

SHORT TITLE: Criminal procedure; providing for admission of chemist report without testimony; repealing duplicate section; emergency.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 525

By: Helton

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 1991, Section 751, as last amended by Section 2, Chapter 199, O.S.L. 1996 (22 O.S. Supp. 1996, Section 751), which relates to admission of findings and reports; providing for admission of chemist report without testimony; amending 47 O.S. 1991, Section 754, as last amended by Section 7, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1996, Section 754), which relates to seizure of driver license; including language from duplicate section relating to certain hearing and admission of certain reports without testimony; changing time for certain testing; repealing 47 O.S. 1991, Section 754, as last amended by Section 4, Chapter 199, O.S.L. 1996 (47 O.S. Supp. 1996, Section 754), which relates to seizure of driver license and which is a duplicate section; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 751, as last amended by Section 2, Chapter 199, O.S.L. 1996 (22 O.S. Supp. 1996, Section 751), is amended to read as follows:

Section 751. A. At any 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, or a chemist's report, which has been made available to the accused by the office of the district attorney at least five (5) days prior to the 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~~ the report is deemed relevant by the state or the accused, the court shall admit ~~such~~ the report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders ~~such~~ the person to appear.

B. When any alleged controlled dangerous substance has been submitted to the laboratory of the Bureau for analysis, and ~~such~~ the 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~~ the substance shall be released to any other person or laboratory ~~absent~~ without 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~~ an 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, or a chemist's report:

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 any hearing prior to trial or forfeiture hearing, when it appears there is a substantial likelihood that material evidence

not contained in ~~said~~ the report may be produced by the testimony of any person having prepared ~~a~~ the 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 hearing or during a hearing a motion is made pursuant to this subsection requiring a person having prepared a report to testify, the court may ~~hear~~ review a report or other evidence but shall continue the 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 2. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 7, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1996, Section 754), is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older 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 or her license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any 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, the officer 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 a 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 any measurable quantity of alcohol in the person's blood or breath, if the person is under twenty-one (21) years of age, or, if the arrested person is twenty-one (21) years of age or older, an alcohol concentration of ten-hundredths (0.10) or more, accompanied by a sworn report from a law enforcement officer that the officer 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 as prohibited by law, 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 if 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. The 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, a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, or a chemist's report, 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 constituted 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 an 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 an authorized agent directs the hearing be held in some other county; or, the Commissioner or an 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 as prohibited by law, 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 not denied a timely requested breath or blood test,
- c. the breath or blood specimen was obtained from the person within two (2) hours ~~of the actual stop by the officer~~ after the arrest of the person,
- d. the person, if under twenty-one (21) years of age, was advised that the privilege to drive would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,
- e. the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,
- f. the person, if twenty-one (21) years of age or older, was advised that the privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more, and
- g. the test result in fact reflects such alcohol concentration;

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 the 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 an authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 3. REPEALER 47 O.S. 1991, Section 754, as last amended by Section 4, Chapter 199, O.S.L. 1996 (47 O.S. Supp. 1996, Section 754), is hereby repealed.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-0810

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