

ENROLLED HOUSE  
BILL NO. 1185

By: Thornbrugh, Boyd (Laura)  
Satterfield, Coleman and  
Sullivan (John) of the  
House

and

Long (Lewis) of the  
Senate

An Act relating to criminal justice; prohibiting certain conduct by persons in custody; providing a penalty; amending 22 O.S. 1991, Section 751, as amended by Section 3, Chapter 355, O.S.L. 1992 (22 O.S. Supp. 1995, Section 751), which relates to admissions of certain findings; making certain reports admissible as evidence at hearings prior to trial and forfeiture hearings; amending 22 O.S. 1991, Section 1325, as amended by Section 2, Chapter 45, O.S.L. 1995 (22 O.S. Supp. 1995, Section 1325), which relates to the disposition of unclaimed personal property in a sheriff's possession; authorizing campus police agency to dispose of personal property in same manner as sheriff; authorizing property to be sold, destroyed, discarded, donated or transferred; providing procedure for application, hearing and notice for disposition of personal property; establishing special funds where proceeds of sales will be deposited; authorizing expenditures from special funds; amending 47 O.S. 1991, Section 754, as last amended by Section 5, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 754), which relates to driver license revocation hearings; making certain reports admissible as evidence; amending 63 O.S. 1991, Section 2-506, as last amended by Section 5, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-506), which relates to forfeiture proceedings; making certain reports admissible as evidence; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 650.9 of Title 21, unless there is created a duplication in numbering, reads as follows:

Every person in the custody of the state, a county or city or a contractor of the state, a county or a city who throws, transfers or in any manner places feces, urine, semen, saliva or blood upon the person of an employee of the state, a county or a city or an employee of a contractor of the state, a county or a city shall upon conviction thereof be guilty of a felony.

SECTION 2. AMENDATORY 22 O.S. 1991, Section 751, as amended by Section 3, Chapter 355, O.S.L. 1992 (22 O.S. Supp. 1995, Section 751), is amended to read as follows:

Section 751. A. At any ~~preliminary~~ preliminary hearing prior to trial or forfeiture hearing, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiners report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the accused by the office of the district attorney at least five (5) days prior to the ~~preliminary~~ hearing, with reference to all or any part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the state or the accused, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders such person to appear.

B. When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

C. For purposes of the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof:

1. The court, upon motion of the state or the accused, shall order the attendance of any person preparing a report submitted as evidence in ~~the preliminary~~ any hearing prior to trial or forfeiture hearing, when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report.

2. The motion shall be filed and notice of the hearing on the motion to order the attendance of the medical examiner shall be given to the medical examiner's office. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

3. If within five (5) days prior to the ~~preliminary~~ hearing or during a ~~preliminary~~ hearing a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the ~~preliminary~~ hearing until such time notice of the motion and hearing is given to the medical examiner's office, the motion is heard, and, if sustained, testimony ordered can be given.

SECTION 3. AMENDATORY 22 O.S. 1991, Section 1325, as amended by Section 2, Chapter 45, O.S.L. 1995 (22 O.S. Supp. 1995, Section 1325), is amended to read as follows:

Section 1325. A. Any ~~sheriff~~ sheriff's office or campus police agency as authorized under Section 360.15 et seq. of Title 74 of the Oklahoma Statutes is authorized to dispose of by public sale, destruction, donation, or transfer for use to a governmental subdivision personal property which has come into ~~his~~ its possession, or deposit in ~~the Sheriff's Training Fund~~ a special fund, as hereafter provided, all money or legal tender of the United

States which has come into ~~his~~ its possession, whether said property or money be stolen, embezzled, lost, abandoned or otherwise, the owner of said property or money being unknown or not having claimed the same, and which the sheriff or campus police agency has held for at least six (6) months, and such property or money, or any part thereof, being no longer needed to be held as evidence or otherwise used in connection with any litigation.

B. ~~The sheriff~~ Where personal property held under the circumstances provided in subsection A of this section is determined by the agency having custody to be unsuitable for disposition by public sale due to its condition or assessed by agency personnel as having limited or no resale value, it may be destroyed, discarded as solid waste or donated to a charitable organization designated by the U.S. Internal Revenue Service as a 501(c)(3) nonprofit organization. Where disposition by destruction, discard, or donation is made of personal property, a report describing the property by category and quantity, and indicating what disposition was made for each item or lot, shall be submitted to the presiding judge of the district court within ten (10) days following the disposition.

C. Where disposition by public sale is appropriate, the sheriff's office or campus police agency shall file an application in the district court of ~~his~~ its county requesting the authority of said court to dispose of such personal property, and shall attach to his application a list describing such property, including all identifying numbers and marks, if any, the date said property came into ~~his~~ its possession and the name and address of the owner ~~and his address~~, if known. The court shall set said application for hearing not less than ten (10) days nor more than twenty (20) days after filing.

~~C.~~ D. Notice shall be given by the sheriff's office or campus police agency of said hearing to each and every owner known and as set forth in said application by certified mail directed to ~~his~~ their last-known address at least ten (10) days prior to the date of said hearing. Said notice shall contain a brief description of the property of said owner and the place and date of the hearing. In addition thereto notice of said hearing shall be posted in three public places in the county, one being the county courthouse at the regular place assigned for the posting of legal notices.

~~D.~~ E. At the hearing, if no owner appears and establishes ownership to said property, the court shall enter an order authorizing the ~~sheriff~~ sheriff's office or campus police agency to donate property having a value of less than Five Hundred Dollars (\$500.00) to a not-for-profit corporation as defined in Title 18 of the Oklahoma Statutes or to sell said personal property to the highest bidder for cash, after at least five (5) days' notice has been given by publication in one issue of a legal newspaper of the county. The ~~sheriff~~ sheriff's office or campus police agency shall make a return of said donation or sale and, when confirmed by said court, the order confirming said donation or sale shall vest in the recipient or purchaser title to said property so donated or purchased.

~~E.~~ F. A ~~sheriff~~ sheriff's office having in ~~his~~ its possession money or legal tender under the circumstances provided in subsection A of this section, prior to appropriating the same for deposit into ~~the Sheriff's Training Fund~~ a special fund, shall file an application in the district court of ~~his~~ its county requesting the court to enter an order authorizing ~~him~~ it to so appropriate said money for deposit in said ~~Sheriff's Training Fund~~ special fund. Said application shall describe the money or legal tender, together

with serial numbers, if any, the date the same came into ~~his~~ the possession of the sheriff's office or campus police agency, and the name and address of the owner ~~and his address~~, if known. Upon filing, said application, which may be joined with an application as described in subsection ~~B~~ C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof, and notice of said hearing shall be given as provided in subsection ~~E~~ D of this section. Such notice shall state that, upon no one appearing to prove ownership to said money or legal tender, the same will be ordered by the court to be deposited in the ~~Sheriff's Training Fund~~ special fund by the ~~sheriff~~ sheriff's office or campus police agency. Said notice may be combined with a notice to sell personal property as set forth in subsection ~~E~~ D of this section. At the hearing, if no one appears to claim and prove ownership to said money or legal tender, the court shall order the same to be deposited by the ~~sheriff~~ sheriff's office or campus police agency in the ~~Sheriff's Training Fund~~ special fund, as provided ~~hereafter~~ in subsection ~~F~~ H of this section.

F. G. Where a sheriff's office or campus police agency has in its possession under the circumstances provided in subsection A of this section, personal property deemed to have potential utility to that sheriff's office, campus police agency or another governmental subdivision, prior to appropriating the personal property for use, the sheriff's office or campus police agency shall file an application in the district court requesting the court to enter an order authorizing it to so appropriate or transfer the property for use. The application shall describe the property, together with serial numbers, if any, the date the property came into the possession of the sheriff's office or campus police agency and the name and address of the owner, if known. Upon filing, the application, which may be joined with an application as described in subsection C of this section, shall be set for hearing not less than ten (10) days nor more than twenty (20) days from the filing thereof. Notice of the hearing shall be given as provided in subsection D of this section. The notice shall state that, upon no one appearing to prove ownership to the personal property, the property will be ordered by the court to be delivered for use by the sheriff's office or campus police agency or its authorizing institution or transferred to another governmental subdivision for its use. The notice may be combined with a notice to sell personal property as set forth in subsection D of this section. At the hearing, if no one appears to claim and prove ownership to the personal property, the court shall order the property to be available for use by the sheriff's office or campus police agency or delivered to an appropriate person for use by the authorizing institution or another governmental subdivision.

H. The money received from the sale of personal property as above provided, after payment of the court costs and other expenses, if any, together with all money in possession of said ~~sheriff~~ sheriff's office or campus police agency, which has been ordered by the court to be deposited in the ~~Sheriff's Training Fund~~ special fund, shall be deposited in such fund which shall be a ~~special fund with the county treasurer and may separately maintained by said~~ special fund with the county treasurer or campus police agency to be expended upon the approval of the sheriff or head of the campus police agency for the purchase of ~~uniforms for the sheriff or his duly authorized deputies or for the purchase of~~ equipment, materials or supplies that may be used in crime prevention and detection, education, training or programming. Said

fund or any portion of it may be expended in ~~providing~~ paying the expenses of the sheriff or any duly authorized deputy ~~in attending official training courses at the Southwest Center for Law Enforcement Education, located on the campus of the University of Oklahoma. It is further provided that expenditure of an amount not to exceed fifty percent (50%) of the amount in said fund in any given fiscal year may be made by the sheriff to provide for the expenses of the sheriff or any duly authorized deputy in attending any police science courses held outside of the State of Oklahoma; and provided further that if said fund has an amount in excess of needs for the above purposes, any such excess may be transferred by the sheriff to the general fund of the county upon the written order of said sheriff or employee of the campus police agency to attend law enforcement or public safety training courses which are conducted by the Oklahoma Council on Law Enforcement Education and Training (CLEET) or other certified trainers, providers, or agencies.~~

SECTION 4. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 5, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 754), is amended to read as follows:

Section 754. A. Any arrested person whose alcohol concentration is ten-hundredths (0.10) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test for alcohol concentration, shall immediately surrender his license, permit or other evidence of driving privilege to the arresting law enforcement officer. This officer shall seize any such license, permit or other evidence of driving privilege surrendered by the arrested person or found on the arrested person during a search.

B. If the license, permit or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, he shall issue to the arrested person a dated receipt for that license, permit or other evidence of driving privilege on a form prescribed by the Department. This receipt shall be recognized as a license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department of Public Safety effective in thirty (30) days. The seized license, permit or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting officer and shall be submitted by mail or in person to the Commissioner of Public Safety or his designated representative within seventy-two (72) hours of the issuance of the receipt. The failure of the arresting officer to timely file this report shall not affect the authority of the Department to revoke the driving privilege of the arrested person.

C. Upon receipt of a written blood or breath test report reflecting that the arrested person had an alcohol concentration of ten-hundredths (0.10) or more accompanied by a sworn report from a law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, the Commissioner of Public Safety shall revoke the privilege to drive of the arrested person and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. Revocation of the license of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the arresting officer as hereinbefore

provided or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose privilege to drive has been revoked or denied, the Commissioner of Public Safety shall grant the person an opportunity to be heard provided the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. Such a request shall also operate to stay the revocation or denial by the Department until the disposition of the hearing unless the person is under suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing. If the hearing request is not timely filed, the revocation shall be sustained.

E. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the person by the Commissioner or an authorized representative at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by either party, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

F. The hearing shall be before the Commissioner of Public Safety or his authorized agent, in the troop headquarters of the Oklahoma Highway Patrol nearest the county wherein the alleged events occurred for which the person was arrested, unless the Commissioner of Public Safety or his authorized agent directs the hearing be held in some other county; or, the Commissioner or his authorized agent may schedule the hearing by telephone and conduct

the hearing by telephone conference call. The hearing may be recorded and its scope shall cover the issues of whether the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. the testing procedures used were in accordance with existent rules of the Board of Tests for Alcohol and Drug Influence,
- b. the person was advised that his privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more,
- c. the test result in fact reflects such alcohol concentration, and
- d. the breath or blood specimen was obtained from the person within two (2) hours of his arrest;

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that his privilege to drive would be revoked or denied if the person refused to submit to the test or tests.

~~F.~~ G. After the hearing, the Commissioner of Public Safety or his authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 2-506, as last amended by Section 5, Chapter 147, O.S.L. 1995 (63 O.S. Supp. 1995, Section 2-506), is amended to read as follows:

Section 2-506. A. Any peace officer of this state shall seize the following property:

1. Any property described in paragraph 4 or 6 of subsection A of Section 2-503 of this title. Such property shall be held as evidence until a forfeiture has been declared or release ordered;

2. Any property described in subsection B of Section 2-503 of this title; or

3. Any property described in subsection C of Section 2-503 of this title.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given by the agency seeking forfeiture according to one of the following methods:

1. Upon each owner or party in interest whose right, title or interest is of record in the Tax Commission, by mailing a copy of the notice by certified mail to the address as given upon the records of the Tax Commission;

2. Upon each owner or party in interest whose name and address is known to the attorney in the office of the agency prosecuting the action to recover unpaid fines, by mailing a copy of the notice by registered mail to the last-known address; or

3. Upon all other owners or interested parties, whose addresses are unknown, but who are believed to have an interest in the property, by one publication in a newspaper of general circulation in the county where the seizure was made.

D. Within forty-five (45) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of forty-five (45) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and shall order the property forfeited to the state, if such fact is proved.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At a hearing in a proceeding against property described in paragraphs 4 and 6 of subsection A or subsections B and C of Section 2-503 of this title, the requirements set forth in said paragraph or subsection, respectively, shall be satisfied by the state by a preponderance of the evidence.

H. The claimant of any right, title or interest in the property may prove his lien, mortgage or conditional sales contract to be a bona fide or innocent ownership interest and that his right, title or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court shall order the property released to the bona fide or innocent owner, lien holder, mortgagee or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the state and sold under judgment of the court, as on sale upon execution, and as provided for in Section 2-508 of this title, except as otherwise provided for in Section 2-503 of this title.

K. Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized, subject only to the orders and decrees of the court or the official having jurisdiction thereof; said official shall maintain a true and accurate inventory and record of all such property seized under the provisions of this section. The provisions of this subsection shall not apply to property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission or the Oklahoma Department of Corrections. Property taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission or the Oklahoma Department of Corrections shall be subject to the provisions of subsections E and F of Section 2-503 of this title.

L. The proceeds of the sale of any property not taken or detained by the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma Department of Public Safety, the

Oklahoma State Bureau of Investigation, the Alcoholic Beverage Laws Enforcement Commission or the Oklahoma Department of Corrections shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual expenses of preserving the property and legitimate costs related to the civil forfeiture proceedings; and

3. The balance to a revolving fund in the office of the county treasurer of the county wherein the property was seized, said fund to be used as a revolving fund solely for enforcement of controlled dangerous substances laws, drug abuse prevention and drug abuse education, and maintained by the district attorney in his discretion for those purposes with a yearly accounting to the board of county commissioners in whose county the fund is established and to the District Attorneys Council; provided, one hundred percent (100%) of the balance of the proceeds of such sale of property forfeited due to nonpayment of a fine imposed pursuant to the provisions of Section 2-415 of this title shall be apportioned as provided in Section 2-416 of this title. Said revolving fund shall be audited by the State Auditor and Inspector at least every two (2) years in the manner provided in Section 171 of Title 19 of the Oklahoma Statutes. Said audit shall include, but not be limited to, a compliance audit. A district attorney may enter into agreements with municipal, county or state agencies to return to such an agency a percentage of proceeds of the sale of any property seized by the agency and forfeited under the provisions of this section. The District Attorneys Council shall adopt guidelines which ensure that such agencies receive a reasonable percentage of such proceeds, considering the relative contribution of each agency to the drug enforcement and prosecution operations relating to the seizure. In formulating said guidelines, the District Attorneys Council shall examine federal guidelines on asset distribution and use said guidelines as a basis for establishing guidelines for this state. The Attorney General is hereby authorized to mediate disputes between district attorneys and such agencies concerning the application of said guidelines in particular instances. Any agency that receives proceeds from an asset distribution shall maintain a true and accurate record of all such assets.

M. Whenever any vehicle, airplane or vessel is forfeited under this act, Section 2-101 et seq. of this title, the district court of jurisdiction may order that the vehicle, airplane or vessel seized may be retained by the state, county or city law enforcement agency which seized the vehicle, airplane or vessel for its official use.

N. If the court finds that the state failed to satisfy the required showing provided for in subsection G of this section, the court shall order the property released to the owner or owners.

O. Except as provided for in subsection Q of this section, a bona fide or innocent owner, lien holder, mortgagee or vendor that recovers property pursuant to this section shall not be liable for storage fees.

P. Except as provided for in subsection Q of this section, storage fees shall be paid by the agency which is processing the seizure and forfeiture from funds generated by seizure and forfeiture actions.

Q. The bona fide or innocent owner, lien holder, mortgagee or vendor shall reclaim subject seized property within thirty (30) days of written notice from the seizing agency. If such person fails to

reclaim the property within the thirty-day time period, then storage fees may be assessed against their secured interest.

R. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the accused by the office of the district attorney or other party to the forfeiture at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by the forfeiture applicant or the respondent, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

SECTION 6. This act shall become effective November 1, 1996.

Passed the House of Representatives the 14th day of May, 1996.

Speaker of the House of  
Representatives

Passed the Senate the 15th day of May, 1996.

President of the Senate