

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 184

By: Shaw of the Senate

and

Bush of the House

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9
10 COMMITTEE SUBSTITUTE

11 An Act relating to criminal procedure; amending
12 Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp.
13 2018, Section 210), which relates to deoxyribonucleic
14 acid (DNA) testing upon arrest; clarifying purpose
15 for collecting DNA samples; designating persons
16 authorized to collect DNA samples; deleting DNA
17 collection exemption; directing use of certain
18 collection instruments by facilities utilizing Rapid
19 DNA technology; prohibiting facilities utilizing
20 Rapid DNA technology from retaining, testing or
21 storing DNA samples after completion of matching
22 process; making certain acts unlawful; providing
23 penalty; adding exception for DNA sample destruction
24 requirement; amending 74 O.S. 2011, Section 150.27a,
as last amended by Section 3, Chapter 194, O.S.L.
2017 (74 O.S. Supp. 2018, Section 150.27a), which
relates to the OSBI Combined DNA Index System (CODIS)
Database; adding exception for DNA sample destruction
requirement; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY Section 1, Chapter 181, O.S.L.
2 2016 (22 O.S. Supp. 2018, Section 210), is amended to read as
3 follows:

4 Section 210. A. Subject to the availability of funds, a person
5 eighteen (18) years of age or older who is arrested for the
6 commission of a felony under the laws of this state or any other
7 jurisdiction shall, upon being booked into a jail or detention
8 facility, submit to deoxyribonucleic acid (DNA) sample collection
9 for testing for law enforcement identification DNA-identification-
10 matching purposes in accordance with Section 150.27a of Title 74 of
11 the Oklahoma Statutes and the rules promulgated by the Oklahoma
12 State Bureau of Investigation (OSBI) for the OSBI Combined DNA Index
13 System (CODIS) Database. DNA samples shall be collected by ~~the~~
14 arresting authority trained medical personnel, law enforcement,
15 tribal police officers, or employees or medical contractors of those
16 organizations as qualified pursuant to subsection B of this section.
17 ~~Convicted or arrested individuals who have previously submitted to~~
18 ~~DNA testing pursuant to this section or Section 991a of Title 22 of~~
19 ~~the Oklahoma Statutes and for whom a valid sample is on file in the~~
20 ~~OSBI CODIS Database shall not be required to submit to additional~~
21 ~~testing.~~

22 B. Samples of blood or saliva for DNA testing or for DNA-
23 identification-matching purposes required by subsection A of this
24 section shall be taken by ~~peace officers, the county sheriff~~ trained

1 medical personnel, law enforcement, tribal police officers, or
2 employees or medical contractors of ~~the county sheriff's office~~
3 those organizations. The individuals shall be properly trained to
4 collect blood or saliva samples. Persons collecting blood or saliva
5 for DNA testing or for DNA-identification-matching purposes pursuant
6 to this section shall be immune from civil liabilities arising from
7 this activity. All collectors of DNA samples shall ensure the
8 collected samples are mailed or delivered to the OSBI within ten
9 (10) days after the DNA sample is collected from the person. ~~All~~
10 ~~collectors of DNA samples shall use~~ using sample kits provided by
11 the OSBI and procedures promulgated by the OSBI, or if the jail,
12 detention facility, booking facility of a federally recognized
13 American Indian tribe in Oklahoma or other designated facility is
14 using Rapid DNA technology, the collector shall use the provided
15 collection instruments. Once the DNA-identification-matching
16 process has concluded and a sample has been mailed or delivered to
17 the OSBI, the collector shall discard the Rapid DNA sample taken in
18 the jail, detention facility, booking facility of a federally
19 recognized American Indian tribe in Oklahoma or other designated
20 facility.

21 If a jail, detention facility, booking facility of a federally
22 recognized American Indian tribe in Oklahoma or other designated
23 facility is using Rapid DNA technology to take the DNA sample for
24 DNA identification purposes, said sample shall not be retained,

1 tested or stored after completion of the Rapid DNA identification
2 process. Any person charged with the custody and dissemination of
3 DNA samples and profiles shall not divulge or disclose any such
4 information except to federal, state, county or municipal law
5 enforcement or criminal justice agencies, nor shall the person
6 tamper with the samples and profiles taken. Any person violating
7 the provisions of this section shall, upon conviction, be guilty of
8 a misdemeanor punishable by imprisonment in the county jail for not
9 more than one (1) year.

10 C. A DNA sample shall not be analyzed and shall be destroyed
11 unless one of the following conditions has been met:

12 1. The arrest was made upon a valid felony arrest or warrant;

13 2. The person has appeared before a judge or magistrate judge
14 who made a finding that there was probable cause for the arrest; ~~or~~

15 3. The person posted bond or was released prior to appearing
16 before a judge or magistrate judge and then failed to appear for a
17 scheduled hearing; or

18 4. The DNA sample was provided as a condition of a plea
19 agreement.

20 D. All DNA samples, records and identifiable information
21 generated pursuant to the provisions of this section shall be
22 automatically expunged from the OSBI Combined DNA Index System
23 (CODIS) Database under the following circumstances:

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1 1. The felony offense for which the person was arrested does
2 not result in charges either by information or indictment and the
3 statute of limitations has expired;

4 2. The state voluntarily dismissed the felony charge filed
5 against the person; or

6 3. The court dismissed the felony charge filed against the
7 person.

8 The Oklahoma State Bureau of Investigation shall promulgate
9 rules establishing procedures relating to the automatic expungement
10 of DNA samples, records and identifiable information collected under
11 the provisions of this section. Fees related to the expungement of
12 DNA samples, records and identifiable information shall not be
13 assessed for persons who qualify for an automatic expungement under
14 the provisions of this subsection.

15 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, as
16 last amended by Section 3, Chapter 194, O.S.L. 2017 (74 O.S. Supp.
17 2018, Section 150.27a), is amended to read as follows:

18 Section 150.27a A. There is hereby established within the
19 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
20 System (CODIS) Database for the purpose of collecting and storing
21 blood or saliva samples and DNA profiles, analyzing and typing of
22 the genetic markers contained in or derived from DNA, and
23 maintaining the records and samples of DNA of individuals:

24 1. Convicted of any felony offense;

1 2. Required to register pursuant to the Sex Offenders
2 Registration Act;

3 3. Subject to the availability of funds, eighteen (18) years of
4 age or older arrested for the commission of a felony under the laws
5 of this state or any other jurisdiction, upon being booked into a
6 jail or detention facility. Provided, the DNA sample shall not be
7 analyzed and shall be destroyed unless one of the following
8 conditions has been met:

9 a. the arrest was made upon a valid felony arrest or
10 warrant,

11 b. the person has appeared before a judge or magistrate
12 judge who made a finding that there was probable cause
13 for the arrest, ~~or~~

14 c. the person posted bond or was released prior to
15 appearing before a judge or magistrate judge and then
16 failed to appear for a scheduled hearing, or

17 d. the DNA sample was provided as a condition of a plea
18 agreement; and

19 4. Subject to the availability of funds, convicted of a
20 misdemeanor offense of assault and battery, domestic abuse,
21 stalking, possession of a controlled substance prohibited under
22 Schedule IV of the Uniform Controlled Dangerous Substances Act,
23 outraging public decency, resisting arrest, escaping or attempting
24 to escape, eluding a police officer, Peeping Tom, pointing a

1 firearm, threatening an act of violence, breaking and entering a
2 dwelling place, destruction of property, negligent homicide, or
3 causing a personal injury accident while driving under the influence
4 of any intoxicating substance, or, upon arrest, any alien unlawfully
5 present under federal immigration law.

6 The purpose of this database is the detection or exclusion of
7 individuals who are subjects of the investigation or prosecution of
8 sex-related crimes, violent crimes, or other crimes in which
9 biological evidence is recovered, and such information shall be used
10 for no other purpose.

11 B. Any DNA specimen taken in good faith by the Department of
12 Corrections, its employees or contractors, the county sheriff, its
13 employees or contractors or a peace officer, and submitted to the
14 OSBI may be included, maintained, and kept by the OSBI in a database
15 for criminal investigative purposes despite the specimen having not
16 been taken in strict compliance with the provisions of this section
17 or Section 991a of Title 22 of the Oklahoma Statutes.

18 C. Upon the request to OSBI by the federal or state authority
19 having custody of the person, any individual who was convicted of
20 violating laws of another state or the federal government, but is
21 currently incarcerated or residing in Oklahoma, shall submit to DNA
22 profiling for entry of the data into the OSBI DNA Offender Database.
23 This provision shall only apply when such federal or state
24 conviction carries a requirement of sex offender registration or DNA

1 profiling. The person to be profiled shall pay a fee of One Hundred
2 Fifty Dollars (\$150.00) to the OSBI.

3 D. The OSBI CODIS Database is specifically exempt from any
4 statute requiring disclosure of information to the public. The
5 information contained in the database is privileged from discovery
6 and inadmissible as evidence in any civil court proceeding. The
7 information in the database is confidential and shall not be
8 released to the public. Any person charged with the custody and
9 dissemination of information from the database shall not divulge or
10 disclose any such information except to federal, state, county or
11 municipal law enforcement or criminal justice agencies. Any person
12 violating the provisions of this section upon conviction shall be
13 deemed guilty of a misdemeanor punishable by imprisonment in the
14 county jail for not more than one (1) year.

15 E. The OSBI shall promulgate rules concerning the collection,
16 storing, expungement and dissemination of information and samples
17 for the OSBI CODIS Database. The OSBI shall determine the type of
18 equipment, collection procedures, and reporting documentation to be
19 used by the Department of Corrections, a county sheriff's office or
20 a law enforcement agency in submitting DNA samples to the OSBI in
21 accordance with Section 991a of Title 22 of the Oklahoma Statutes.
22 The OSBI shall provide training to designated employees of the
23 Department of Corrections, a county sheriff's office and a law
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1 enforcement agency in the proper methods of performing the duties
2 required by this section.

3 F. The OSBI CODIS Database may include secondary databases and
4 indexes including, but not limited to:

5 1. Forensic index database consisting of unknown evidence
6 samples;

7 2. Suspect index database consisting of samples taken from
8 individuals as a result of criminal investigations;

9 3. Convicted offender index database authorized pursuant to
10 subsection A of this section; and

11 4. Missing persons and unidentified remains index or database
12 consisting of DNA profiles from unidentified remains and relatives
13 of missing persons.

14 G. 1. Any person convicted of a felony offense who is in
15 custody shall provide a blood or saliva sample prior to release.

16 2. Subject to the availability of funds, any person convicted
17 of a misdemeanor offense of assault and battery, domestic abuse,
18 stalking, possession of a controlled substance prohibited under
19 Schedule IV of the Uniform Controlled Dangerous Substances Act,
20 outraging public decency, resisting arrest, escaping or attempting
21 to escape, eluding a police officer, Peeping Tom, pointing a
22 firearm, threatening an act of violence, breaking and entering a
23 dwelling place, destruction of property, negligent homicide, or
24 causing a personal injury incident while driving under the influence

1 of any intoxicating substance who is in custody shall provide a
2 blood or saliva sample prior to release.

3 3. Every person who is convicted of a felony offense whose
4 sentence does not include a term of incarceration shall provide a
5 blood or saliva sample as a condition of sentence.

6 4. Subject to the availability of funds, every person who is
7 convicted of a misdemeanor offense of assault and battery, domestic
8 abuse, stalking, possession of a controlled substance prohibited
9 under Schedule IV of the Uniform Controlled Dangerous Substances
10 Act, outraging public decency, resisting arrest, escape or
11 attempting to escape, eluding a police officer, Peeping Tom,
12 pointing a firearm, threatening an act of violence, breaking and
13 entering a dwelling place, destruction of property, negligent
14 homicide, or causing a personal injury accident while driving under
15 the influence of any intoxicating substance whose sentence does not
16 include a term of incarceration shall provide a blood or saliva
17 sample as a condition of sentence.

18 5. Subject to the availability of funds, any person eighteen
19 (18) years of age or older who is arrested for the commission of a
20 felony under the laws of this state or any other jurisdiction shall,
21 upon being booked into a jail or detention facility, submit to DNA
22 testing for law enforcement identification purposes. Provided, the
23 DNA sample shall not be analyzed and shall be destroyed unless one
24 of the following conditions has been met:

- 1 a. the arrest was made upon a valid felony arrest or
2 warrant,
3 b. the person has appeared before a judge or magistrate
4 judge who made a finding that there was probable cause
5 for the arrest, ~~or~~
6 c. the person posted bond or was released prior to
7 appearing before a judge or magistrate judge and then
8 failed to appear for a scheduled hearing, or
9 d. the DNA sample was provided as a condition of a plea
10 agreement.

11 SECTION 3. This act shall become effective November 1, 2019.

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13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/27/2019 - DO
14 PASS, As Amended.
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