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***Topic I : DUI Laws / effect and result***

***Topic II : Drug Court Laws /  
recent amendments w/ Q&A***

# ALCOHOL / DRUG Revocation(s)

DUI / DWI suspensions arise from either "IMPLIED CONSENT" or "CRIMINAL" laws being violated.

Drug possession revocations arise from "CRIMINAL" laws being violating.

## **Licensee example #1**

**January 1st, 2012 licensee stops off at the local pub after a hard days work. On his way home from the pub, the licensee gets pulled over for speeding. The officer detects the odor of alcohol about Licensee's person. After doing a field sobriety test, he is arrested for driving under the influence of alcohol. This makes the licensee angry for personal reasons because he just knows the cop has it out for him. So, in the licensee vast wisdom of the laws, he refuses to take any kind of test because he knows his rights!**

## **IMPLIED CONSENT : Title 47; Chapter 67-751.a.1**

Any person who operates a motor vehicle upon the public roads, highways, streets, turnpikes or other public place or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings within this state shall be deemed to have given consent to a test or tests of such person's blood or breath, for the purpose of determining the alcohol concentration as defined in Section 756 of this title, and such person's blood, saliva or urine for determining the presence or concentration of any other intoxicating substance therein as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place or upon any private road, street, alley or lane which provides access to one or more single or multi-family dwellings while under the influence of alcohol or other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, or if the person is involved in a traffic accident that resulted in the immediate death or serious injury of any person and is removed from the scene of the accident to a hospital or other health care facility outside the State of Oklahoma before a law enforcement officer can effect an arrest.

**When the licensee refused to take a breath or blood test or (test's) he violated the Implied Consent laws.**

**Title 47; 67-753 Refusal to submit to test**

If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the presence or concentration of any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has operated the motor vehicle in such a manner as to have caused the death or serious physical injury of any other person or persons. In such event, such test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for such test or tests. The sample shall be taken in a medically acceptable manner at a hospital or other suitable health care facility. The Commissioner of Public Safety, upon the receipt of a sworn report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance and that the person had refused to submit to the test or tests, shall revoke the license to drive and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. If the person is a resident or a nonresident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety shall deny to the person the issuance of a license or permit for a period as provided by Section 6-205.1 of this title subject to a review as provided in Section 754 of this title. **The revocation or denial shall become effective thirty (30) days after the arrested person is given written notice thereof by the officer or by the Department as provided in Section 754 of this title.**

# DPS ACTIONS AND ORDER OF EVENTS

1) The officer that arrested the licensee sends the “Officers Affidavit and Notice of Revocation/Disqualification” to DPS along with his driver license if he has one.

2) When DPS receives the Officers Affidavit it is processed and places a Refusal of the Chemical Test Law on the driving record.

The **Refusal** is placed on the public driving record showing a **DC order not in effect**. Per Title 47; 2-116 (giving of notice), the licensee has 30 days notice prior to having his driving privileges suspended. When the officer arrested the licensee on January 1st, 2012, took his driver license and gave him the officers Affidavit, he was served notice at that time.

Once the 30 days has expired from the date of service, the revocation based on the **Refusal** to submit to a test or tests will become effective, the temporary license served at the time of the arrest has expired.

Statutory obligations defined to appeal the implied consent revocation as noted in Title 47 O.S. Chapter 6-211:

D. A person whose driving privilege is revoked or denied or who is denied a hearing pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest occurred relating to the test refusal or test result, as shown by the records of the Department.

E. The petition shall be filed within thirty (30) days after the order has been served upon the person, except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the person that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting the matter for hearing not less than fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of the court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma.

F. At a hearing on a revocation by the Department pursuant to the implied consent laws as provided in Sections 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department and the person actually exercised the opportunity to appear as provided in Section 754 of this title and the Department entered an order sustaining the revocation

H. In the event the Department declines to modify, as provided in Section 754.1 of this title, a revocation order issued pursuant to Section 753, Section 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, which is subject to modification pursuant to Section 11-906.4 of this title or Section 6-205.1 of this title, a petition for modification may be included with the appeal or separately filed at any time, and the district court may, in its discretion, modify the revocation as provided for in Section 755 of this title; provided, any modification under this subsection shall apply to Class D motor vehicles only.

***Once the revocation becomes effective the Department will mail the licensee a "notice of confirmation and reinstatement requirements". The official notice of revocation is the Officers Affidavit and notice of revocation that is served by the arresting officer at the time of arrest.***

If the licensee has an issue with "Identity" a hearing request based on identity may be requested at a later time beyond the 15 days that is prescribed in state law, this is the only reason for waiving the 15 day obligation.

### **REINSTATEMENT REQUIREMENTS FOR A Chemical Test Refusal**

#### **1) Certificate of completion of an Oklahoma Drug and Alcohol assessment. Title 47; 6-212.2.a**

Whenever the records of the Department of Public Safety reflect a conviction of a person pursuant to Section 11-902 of this title or an alcohol- or drug-related revocation or suspension of the driving privileges of that person pursuant to the provisions of paragraph 2 or 6 of subsection A of Section 6-205 or to Section 6-205.1, 6-206, 753, 754 or 761 of this title, the person shall participate in an alcohol and drug assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the person's receptivity to treatment and prognosis. As determined by the assessment, the person shall enroll in, attend and successfully complete the appropriate alcohol and drug substance abuse course certified by the Department of Mental Health and Substance Abuse Services or an alcohol or other drug treatment program or both. The alcohol and drug substance abuse course shall consist of either ten (10) hours or twenty-four (24) hours of instruction and shall conform with the provisions of Section 3-453 of Title 43A of the Oklahoma Statutes. No citizen shall be compelled to travel more than seventy (70) miles from the citizen's place of residence to attend a course or evaluation program required herein. For purposes of this subsection, the requirement for alcohol and drug substance abuse evaluation shall be considered satisfied if the person is evaluated by an assessment agency or assessment personnel certified for that purpose, all recommendations identified by the evaluation are satisfied by the person, and a report of such evaluation and completion is presented to the court prior to sentencing and to the Department.

#### **2) Payment of statutory & reinstatement fees that would total \$340.00. The fees are broken into four categories, \$200 - Trauma Care Fund, \$100 General Revenue, \$25 DPS, \$15 DMHSAS, \$50 RDL fee**

## DRIVER COMPLIANCE and the LEGAL DIVISION HANDLE REQUEST FOR MODIFICATIONS AND HEARINGS ON ALL IMPLIED CONSENT CASES

### Scenario #1

After the licensee understands he has made a monumental error in refusing the state's test, he realizes he can't drive to work legally anymore. He then asks DPS for a permit to drive to work. When the request is received by the Department the note is placed on record as - **Chemical test modification requested**. You may or may not also see a stay of the suspension on record as a dept action code **Chemical test revocation order stayed**. If the modification is granted, the dept action on record will indicate - **Chemical test modification issued by the Department**. If the request for modification is denied, the dept action will indicate - **Chemical test modification denied by Department** as the notation is placed on record.

### Scenario #2

The licensee seeks an attorney's advice before doing anything. The attorney request's an Administrative Hearing for the revocation and the arrest was less than 15 days ago. At this point the dept action will be updated to indicate - **chemical test revocation hearing requested**. A stay will also be added showing dept action - **Chemical revocation order stayed**.

### Scenario #2

The date for the administrative hearing arrives. The licensee and his attorney show up and lose the hearing. The Department sustains the revocation. An update is made to the dept action to show - **Chemical test revocation sustained**. At this point the revocation goes into effect for the length of time according to law. Now that the revocation is sustained, a formal notice of revocation is mailed and a dept action has been updated to note that the has been sent notice of the finding of the admin hearing and of the statutory requirements for reinstatement.

### Scenario #3

The licensee and his attorney appear for the administrative hearing and DPS finds the suspension will be vacated based on the merits of the case. A set aside order will be done and a the dept action code will be updated to show - **Chemical test revocation set aside**. The revocation action is deleted from the record. The licensee's driving privileges are returned to him pending the outcome of the criminal charge of DUI in court.

The final outcome of the administrative revocation may or may not have any bearing on the Criminal Charge of DUI or APC. Separate laws concerning each case separate the union of the findings and the circumstances of consideration of the merits of each action

## Breath Interlock Device requirements

A breath interlock device will be required for any arrest on or after November 1, 2011 if: on the first arrest ***only*** if the arrest resulted from a breath test refusal or a breath or blood test registering 0.15 or more.

**1ST Arrest:** The condition for reinstatement is a requirement of a BID following the previously mentioned elements *the licensee is required to maintain the BID for a period of 18 months.*

**2nd Arrest w/n 10 previous years :** The condition for reinstatement is a requirement of a BID for a period of 48 months

**3rd Arrest w/n 10 previous years :** The condition for reinstatement is a requirement of a BID for a period of 60 months

At the time of eligibility the licensee is required to provide the Department with a BID installation certificate, the contract will indicate the period of time the contract has been issued for. If the licensee has the BID removed the provider will send notice of the removal to the Department, the Department will issue a driver license withdrawal until compliance is provided.

# Drug Court Stays

On November 1, 2006 Oklahoma State Statute directed the Department of Public Safety to “stay” any driver license withdrawals for an active participant of a Drug Court.

## Title 22. Criminal Procedure Chapter 7 Oklahoma Drug Court Act Section 471.6 - Final Eligibility Hearing

**I. Notwithstanding any other provision of law, if the driving privileges of the offender have been suspended, revoked, cancelled or denied by the Department of Public Safety and if the drug court judge determines that no other means of transportation for the offender is available, the drug court judge may enter a written order requiring the Department of Public Safety to stay any and all such actions against the Class D driving privileges of the offender; provided, the stay shall not be construed to grant driving privileges to an offender who has not been issued a driver license by the Department or whose Oklahoma driver license has expired, in which case the offender shall be required to apply for and be found eligible for a driver license, pass all examinations, if applicable, and pay all statutory driver license issuance or renewal fees. The offender shall provide proof of insurance to the drug court judge prior to the judge ordering a stay of any driver license suspension, revocation, cancellation, or denial. When a judge of a drug court enters a stay against an order by the Department of Public Safety suspending or revoking the driving privileges of an offender,**

**Effective November 1, 2011 the following language was added to the statute:**  
**the time period set in the order by the Department for the suspension or revocation shall continue to run during the stay.**

**Should consideration be given to a licensee with an out of state license suspension??**

Title 47 O.S. Chap 6 sect 103.3 : Statute forbids the Department to license an applicant suspended in any other jurisdiction:

Section 6-103 - Persons to Whom the Department May Not Issue a License - Appeal Rights

3. Any person whose driving privilege has been suspended, revoked, canceled or denied in this state or any other state or country until the driving privilege has been reinstated by the state or country withdrawing the privilege;

Any applicant who is denied a license under the provisions of subsection A of this section shall have the right to an appeal as provided in Section 6-211 of this title

# Drug Court Stays continued.....

## Oklahoma Statutes Citationized

**Title 47. Motor Vehicles Chapter 6 - Driver Licenses Article Article 2 - Cancellation, Suspension, or Revocation of Licenses section 6-212.4 - Revocation, Suspension, Cancellation and/or Denial Periods of Time of Driving Privileges - Waiver -Graduation from Oklahoma Drug Court Program**

**On November 1, 2012 the following will become effective:**

**All revocation, suspension, cancellation and/or denial periods of time of driving privileges as provided in this chapter shall be considered served upon successful graduation from an Oklahoma Drug Court Program created and administered pursuant to the Oklahoma Drug Court Act and the Oklahoma Department of Mental Health and Substance Abuse Services, unless evidence of drug and/or alcohol use occurring post-graduation is acquired by the Department of Public Safety. This waiver of time applies only to Class D driving privileges. Notwithstanding the foregoing, this section does not require the Department of Public Safety to grant driving privileges to an individual not otherwise eligible. Electronic notification of graduation from an Oklahoma Drug Court Program shall be provided to the Department of Public Safety by the court clerk in the county where said program is situated. Such electronic notification shall be consistent with the provisions of Section 18-101 of Title 47 of the Oklahoma Statutes or by any other method approved by the Department of Public Safety.**

**To summarize,**

**A stay order issued on or after November 1, 2011 will cause the periods of suspension or revocation to continue to run,**

**On or after November 1, 2012 when the Office of the Court Clerk notifies the Department of a successful graduate that all previous unexpired periods of suspension or revocation will be considered as SERVED**

**Questions ~ Comments ~ Ideas or suggestions are welcomed**