognizance
6 bond and commit the person to an inpatient forensic bed.

7 E. If the court determines that the person is not appropriate
8 for outpatient restoration or assisted outpatient treatment based on
9 the criteria established in subsection B of this section, the court
10 shall further order the Department to take custody of the ~~individual~~
11 person as soon as a forensic bed becomes available, unless both the
12 Department and the county jail where the person is being held
13 determine that it is in the best interests of the person to remain
14 in the county jail. Such competency restoration services shall
15 begin within a reasonable period of time after the court has
16 determined that the person is not competent to stand trial.

17 The person shall remain in the custody of the county jail until
18 such time as the Department has a bed available at the forensic
19 facility unless competency restoration services are provided by a
20 designee of the Department, in which case custody of the person
21 shall be transferred to the Department.

22 ~~B.~~ F. The Department of Mental Health and Substance Abuse
23 Services or designee shall make periodic reports to the court as to
24 the competency of the defendant.

1 ~~E.~~ G. If the person is determined by the Department of Mental
2 Health and Substance Abuse Services or designee to have regained
3 competency, or is no longer incompetent because the person is a
4 person requiring treatment as defined by Title 43A of the Oklahoma
5 Statutes, a hearing shall be scheduled within twenty (20) days:

6 1. If found competent by the court or a jury after such
7 rehearing, criminal proceedings shall be resumed;

8 2. If the person is found to continue to be incompetent because
9 the person is a person requiring treatment as defined in Title 43A
10 of the Oklahoma Statutes, the person shall be returned to the
11 custody of the Department of Mental Health and Substance Abuse
12 Services or designee;

13 3. If the person is found to be incompetent because the person
14 is intellectually disabled as defined by Title 10 of the Oklahoma
15 Statutes, the court shall issue the appropriate order as set forth
16 in Section 1175.6b of this title;

17 4. If the person is found to be incompetent for reasons other
18 than the person is a person requiring treatment as defined by Title
19 43A of the Oklahoma Statutes, and other than the person is
20 intellectually disabled as defined in Title 10 of the Oklahoma
21 Statutes, and is also found to be not dangerous as defined by
22 Section 1175.1 of this title, the court shall issue the appropriate
23 order as set forth in Section 1175.6b of this title; or

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1 5. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by Title
3 43A of the Oklahoma Statutes, and other than the person is
4 intellectually disabled as defined in Title 10 of the Oklahoma
5 Statutes, but is also found to be dangerous as defined by Section
6 1175.1 of this title, the court shall issue the appropriate order as
7 set forth in Section 1175.6c of this title.

8 ~~D.~~ H. If the person is found to be incompetent because the
9 person is a person requiring treatment as defined by Section 1-103
10 of Title 43A of the Oklahoma Statutes, but not capable of achieving
11 competence with treatment within a reasonable period of time as
12 defined by Section 1175.1 of this title, the court shall commence
13 civil commitment proceedings pursuant to Title 43A and shall dismiss
14 without prejudice the criminal proceeding. If the person is
15 subsequently committed to the Department of Mental Health and
16 Substance Abuse Services pursuant to Title 43A, the statute of
17 limitations for the criminal charges which were dismissed by the
18 court shall be tolled until the person is discharged from the
19 Department of Mental Health and Substance Abuse Services pursuant to
20 Section 7-101 of Title 43A of the Oklahoma Statutes.

21 SECTION 4. This act shall become effective November 1, 2024.

22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
23 February 13, 2024 - DO PASS AS AMENDED

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