

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1897

By: Representative Bryant
By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT CONCERNING VENOUS BLOOD DRAWS IN CONNECTION
WITH A CRIMINAL OFFENSE; TO AMEND § 5-65-204; AND FOR
OTHER PURPOSES.

Subtitle

CONCERNING VENOUS BLOOD DRAWS IN
CONNECTION WITH A CRIMINAL OFFENSE; AND
TO AMEND § 5-65-204.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-65-204 is amended to read as follows:
5-65-204. Validity – Approved methods.

(a)(1) As used in this chapter, § 5-10-105, § 5-75-101 et seq., and §
5-76-101 et seq. [repealed], “alcohol concentration” means either:

(A) Grams of alcohol per one hundred milliliters (100 ml)
or one hundred cubic centimeters (100 cc) of blood; or

(B) Grams of alcohol per two hundred ten liters (210 l) of
breath.

(2) The alcohol concentration of urine, saliva, or other bodily
substance is based upon grams of alcohol per one hundred milliliters (100 ml)
or one hundred cubic centimeters (100 cc) of blood, the same being percent
weight per volume or percent alcohol concentration.

(b)(1)(A) A chemical test made to determine the presence and amount of
alcohol in a person’s blood, urine, saliva, or breath to be considered valid
under this chapter shall be performed according to a method approved by the



Department of Health and State Board of Health or by an individual possessing a valid certificate issued by the department for this purpose.

(B) The department may:

(i) Approve satisfactory techniques or methods for the chemical test;

(ii) Ascertain the qualifications and competence of an individual to conduct the chemical test; and

(iii) Issue a certificate that is subject to termination or revocation at the discretion of the department.

(C)(i) An auxiliary law enforcement officer appointed as a reserve law enforcement officer and certified by the department in the operation of an instrument used to determine the alcohol content of the breath may operate an instrument used to determine the alcohol content of the breath under this chapter.

(ii) The department shall promulgate rules to implement subdivision (b)(1)(C)(i) of this section.

(2) However, a method of chemical analysis of a person's blood, urine, saliva, or other bodily substance made by the State Crime Laboratory for determining the presence of one (1) or more controlled substances or any intoxicant is exempt from approval by the department or the board.

~~(c)(1) When a person submits to a blood test at the request of a law enforcement officer under a provision of this section or because a warrant has been issued to take a sample of the person's blood, blood may be drawn by a physician or a person acting under the direction and supervision of a physician~~ Blood may be drawn by a person who is licensed, certified, or otherwise authorized by law to perform venous blood draws when a person consents to the procedure or when a warrant or court order has been issued to take a sample of the person's blood.

(2) When a blood sample is taken at the request of a law enforcement officer based on exigent circumstances, the blood may only be drawn by a physician or a licensed nurse.

~~(2)(3)~~ The limitation in subdivision limitations under subdivisions (c)(1) and (2) of this section does do not apply to the taking of a breath, saliva, or urine specimen.

~~(3)(A) No person, institution, or office in this state that withdraws blood for the purpose of determining alcohol or controlled~~

~~substance content of the blood at the request of a law enforcement officer under a provision of this chapter shall be held liable for violating any criminal law of this state in connection with the withdrawing of the blood.~~

~~(B) No physician, institution, or person acting under the direction or supervision of a physician shall be held liable in tort for the withdrawal of the blood unless the person is negligent in connection with the withdrawal of the blood or the blood is taken over the objections of the subject.~~

(d)(1) The person tested may have a physician or a qualified technician, registered nurse, or other qualified person of his or her own choice administer a complete chemical test in addition to any chemical test administered at the direction of a law enforcement officer.

(2) The law enforcement officer shall advise the person in writing of the right provided in subdivision (d)(1) of this section and that if the person chooses to have an additional chemical test and the person is found not guilty, the arresting law enforcement agency shall reimburse the person for the cost of the additional chemical test.

(3) The refusal or failure of a law enforcement officer to advise a person of the right provided in subdivision (d)(1) of this section and to permit and assist the person to obtain a chemical test under subdivision (d)(1) of this section precludes the admission of evidence relating to a chemical test taken at the direction of a law enforcement officer.

(e) Upon the request of the person who submits to a chemical test at the request of a law enforcement officer or because a warrant has been issued to take a sample of the person's blood, full information concerning the chemical test shall be made available to the person or to his or her attorney.

(f)(1) A person who is licensed, certified, or otherwise authorized by law to perform a venous blood draw and any institution or entity employing or using the services of the person is not liable for violating a criminal law of this state in connection with withdrawing blood at the request of a law enforcement officer under this chapter.

(2) A person who is licensed, certified, or otherwise authorized by law to perform a venous blood draw, and any institution or entity employing or using the services of the person is immune from civil and

regulatory liability in connection with withdrawing blood at the request of a law enforcement officer under this chapter, unless the person is negligent in connection with the withdrawal of the blood.

(3) The immunity granted under this subsection is not conditioned upon the existence of express consent, probable cause, a search warrant, or a court order.