

ENROLLED SENATE
BILL NO. 611

By: Anderson of the Senate

and

Duncan of the House

An Act relating to criminal procedure; amending 22 O.S. 2001, Sections 751.1 and 751, as amended by Section 5, Chapter 130, O.S.L. 2004 (22 O.S. Supp. 2008, Section 751), which relate to DNA profiles and laboratory reports; authorizing use of certain report from specified laboratory; modifying procedures for disclosure of certain report; amending 22 O.S. 2001, Section 1053, as amended by Section 21, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2008, Section 1053), which relates to appeals; allowing certain interlocutory appeal; establishing priority of certain appeals; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2001, Section 751.1, is amended to read as follows:

Section 751.1 A. As used in this act:

1. "Deoxyribonucleic Acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual; and

2. "DNA Profile" means an analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

B. 1. At any hearing prior to trial or at a forfeiture hearing, a report of the findings of a laboratory report from a forensic laboratory operated by ~~the State of Oklahoma~~ this state or any political subdivision thereof, or from a laboratory performing analysis at the request of a forensic laboratory operated by this state or any political subdivision thereof, regarding DNA Profile, which has been made available to the accused by the office of the district attorney at least five (5) days prior to the hearing, 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 a report is deemed relevant by the state or the accused, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to this section, orders the person making the report to appear. If the accused is not served with a report, by the district attorney, at least 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 furnishing of the report by the district attorney.

2. The court, upon motion of the state or accused, shall order the attendance of any person preparing such 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 the report may be produced by the testimony of the person having prepared the report. The motion shall be filed and notice given of the hearing on the motion to order the attendance of the person having prepared the report. A hearing shall be held and, if the motion is sustained, an order issued giving not less than five (5) days' prior notice to the time when the testimony shall be required. 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 the report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person having prepared the report, the motion is heard, and, if sustained, testimony ordered can be given.

C. If the state decides to offer evidence of a DNA profile in any trial on the merits, the state shall~~+,~~

~~1. At~~ at least fifteen (15) days before the criminal proceeding, notify in writing the defendant or the defendant's attorney and mail, deliver, or make available to the defendant or the defendant's attorney a copy of any report or statement to be introduced~~; and~~

~~2. Upon written demand of the defendant filed at least five (5) days before the trial on the merits, require the presence of any person in the chain of custody as a prosecution witness. Provided, however, failure to make such demand shall not waive any rights of the defendant nor relieve the prosecution of the burden of proof that has not previously been made available to the defendant or the defendant's attorney pursuant to subsection B of this section.~~

SECTION 2. AMENDATORY 22 O.S. 2001, Section 751, as amended by Section 5, Chapter 130, O.S.L. 2004 (22 O.S. Supp. 2008, Section 751), is amended to read as follows:

Section 751. A. At any hearing prior to trial or at a forfeiture hearing:

1. A report of the findings of the laboratory of the Oklahoma State Bureau of Investigation;

2. The report of investigation or autopsy report of the medical examiner;

3. A laboratory report from a forensic laboratory operated by ~~the State of Oklahoma~~ this state or any political subdivision thereof, or from a laboratory performing analysis at the request of a forensic laboratory operated by this state or any political subdivision thereof;

4. A report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as to the existence or status of any license or permit to sell, transfer, or possess precursor substances; or

5. A report from the Department of Public Safety as to the handling and storage of evidence, 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 a report is deemed relevant by the state or the accused, the court shall admit the report without the testimony of the person making the report, unless the court, pursuant to subsection C of this section, orders 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~~ 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 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 or a report from the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control as to the existence or status of any license or permit to sell, transfer, or possess precursor substances:

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 such report may be produced by the testimony of the person having prepared 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; and

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 3. AMENDATORY 22 O.S. 2001, Section 1053, as amended by Section 21, Chapter 460, O.S.L. 2002 (22 O.S. Supp. 2008, Section 1053), is amended to read as follows:

Section 1053. Appeals to the Court of Criminal Appeals may be taken by the state or a municipality in the following cases and no other:

1. Upon judgment for the defendant on quashing or setting aside an indictment or information;

2. Upon an order of the court arresting the judgment;

3. Upon a question reserved by the state or a municipality;

4. Upon judgment for the defendant on a motion to quash for insufficient evidence in a felony matter; ~~and~~

5. Upon a pretrial order, decision, or judgment suppressing or excluding evidence where appellate review of the issue would be in the best interests of justice. ~~Priority shall be given to such an appeal, and the order staying the proceedings shall be entered pending the outcome of the appeal; and~~

6. Upon a pretrial order, decision or judgment suppressing or excluding evidence in cases alleging violation of any provisions of Section 13.1 of Title 21 of the Oklahoma Statutes.

Priority shall be given to appeals taken pursuant to paragraph 5 or 6 of this section, and an order staying proceedings shall be entered pending the outcome of the appeal.

SECTION 4. This act shall become effective November 1, 2009.

Passed the Senate the 13th day of May, 2009.

Presiding Officer of the Senate

Passed the House of Representatives the 18th day of May, 2009.

Presiding Officer of the House
of Representatives