

and

Paulk of the House

An Act relating to criminal procedure and the Office of the Chief Medical Examiner; amending 22 O.S. 1991, Section 751, as last amended by Section 2, Chapter 199, O.S.L. 1996 (22 O.S. Supp. 1998, Section 751), which relates to certain evidence and reports; authorizing continuance of certain proceedings when certain reports are not furnished to the accused; clarifying persons to be given notice to attend certain proceedings; prohibiting admission into evidence of certain information of medical examiners except under certain conditions and providing exceptions; allowing request by any party to the Office of the Chief Medical Examiner for the furnishing of records to be admitted as evidence in a civil action; requiring party seeking admission of records to serve interrogatories; providing that interrogatories and answers be admissible in evidence in civil cases; allowing the taking of depositions; requiring such depositions take place at certain locations with exception; amending 63 O.S. 1991, Section 949, which relates to records and evidence within the office of the Chief Medical Examiner; limiting admission into evidence of certain information; allowing taking of depositions and providing procedures; requiring timely application to medical examiner; allowing issuance of subpoena under certain circumstances; providing for payment of certain fee; making certain fee exclusive; 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. 1998, Section 751), is amended to read as follows:

Section 751. A. At any hearing prior to trial or at a 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 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 a~~ a report is deemed relevant by the state or the accused, the court shall admit ~~such the~~ the report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders ~~such the~~ the person making the report to appear. If the accused is not served with a report, by the district attorney, within five (5) days prior to a hearing, the accused may be allowed a continuance of the portion of the hearing to which the report is relevant, to allow at least five (5) days preparation subsequent to the district attorney's furnishing of the report.

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~~ 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 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 any hearing prior to trial or forfeiture hearing, when

it appears there is a substantial likelihood that material evidence not contained in ~~said~~ such report may be produced by the testimony of ~~any~~ the 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 Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control 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 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 63 O.S. 1991, Section 949, is amended to read as follows:

Section 949. A. 1. The Office of the Chief Medical Examiner shall keep full and complete records, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death and all other relevant information concerning the death. The full report and detailed findings of the autopsy, if any, shall be a part of the record in each case.

2. The office shall promptly deliver to ~~the~~ each district attorney ~~of each county~~ having ~~criminal~~ jurisdiction ~~over~~ of the case, copies of all records relating to every a death as to for which further investigation may be advisable. Any district attorney or other law enforcement official may, upon request, secure obtain copies of such records or other information deemed necessary ~~by him~~

to the performance of ~~his~~ such district attorney's or other law enforcement official's official duties.

B. No report, findings, testimony, or other information of a medical examiner shall be admitted in evidence in any civil action in any court in this state, except under the following circumstances:

1. Certified copies of reports pertaining to the factual determinations of views and examination of or autopsies upon the bodies of deceased persons by the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control may be admitted in evidence in any civil case in a court of competent jurisdiction in this state by stipulation of all parties in the case.

2. If a party refuses to stipulate ~~as~~ to admission, the ~~records reports~~ may be requested by ~~the~~ any party seeking ~~the stipulation as to admission from~~ to admit the records as evidence. The request shall be made to the Office of the Chief Medical Examiner ~~and they,~~ who shall be furnished furnish same.

3. The party seeking ~~the stipulation as to~~ admission of the reports shall then serve interrogatories concerning the facts to be answered under oath by the person preparing the records. The interrogatories and answers thereto shall be subject to the rules of evidence and may be ~~admitted~~ admissible in evidence in any civil case in a court of competent jurisdiction. Objections to the interrogatories shall be made by any party in accordance with law just as if the interrogatories had been served on the objecting party. Cross interrogatories shall be submitted and shall be answered and admitted in evidence in the same manner as interrogatories.

4. The taking of depositions shall then be allowed pursuant to the provisions of Section 3230 of Title 12 of the Oklahoma Statutes; provided, however, depositions shall take place at the Office of the

Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision or control whose testimony is sought, unless all parties, including the medical examiner, agree the deposition can be taken elsewhere.

5. No other testimony of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control shall be admitted in evidence in any civil action in any court of this state, unless ~~upon~~ timely application is made to the court by ~~any~~ an interested party or litigant and ~~after~~ timely notice of the application is given to the medical examiner. After a hearing ~~thereon~~, the court, for good cause shown, may order the appearance of the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control for the purpose of testifying and may order that a subpoena be issued for that appearance; provided, however, that such order by the court shall be the exception and not the rule.

6. The cost of the records or certified copies thereof shall be paid by the party requesting same. The reasonable fee charged by the Chief Medical Examiner, a medical examiner, consultant pathologist, or anyone under their supervision and control for answering interrogatories or cross interrogatories, submitting to depositions, or providing testimony shall be paid by the party submitting same. This fee shall be in place of any other witness fee allowed by law.

C. Certified copies of reports and findings, exclusive of hearsay evidence, may be admitted in evidence in preliminary hearings and criminal trials by stipulation.

D. Certified copies of reports of investigations by a medical examiner, laboratory reports and/or autopsy reports may be furnished to the next of kin or others having need for them upon written statement and payment of a reasonable fee set by the Board of Medicolegal Investigations.

SECTION 3. 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.

Passed the Senate the 9th day of March, 1999.

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President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_ ,  
1999.

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Speaker of the House of  
Representatives