

1 ENGROSSED SENATE  
2 BILL NO. 1804

By: Brooks and David of the  
Senate

3 and

4 Hill of the House

5  
6 An Act relating to criminal procedure; amending 22  
7 O.S. 2011, Section 1105, which relates to discharge  
8 of defendant upon giving bail; specifying allowable  
9 time period for initial appearance for certain  
10 offenses; construing provisions; and providing an  
11 effective date.

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

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

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

23 B. No police officer or sheriff may release a person arrested  
24 for a violation of an ex parte or final protective order as provided  
in Sections 60.2 and 60.3 of this title, or arrested for an act

1 constituting domestic abuse as specified in Section 644 of Title 21  
2 of the Oklahoma Statutes, or arrested for any act constituting  
3 domestic abuse, stalking or harassment as defined by Section 60.1 of  
4 this title, or arrested for an act constituting domestic assault and  
5 battery or domestic assault and battery with a deadly weapon  
6 pursuant to Section 644 of Title 21 of the Oklahoma Statutes,  
7 without the violator appearing before a magistrate, judge or court.  
8 The appearance before a magistrate, judge or court shall occur no  
9 earlier than twenty-four (24) hours after arrest but no later than  
10 seventy-two (72) hours after arrest; provided, such requirement  
11 shall not be construed to constitute an unnecessary delay unless the  
12 person arrested can establish prejudice by reason of the delay. To  
13 the extent that any of the following information is available to the  
14 court, the magistrate, judge or court shall consider, in addition to  
15 any other circumstances, before determining bond and other  
16 conditions of release as necessary for the protection of the alleged  
17 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. No police officer or sheriff may release a person arrested  
9 for any violation of subsection G of Section 2-401 of Title 63 of  
10 the Oklahoma Statutes, without the violator appearing before a  
11 magistrate, judge, or court. In determining bond and other  
12 conditions of release, the magistrate, judge, or court shall  
13 consider any evidence that the person is in any manner dependent  
14 upon a controlled dangerous substance or has a pattern of regular,  
15 illegal use of any controlled dangerous substance. A rebuttable  
16 presumption that no conditions of release on bond would assure the  
17 safety of the community or any person therein shall arise if the  
18 state shows by clear and convincing evidence:

19 1. The person was arrested for a violation of subsection G of  
20 Section 2-401 of Title 63 of the Oklahoma Statutes, relating to  
21 manufacturing or attempting to manufacture a controlled dangerous  
22 substance, or possessing any of the substances listed in subsection  
23 G of Section 2-401 of Title 63 of the Oklahoma Statutes with the  
24 intent to manufacture a controlled dangerous substance; and

1        2. The person is in any manner dependent upon a controlled  
2 dangerous substance or has a pattern of regular illegal use of a  
3 controlled dangerous substance, and the violation referred to in  
4 paragraph 1 of this subsection was committed or attempted in order  
5 to maintain or facilitate the dependence or pattern of illegal use  
6 in any manner.

7        SECTION 2. This act shall become effective November 1, 2020.

8        Passed the Senate the 9th day of March, 2020.

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Presiding Officer of the Senate

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12        Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
13 2020.

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Presiding Officer of the House  
of Representatives

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