

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1562

By: Gann

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6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 1105, which relates to bailable
9 offenses; prohibiting the release of persons charged
10 with certain offenses; providing for a rebuttable
11 presumption; and providing an 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

1 in Sections 60.2 and 60.3 of this title, or arrested for an act
2 constituting domestic abuse as specified in Section 644 of Title 21
3 of the Oklahoma Statutes, or arrested for any act constituting
4 domestic abuse, stalking or harassment as defined by Section 60.1 of
5 this title, or arrested for an act constituting domestic assault and
6 battery or domestic assault and battery with a deadly weapon
7 pursuant to Section 644 of Title 21 of the Oklahoma Statutes,
8 without the violator appearing before a magistrate, judge or court.
9 To the extent that any of the following information is available to
10 the court, the magistrate, judge or court shall consider, in
11 addition to any other circumstances, before determining bond and
12 other conditions of release as necessary for the protection of the
13 alleged victim, the following:

- 14 1. Whether the person has a history of domestic violence or a
15 history of other violent acts;
- 16 2. The mental health of the person;
- 17 3. Whether the person has a history of violating the orders of
18 any court or governmental entity;
- 19 4. Whether the person is potentially a threat to any other
20 person;
- 21 5. Whether the person has a history of abusing alcohol or any
22 controlled substance;
- 23 6. Whether the person has access to deadly weapons or a history
24 of using deadly weapons;

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

- 3 a. the duration of the alleged violent incident,
- 4 b. whether the alleged violent incident involved serious
5 physical injury,
- 6 c. whether the alleged violent incident involved sexual
7 assault,
- 8 d. whether the alleged violent incident involved
9 strangulation,
- 10 e. whether the alleged violent incident involved abuse
11 during the pregnancy of the alleged victim,
- 12 f. whether the alleged violent incident involved the
13 abuse of pets, or
- 14 g. whether the alleged violent incident involved forcible
15 entry to gain access to the alleged victim;

16 8. Whether a separation of the person from the alleged victim
17 or a termination of the relationship between the person and the
18 alleged victim has recently occurred or is pending;

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

22 10. Whether the person has expressed suicidal or homicidal
23 ideations; and

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

3 C. No police officer or sheriff may release a person arrested
4 for any violation of subsection G of Section 2-401 of Title 63 of
5 the Oklahoma Statutes, without the violator appearing before a
6 magistrate, judge, or court. In determining bond and other
7 conditions of release, the magistrate, judge, or court shall
8 consider any evidence that the person is in any manner dependent
9 upon a controlled dangerous substance or has a pattern of regular,
10 illegal use of any controlled dangerous substance. A rebuttable
11 presumption that no conditions of release on bond would assure the
12 safety of the community or any person therein shall arise if the
13 state shows by clear and convincing evidence:

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

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

3 D. No police officer or sheriff may release a person arrested
4 for any violation of Section 1320.3 of Title 21 of the Oklahoma
5 Statutes, without the violator appearing before a magistrate, judge
6 or court. There shall be a rebuttable presumption that no condition
7 of release would assure the safety of the community if the state
8 shows by clear and convincing evidence that the person was arrested
9 for a violation of Section 1320.3 of Title 21 of the Oklahoma
10 Statutes.

11 SECTION 2. This act shall become effective November 1, 2021.

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13 58-1-5635 GRS 01/07/21

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