

RULE CR 2. Pre-established Bail and Initial Appearance

Per the authority vested upon the District Court of Tulsa County, State of Oklahoma; and in accordance with the jurisdiction granted by the Oklahoma Legislature over certain misdemeanor and felony criminal matters by 22 O.S. § 1105; in accordance with the applicable Oklahoma District Court Rules regarding criminal procedure; and all other applicable rules and/or policies adopted by the District Court of Tulsa County, State of Oklahoma, established by 20 O.S. §23, the Court hereby issues the following Rule regarding a pre-established schedule for bail pursuant to 22 O.S. § 1105.2 and for the initial appearance for persons arrested for certain misdemeanor and felony statutory criminal charges.

I. Rights of bail for persons accused of statutory criminal offenses.

The United States Supreme Court has established the accused is not entitled to bail as a constitutional right. *See U.S. v. Salerno*, 481 US 739, 754, 107 S. Ct. 2095, 95 L.E.2d 697 (1987) (citing the original source for Eighth Amendment in English Bill of Rights, the majority finds the very language of the Amendment “fails to say all arrests *must* beailable” [emphasis added]). The accused is protected by both Article II, Sections 8 & 9 of the Constitution of The State of Oklahoma (1988 and 1907) with regard to excessive bail, and the Eighth Amendment, as applied to the States by virtue of the Fourteenth Amendment of the United States Constitution.

The foremost consideration when fixing bail is the probability that the accused, if free, will appear at trial, and the conditions of release are within the sole discretion of the trial court and will not be overturned absent a clear abuse of discretion. *Bowman v. State*, 1978 OK CR 115, 585 P.2d 1373, *cert. denied* 440 U.S. 920 (1979). Some of the other factors considered when establishing bail include the seriousness of the crime charged against the defendant, his or her reputation and his or her financial condition. *See Brill v. Gurich*, 1998 OK CR 49, 965 P.2d 404; Rule CR 10.5

of the Local Rules of Tulsa County District Court (2003); Rule 1.14, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2003).

In accordance with 22 O.S. § 1101, the trial court may only deny bail upon the appropriate findings. See *Brill v. Gurich*, 1998 OK CR 49, 965 P.2d 404 and Art. II, Sec. 8 of the Oklahoma Constitution. The Oklahoma Court of Criminal Appeals has noted that “[b]ail is not to be deemed excessive simply because the particular person charged cannot give the bail required.” *Ex Parte McClellan*, 1908 OK CR 29, 97 P. 1019, 1020.

Pursuant to 22 O.S. §§ 1105 and 1105.2 and Rule 1 of the Local Rules of the Tulsa County District Court, the District Court of Tulsa County, State of Oklahoma, for certain offenses hereby adopts and affirms the written and established bail schedule found in Appendix A to these Rules. The provisions of said Appendix are hereby incorporated by reference to this Rule as if fully set forth herein.

Any party, defendant, accused, or other person required or permitted by law to give or post bail as surety or security in a criminal matter may discharge this requirement by cash, surety, property, or personal recognizance depending upon the conditions of release set forth in the bail schedule.

The purpose of the bail schedule is to permit the posting of bail without a delay associated with the "First Appearance" within 48 hours of being confined to the David L. Moss Criminal Justice Center, as mandated by 20 O.S. § 55. It is the opinion of the Court that the employ of such a schedule, as authorized by state law, “provides speedy and convenient release for those who have no difficulty in meeting its requirements[.]” *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978).

In particular, this schedule, authorized by 22 O.S. § 1105, shall apply to certain arrests without warrants as permitted by 22 O.S. § 196, or other applicable code. For offenses not listed on the schedule, conditions of release may only be determined after the individualized hearing described below.

II. Scheduling of "First Appearance" for individuals not otherwise capable

of posting bail pursuant to the schedule established in accordance with 22 O.S. § 1105

For those individuals who do not obtain release pursuant to the pre-set bail schedule as outlined above, within forty-eight (48) hours from their arrest, they shall then be brought before the Court for a "first appearance" in accordance with 20 O.S. § 55. In addition to those obligations established by this Rule, the accused shall be represented by court appointed counsel, if he or she does not have retained counsel for this hearing, for the limited purpose of determining the appropriate conditions of release. At this time the accused will be given the opportunity to object to the bail amount/conditions of release set for him or her.

The staff of the David L. Moss Criminal Justice Center shall inform the Tulsa County Court staff of any such accused in a timely fashion and shall additionally facilitate his/her appearance via video transmission or teleconference at a time to be set by the Court.

To the extent an accused is claiming to be indigent and not just unable to meet the conditions of release pursuant to the pre-set bail schedule, the Court in exercising its discretion in setting the conditions of release as allowed by law may consider various factors, including but not limited to the seriousness of the charge and criminal and appearance history.

To the extent an accused is claiming to be indigent and the charge is not on the pre-set bail schedule, the Court in exercising its discretion in setting the condition of release as allowed by law may consider various factors including but not limited to the seriousness of the charge and criminal and appearance history.