



SENATE BILL 367

AN UPDATE FOR LAW ENFORCEMENT, PROSECUTORS, and JUDGES



Senate Bill 367 was passed by the 58th Session of the Oklahoma Legislature in 2021 and signed by Governor Stitt. The effective date of the Act is November 1, 2021. SB 367 contains a number of changes impacting impaired driving cases. These changes impact both the enforcement of impaired driving laws and prosecution/adjudication of impaired driving cases. The changes are outlined below from those perspectives.

ENFORCEMENT

1. Law enforcement officers are no longer obligated to seize the driver license of the individual arrested for impaired driving. This will eliminate the need to surrender the license to DPS or issue a temporary driver license/receipt for driver license to the arrested individual.
2. SB 367 authorizes the Department of Public Safety to create a process to receive the Officer's Affidavit and Notice of Revocation/Disqualification (OANRD) electronically. The Department will accept electronically submitted, legible, OANRDs in PDF format at DUlaffidavits@dps.ok.gov. Each OANRD must be attached to a separate email.

PROSECUTION/ADJUDICATION

The bulk of the changes brought on by SB 367 relate to the prosecution/adjudication of impaired driving cases. These changes will affect both criminal prosecutions and administrative appeals of driver license revocations.

1. Authorized blood collectors – SB 367 includes a list of medical professionals licensed by *any state* who are authorized to collect blood. Previously, Oklahoma licensure was required. The bill also adds Intermediate Emergency Medical Technicians and Advanced Emergency Medical Technicians (Paramedics), *licensed in Oklahoma*, to the list of authorized blood collectors.
2. Analysis of blood specimens – The bill departs from the long-standing reliance on the rules of the Board of Tests for Alcohol and Drug Influence to determine admissibility questions regarding the analysis of blood specimens. Instead, the statutes now rely on accreditation of the testing laboratory under the ISO/IEC 17025 accreditation standard. *See also*, 74 O.S. §150.37.
3. Breath test administration – The changes to the breath testing scheme of the State of Oklahoma are the most far reaching included in SB 367. The Legislature changed the standard of admissibility from compliance with the rules of the Board of Tests for

Alcohol and Drug Influence to a more statutory based process. Effective November 1, 2021, admissibility of the results of a breath test conducted in Oklahoma depends upon:

- a. An operator holding a permit from the Board of Tests (47 O.S. §759(C)(1));
 - b. Administering a test on an instrument appearing on NHTSA's Conforming Products List and utilizing a reference method appearing on NHTSA's Conforming Products List (47 O.S. §759 (C)(2));
 - c. Maintenance of the instrument by the Board of Tests for Alcohol and Drug Influence (47 O.S. §759 (C)(3));
 - d. Performance of the breath test in accordance with operating procedure prescribed by the Board of Tests or the State Director of Tests (47 O.S. §759 (C)(4)).
4. Screening Tests – The statute also now clarifies that "screening tests" are not evidential tests used to prove DUI in fact, but merely a law enforcement tool to aid in establishing probable cause. *See* 47 O.S. §759(E).

CONCLUSION

This Update is the combined effort of the Department of Public Safety and the Board of Tests for Alcohol and Drug Influence. Please direct any questions raised by the Update to Kevin Behrens (kevin.behrens@dps.ok.gov) AND Josh Smith (Joshua.smith@bot.ok.gov). For your convenience the following link leads to the enrolled version of SB 367: <https://www.sos.ok.gov/documents/legislation/58th/2021/1R/SB/0367.pdf>.