

An Act

ENROLLED SENATE
BILL NO. 184

By: Shaw of the Senate

and

Bush of the House

An Act relating to criminal procedure; amending Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp. 2018, Section 210), which relates to deoxyribonucleic acid (DNA) testing upon arrest; clarifying purpose for collecting DNA samples; designating persons authorized to collect DNA samples; deleting DNA collection exemption; directing use of certain collection instruments by facilities utilizing Rapid DNA technology; prohibiting facilities utilizing Rapid DNA technology from retaining, testing or storing DNA samples after completion of matching process; making certain acts unlawful; providing penalty; adding exception for DNA sample destruction 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.

SUBJECT: Criminal DNA collection and analysis

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

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

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

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

recognized American Indian tribe in Oklahoma or other designated facility.

If a jail, detention facility, booking facility of a federally recognized American Indian tribe in Oklahoma or other designated facility is using Rapid DNA technology to take the DNA sample for DNA identification purposes, said sample shall not be retained, tested or stored after completion of the Rapid DNA identification process. Any person charged with the custody and dissemination of DNA samples and profiles shall not divulge or disclose any such information except to federal, state, county or municipal law enforcement or criminal justice agencies, nor shall the person tamper with the samples and profiles taken. Any person violating the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year.

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

1. The arrest was made upon a valid felony arrest or warrant;
2. The person has appeared before a judge or magistrate judge who made a finding that there was probable cause for the arrest; ~~or~~
3. The person posted bond or was released prior to appearing before a judge or magistrate judge and then failed to appear for a scheduled hearing; or
4. The DNA sample was provided as a condition of a plea agreement.

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

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

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

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

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

SECTION 2. AMENDATORY 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), is amended to read as follows:

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

1. Convicted of any felony offense;

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

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

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

- b. the person has appeared before a judge or magistrate judge who made a finding that there was probable cause for the arrest, ~~or~~
- c. the person posted bond or was released prior to appearing before a judge or magistrate judge and then failed to appear for a scheduled hearing, or
- d. the DNA sample was provided as a condition of a plea agreement; and

4. Subject to the availability of funds, convicted of a misdemeanor offense of assault and battery, domestic abuse, stalking, possession of a controlled substance prohibited under Schedule IV of the Uniform Controlled Dangerous Substances Act, outraging public decency, resisting arrest, escaping or attempting to escape, eluding a police officer, Peeping Tom, pointing a firearm, threatening an act of violence, breaking and entering a dwelling place, destruction of property, negligent homicide, or causing a personal injury accident while driving under the influence of any intoxicating substance, or, upon arrest, any alien unlawfully present under federal immigration law.

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

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

C. Upon the request to OSBI by the federal or state authority having custody of the person, any individual who was convicted of violating laws of another state or the federal government, but is currently incarcerated or residing in Oklahoma, shall submit to DNA profiling for entry of the data into the OSBI DNA Offender Database.

This provision shall only apply when such federal or state conviction carries a requirement of sex offender registration or DNA profiling. The person to be profiled shall pay a fee of One Hundred Fifty Dollars (\$150.00) to the OSBI.

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

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

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

1. Forensic index database consisting of unknown evidence samples;
2. Suspect index database consisting of samples taken from individuals as a result of criminal investigations;
3. Convicted offender index database authorized pursuant to subsection A of this section; and

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

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

2. Subject to the availability of funds, any person convicted of a misdemeanor offense of assault and battery, domestic abuse, stalking, possession of a controlled substance prohibited under Schedule IV of the Uniform Controlled Dangerous Substances Act, outraging public decency, resisting arrest, escaping or attempting to escape, eluding a police officer, Peeping Tom, pointing a firearm, threatening an act of violence, breaking and entering a dwelling place, destruction of property, negligent homicide, or causing a personal injury incident while driving under the influence of any intoxicating substance who is in custody shall provide a blood or saliva sample prior to release.

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

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

5. Subject to the availability of funds, any person eighteen (18) years of age or older who is arrested for the commission of a felony under the laws of this state or any other jurisdiction shall, upon being booked into a jail or detention facility, submit to DNA testing for law enforcement identification purposes. Provided, the

DNA sample shall not be analyzed and shall be destroyed unless one of the following conditions has been met:

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

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

Passed the Senate the 7th day of May, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____