

ENGROSSED SENATE AMENDMENTS
TO
ENGROSSED HOUSE BILL NO. 1289

By: Smith (Dale) and Reese

An Act relating to schools; amending 70 O.S. 1991, Section 24-102, as last amended by Section 3, Chapter 350, O.S.L. 1997 (70 O.S. Supp. 1998, Section 24-102), which relates to pupil searches; authorizing certain drug and/or alcohol testing on pupils under certain circumstances; providing an effective date; and declaring an emergency.

AUTHOR: Add the following Senate Author and Coauthor: Henry (Principal) and Muegge

AMENDMENT NO. 1. Page 3, Section 1, line 2, after the period add the following language

"Any superintendent, principal, teacher or security personnel detaining, searching or authorizing such detention or search for drugs or alcohol shall have immunity from civil liability that might otherwise be incurred or imposed as a result of such action."

AMENDMENT NO. 2. Page 3, line 2 1/2, add Sections 2 through 15 to read

"SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.1 of Title 70, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 15 of this act shall be known and may be cited as the "Standards for School Drug and Alcohol Testing Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Administrator" means an administrator as defined in Section 6-101.3 of Title 70 of the Oklahoma Statutes;
2. "Alcohol" means ethyl alcohol or ethanol;
3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the

same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test;

5. "Department" means the State Department of Health;

6. "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein;

7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products;

8. "Random selection basis" means a mechanism for selecting students for drug or alcohol testing that:

- a. results in an equal probability that any student from among the students participating in an extracurricular or cocurricular activity subject to the selection mechanism will be selected, and
- b. does not give a school employee discretion to waive the selection of any student selected under the mechanism;

9. "Reasonable suspicion" means a belief that a student is using or has used drugs or alcohol in violation of the district's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, and may be based upon, among other things:

- a. observable phenomena, such as:
 - (1) the physical symptoms or manifestations of being under the influence of a drug or alcohol while at school or participating in an extracurricular or cocurricular activity, or

- (2) the direct observation of drug or alcohol use while at school or participating in an extracurricular or cocurricular activity,
- b. a report of drug or alcohol use while at school or participating in an extracurricular or cocurricular activity, provided by reliable and credible sources and which has been independently corroborated,
 - c. evidence that a student has tampered with, or caused another person to tamper with, a drug or alcohol test administered pursuant to this act, or
 - d. evidence that a student is involved in the use, possession, sale, solicitation or transfer of drugs while on school premises, while in transit under the authority of the school, or while attending any function sponsored or authorized by the school;

10. "Review officer" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by a school district's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate a student's test results together with the student's medical history and any other relevant information;

11. "Sample" means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol in the human body;

12. "Student" means a person who is enrolled in a public school in this state; and

13. "Testing facility" means any person, including any laboratory, hospital, clinic or facility, either off or on school premises, which provides laboratory services to test for the presence of drugs or alcohol in the human body.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Standards for the School Drug and Alcohol Testing Act shall not be construed as requiring or encouraging schools to conduct drug or alcohol testing.

B. Except as provided in subsection C of this section, school districts that choose to conduct drug or alcohol testing of students shall be governed by the provisions of this act and the rules promulgated for its implementation.

C. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for the School Drug and Alcohol Testing Act and the rules promulgated for its implementation.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.4 of Title 70, unless there is created a duplication in numbering, reads as follows:

School districts that choose to conduct drug or alcohol testing may request or require student to undergo testing under only the following circumstances:

1. Applicant or participant testing: A school administrator may request or require a student who applies to participate in any extracurricular or cocurricular activity or any student who is participating in an extracurricular or cocurricular activity to undergo drug or alcohol testing on a random or scheduled, periodic basis as defined and authorized in this act, provided that such testing does not violate the provisions of the Americans with Disabilities Act of 1990, 42 U.S.C., Section 12101 et seq., and provided that such testing is required for all students who apply to participate or who are participating in such activity;

2. Random testing: An administrator may request or require a student who has applied to participate or who is participating in an

extracurricular or cocurricular activity to undergo drug or alcohol testing on a random selection basis if the testing is part of the district's written policy and meets the requirements for random selection set forth in this act;

3. Scheduled, periodic testing: An administrator may request a student who is participating in an extracurricular or cocurricular activity to undergo drug or alcohol testing if the test is scheduled routinely for all students who are participating in such activity and the district's written policy includes a requirement for such testing;

4. Reasonable suspicion testing: An administrator may request or require a student to undergo drug or alcohol testing if the administrator has a reasonable suspicion that the student has violated the district's written policy on drug and alcohol use;

5. Post-accident testing: An administrator may request or require a student to undergo drug or alcohol testing if the administrator has a reasonable suspicion that the student or another person has sustained an injury while on school premises, while in transit under the authority of the school, or while attending any function sponsored or authorized by the school or the school district's property has been damaged as a direct result of the student's use of drugs or alcohol.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.5 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. No school district may request or require a student to undergo drug or alcohol testing unless the school district has first adopted a written, detailed policy setting forth the specifics of its drug or alcohol testing program. The written policy shall be uniformly applied to those covered by the policy and shall include, but not be limited to, the following information:

1. A statement of the district's policy respecting drug or alcohol use by students;
2. Students or student groups that are subject to testing;
3. Circumstances under which testing may be requested or required;
4. Substances which may be tested, including the brand or common name, if any, and the chemical name of any drug or its metabolite to be tested;
5. Testing methods and collection procedures to be used;
6. Consequences of refusing to undergo testing;
7. Potential adverse action which may be taken as a result of a positive test result;
8. The rights of a student to explain, in confidence, the test results;
9. Requirement for referral to a substance abuse counseling, treatment or rehabilitation program as required in this act and procedures for such referral;
10. The rights of a student to obtain all information and records related to the student's testing;
11. Confidentiality requirements; and
12. The available appeal procedures, remedies and sanctions.

B. Drug or alcohol testing governed by the Standards for School Drug and Alcohol Testing Act shall not be requested or required of a student by a school district unless the district's policy includes a requirement that a student who tests positive, or whose test result is confirmed by a second test if requested by the student or parent or guardian, shall be referred to an in-school or other program for substance abuse counseling, treatment or rehabilitation.

C. A district that is implementing a drug or alcohol testing policy for the first time, or is implementing changes to its policy, shall provide at least thirty (30) days' notice to students and

parents or guardians prior to implementation of the policy or changes to the policy.

D. The district shall post a copy of the drug or alcohol testing policy, and any changes to the policy, in a prominent student access area in the place of employment and shall give a copy of the policy, and any changes to the policy, to each student.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.6 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Any drug or alcohol testing by a school district shall occur during or immediately after the regular school day or during or immediately before or after an extracurricular or cocurricular activity.

B. The school district shall pay all costs of testing for drugs or alcohol required by the district, including confirmation tests required by this act and the cost of transportation if the testing of a student is conducted at a place other than the school site where the student regularly attends. Provided, however, a student or parent or guardian who requests a retest of a sample in order to challenge the results of a positive test shall pay all costs of the retest, unless the retest reverses the findings of the challenged positive test. In such case, the district shall reimburse the student or parent or guardian for the costs of the retest.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.7 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall have the power and duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing facilities to be used for purposes of the Standards for School Drug and Alcohol Testing Act and for the establishment and regulation of minimum testing standards and procedures to be applied for purposes of the Standards for School

Drug and Alcohol Testing Act, which shall include, but not be limited to, the following:

1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis for initial or confirmation tests either be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;
2. Qualifications of testing facility personnel;
3. Body component samples that are appropriate for drug and alcohol testing;
4. The drugs in addition to marihuana, cocaine, opiates, amphetamines and phencyclidine, and their metabolites, for which testing may be conducted;
5. Methods of analysis and internal quality control procedures to ensure reliable test results;
6. Internal review and certification process for test results;
7. Security measures to preclude adulteration;
8. Chain-of-custody procedures;
9. Retention and storage procedures and durations to ensure availability of samples for retesting;
10. Procedures for ensuring confidentiality of test results;
11. Proficiency testing;
12. Training and qualifications of review officers which shall include, but not be limited to, licensure to practice medicine and surgery or osteopathic medicine or holding a doctorate in clinical chemistry, forensic toxicology, or a similar biomedical science;
13. Training and qualifications of collection site personnel;
14. Sample collection procedures that ensure the privacy of the individual and prevent and detect tampering with the sample; and

15. Sample documentation, storage and transportation to the testing facility.

B. The rules promulgated by the State Board of Health pursuant to the provisions of this act shall in all applicable respects be consistent with any federal laws and regulations for drug and alcohol testing in schools and shall include safeguards, standards and procedures not less stringent than those applicable to the Workplace Drug and Alcohol Testing Act, Sections 551, et seq. of Title 40 of the Oklahoma Statutes.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.8 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. On and after July 1, 1999, no testing facility shall provide laboratory services to a school district to test for the presence or absence of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to this act and is licensed by the State Department of Health to perform such tests. The State Board of Health shall promulgate rules relating to the issuance of such license, including rules governing license revocation, suspension and nonrenewal.

B. The fees for licensure of testing facilities by the State Department of Health shall be set by the State Board of Health and shall not be more than One Hundred Fifty Dollars (\$150.00) annually.

C. Any testing facility providing laboratory services to a school district to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section shall be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed testing facility in violation of this section shall constitute a separate offense.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.9 of Title 70, unless there is created a duplication in numbering, reads as follows:

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;
2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected;
3. The collection of samples shall be performed under reasonable and sanitary conditions;
4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen;
5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no school district employee shall directly observe an student in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
6. Sample collection shall be documented, and the documentation procedures shall include:
 - a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
 - b. an opportunity for the student or parent or guardian to provide notification of any information which the

student or parent or guardian considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;

7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule; and

9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.10 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. School districts shall maintain all drug and alcohol test results and related information, including, but not limited to, interviews, reports, statements and memoranda, as confidential records, separate from other student records. Unless such records are ordered released pursuant to a valid court order, such records, including the records of the testing facility, shall not be used in any criminal proceeding, or any civil or administrative proceeding, except in those actions taken by the district or in any action involving the student and the district. The records may be released to a program to which a student is referred by the district for substance abuse counseling, treatment, or rehabilitation.

B. The records described in subsection A of this section and maintained by the district shall be the property of the district

and, upon the request of the tested student or parent or guardian, shall be made available for inspection and copying to the student or parent or guardian. Unless acting pursuant to a valid court order or pursuant to authorization on this act, a district shall not release such records to any person other than the student or parent or guardian, unless the student or parent or guardian, in writing following receipt of the test results, has expressly granted permission for the district to release such records.

C. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to any person or entity, based on the analysis of a sample collected from a student for the purpose of testing for the presence of drugs or alcohol, any information relating to:

1. The general health, pregnancy or other physical or mental condition of the student; or

2. The presence of any drug other than the drug or its metabolites that the district requested be identified and for which a medically acceptable explanation of the positive result, other than the use of drugs, has not been forthcoming from the student or parent or guardian.

Provided, however, a testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the student or parent or guardian of the student who was tested upon request of the student or parent or guardian.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.11 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. If a student tests positive, an administrator may prevent the student from participating in extracurricular or cocurricular activities until the results of a confirmation test, if requested, are obtained.

B. If the student refuses to undergo testing, if no confirmation is requested following a positive test result, or if a confirmation test shows the initial positive result was accurate, an administrator may prevent the student from participating in extracurricular or cocurricular activities for any period of time authorized as a sanction in the district's policy and may take other disciplinary action in accordance with the district's disciplinary policy. Except for denial of participation in an extracurricular activity or cocurricular activity, a district may take no action against a student based on a positive test result if a confirmation test has been requested by the student or a parent or guardian unless the test result has been confirmed by a second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by rule of the State Board of Health, at the cutoff levels determined by Board rule.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.12 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Any student or parent or guardian aggrieved by a willful violation of the Standards for School Drug and Alcohol Testing Act may institute a civil action in a court of competent jurisdiction within two (2) years of the person's discovery of the alleged willful violation or of the exhaustion of any internal administrative remedies available to the person. Failure to institute action within two (2) years shall bar the person from obtaining the relief provided for in subsection B of this section.

B. Any action for damages brought pursuant to this act against a school district or school employee must be brought pursuant to the Governmental Tort Claims Act in the county where the district board of education office is located.

C. A student, parent, or guardian may seek injunctive or declaratory relief in the district court in the county where the district board of education is located.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.13 of Title 70, unless there is created a duplication in numbering, reads as follows:

On and after the effective date of this act no school district shall implement a drug or alcohol testing program subject to the provisions of this act unless the program is in compliance with the provisions of this act and the rules promulgated for its implementation. Provided, a drug or alcohol testing program subject to the provisions of this act which is in effect prior to the effective date of this act shall be in compliance with the provisions of this act and the rules promulgated for its implementation no later than September 1, 1999.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-160.14 of Title 70, unless there is created a duplication in numbering, reads as follows:

Any person who willfully and knowingly violates the provisions of the Standards for School Drug and Alcohol Testing Act shall be guilty of a misdemeanor and, upon conviction, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) or imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment."

and renumber subsequent paragraphs

AMENDMENT NO. 3. Page 1, strike the title to read

"[schools - pupil searches - drug and/or alcohol
testing - circumstances - effective date -
emergency]"

and when the title is restored, amend to conform

Passed the Senate the 7th day of April, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____,
1999.

Speaker of the House of
Representatives