

SB 611

Senate Bill No. 611
As Amended

SENATE BILL NO. 611 - By: Anderson of the Senate and Duncan of the House.

[criminal procedure - DNA reports - 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

1 district attorney at least five (5) days prior to the hearing, when
2 certified as correct by the persons making the report, shall be
3 received as evidence of the facts and findings stated, if relevant
4 and otherwise admissible in evidence. If a report is deemed
5 relevant by the state or the accused, the court shall admit the
6 report without the testimony of the person making the report, unless
7 the court, pursuant to this section, orders the person making the
8 report to appear. If the accused is not served with a report, by
9 the district attorney, at least five (5) days prior to a hearing,
10 the accused may be allowed a continuance of the portion of the
11 hearing to which the report is relevant, to allow at least five (5)
12 days' preparation subsequent to the furnishing of the report by the
13 district attorney.

14 2. The court, upon motion of the state or accused, shall order
15 the attendance of any person preparing such a report submitted as
16 evidence in any hearing prior to trial or forfeiture hearing, when
17 it appears there is a substantial likelihood that material evidence
18 not contained in the report may be produced by the testimony of the
19 person having prepared the report. The motion shall be filed and
20 notice given of the hearing on the motion to order the attendance of
21 the person having prepared the report. A hearing shall be held and,
22 if the motion is sustained, an order issued giving not less than
23 five (5) days' prior notice to the time when the testimony shall be

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

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

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

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

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

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

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

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

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

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

18 5. A report from the Department of Public Safety as to the
19 handling and storage of evidence,
20 which has been made available to the accused by the office of the
21 district attorney at least five (5) days prior to the hearing, with
22 reference to all or any part of the evidence submitted, when
23 certified as correct by the persons making the report shall be

1 received as evidence of the facts and findings stated, if relevant
2 and otherwise admissible in evidence. If a report is deemed
3 relevant by the state or the accused, the court shall admit the
4 report without the testimony of the person making the report, unless
5 the court, pursuant to subsection C of this section, orders the
6 person making the report to appear. If the accused is not served
7 with a report, by the district attorney, within five (5) days prior
8 to a hearing, the accused may be allowed a continuance of the
9 portion of the hearing to which the report is relevant, to allow at
10 least five (5) ~~days~~ days' preparation subsequent to the district
11 attorney's furnishing of the report.

12 B. When any alleged controlled dangerous substance has been
13 submitted to the laboratory of the Bureau for analysis, and such
14 analysis shows that the submitted material is a controlled dangerous
15 substance, the distribution of which constitutes a felony under the
16 laws of this state, no portion of such substance shall be released
17 to any other person or laboratory without an order of a district
18 court. The defendant shall additionally be required to submit to
19 the court a procedure for transfer and analysis of the subject
20 material to ensure the integrity of the sample and to prevent the
21 material from being used in any illegal manner.

22 C. For purposes of the medical examiner's report of
23 investigation or autopsy report, or a laboratory report from a

1 forensic laboratory operated by the State of Oklahoma or any
2 political subdivision thereof or a report from the Oklahoma State
3 Bureau of Narcotics and Dangerous Drugs Control as to the existence
4 or status of any license or permit to sell, transfer, or possess
5 precursor substances:

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

12 2. The motion shall be filed and notice of the hearing on the
13 motion to order the attendance of the Chief Medical Examiner, a
14 medical examiner, consultant pathologist, or anyone under their
15 supervision or control shall be given to the medical examiner's
16 office. The hearing shall be held and, if sustained, an order
17 issued not less than five (5) days prior to the time when the
18 testimony shall be required; and

19 3. If within five (5) days prior to the hearing or during a
20 hearing a motion is made pursuant to this subsection requiring a
21 person having prepared a report to testify, the court may hear a
22 report or other evidence but shall continue the hearing until such
23 time notice of the motion and hearing is given to the medical

1 examiner's office, the motion is heard, and, if sustained, testimony
2 ordered can be given.

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

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

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

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

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

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

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

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

1 Priority shall be given to appeals taken pursuant to paragraphs
2 5 or 6 of this section, and an order staying proceedings shall be
3 entered pending the outcome of the appeal.

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

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-10-09 - DO
6 PASS, As Amended and Coauthored.