

Cherokee Nation Code Annotated

Title 47: Motor Vehicles

Chapter 67: Chemical Tests

§ 753. Refusal to submit to test

Cite as: 47 CNCA § 753

A. 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 except upon the issuance of a search warrant or 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 as authorized by Section 752 of this title. 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, or 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 provided by 47 O.S. § 6-205.1. If the person is a resident or 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 provided by 47 O.S. § 6-205.1 subject to a review as provided in 47 O.S. § 754. 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 of Public Safety as provided in 47 O.S. § 754.

B. The Department shall immediately reinstate the driving privilege of the person if:

1. The arrested person was required to submit to the testing of his or her blood or breath pursuant to the provisions of a search warrant despite his or her refusal to submit to testing; and
2. The Department receives a written blood or breath test report that reflects the arrested person did not have any measurable quantity of alcohol, or any other intoxicating

substance, or the combination of alcohol and any other intoxicating substance in the blood or breath of the arrested person.

Historical Data

LA 21-21, eff. May 17, 2021.