

1 ENGROSSED SENATE  
2 BILL NO. 184

By: Shaw of the Senate

3 and

4 Bush of the House

5  
6 An Act relating to criminal procedure; amending  
7 Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp.  
8 2018, Section 210), which relates to deoxyribonucleic  
9 acid (DNA) testing upon arrest; clarifying purpose  
10 for collecting DNA samples; designating persons  
11 authorized to collect DNA samples; deleting DNA  
12 collection exemption; directing use of certain  
13 collection instruments by facilities utilizing Rapid  
14 DNA technology; prohibiting facilities utilizing  
15 Rapid DNA technology from retaining, testing or  
16 storing DNA samples after completion of matching  
17 process; making certain acts unlawful; providing  
18 penalty; adding exception for DNA sample destruction  
19 requirement; amending 74 O.S. 2011, Section 150.27a,  
20 as last amended by Section 3, Chapter 194, O.S.L.  
21 2017 (74 O.S. Supp. 2018, Section 150.27a), which  
22 relates to the OSBI Combined DNA Index System (CODIS)  
23 Database; adding exception for DNA sample destruction  
24 requirement; and providing an effective date.

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

1 jurisdiction shall, upon being booked into a jail or detention  
2 facility, submit to deoxyribonucleic acid (DNA) sample collection  
3 for testing for law enforcement identification DNA-identification-  
4 matching purposes in accordance with Section 150.27a of Title 74 of  
5 the Oklahoma Statutes and the rules promulgated by the Oklahoma  
6 State Bureau of Investigation (OSBI) for the OSBI Combined DNA Index  
7 System (CODIS) Database. DNA samples shall be collected by ~~the~~  
8 ~~arresting authority~~ trained medical personnel, law enforcement or  
9 employees or medical contractors of these organizations as qualified  
10 pursuant to subsection B of this section. ~~Convicted or arrested~~  
11 ~~individuals who have previously submitted to DNA testing pursuant to~~  
12 ~~this section or Section 991a of Title 22 of the Oklahoma Statutes~~  
13 ~~and for whom a valid sample is on file in the OSBI CODIS Database~~  
14 ~~shall not be required to submit to additional testing.~~

15 B. Samples of blood or saliva for DNA testing or for DNA-  
16 identification-matching purposes required by subsection A of this  
17 section shall be taken by ~~peace officers, the county sheriff~~ trained  
18 medical personnel, law enforcement or employees or medical  
19 ~~contractors of the county sheriff's office~~ these organizations. The  
20 individuals shall be properly trained to collect blood or saliva  
21 samples. Persons collecting blood or saliva for DNA testing or for  
22 DNA-identification-matching purposes pursuant to this section shall  
23 be immune from civil liabilities arising from this activity. All  
24 collectors of DNA samples shall ensure the collected samples are

1 mailed or delivered to the OSBI within ten (10) days after the DNA  
2 sample is collected from the person. ~~All collectors of DNA samples~~  
3 ~~shall use~~ using sample kits provided by the OSBI and procedures  
4 promulgated by the OSBI, or if the jail, detention facility or other  
5 designated facility is using Rapid DNA technology, the collector  
6 shall use the provided collection instruments. Once the DNA-  
7 identification-matching process has concluded and a sample has been  
8 mailed or delivered to the OSBI, the collector shall discard the  
9 Rapid DNA sample taken in the jail, detention facility or other  
10 designated facility.

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

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

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

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

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

7 4. The DNA sample is provided as a condition of a plea  
8 agreement.

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

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

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

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

20 The Oklahoma State Bureau of Investigation shall promulgate  
21 rules establishing procedures relating to the automatic expungement  
22 of DNA samples, records and identifiable information collected under  
23 the provisions of this section. Fees related to the expungement of  
24 DNA samples, records and identifiable information shall not be

1 assessed for persons who qualify for an automatic expungement under  
2 the provisions of this subsection.

3 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, as  
4 last amended by Section 3, Chapter 194, O.S.L. 2017 (74 O.S. Supp.  
5 2018, Section 150.27a), is amended to read as follows:

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

- 12 1. Convicted of any felony offense;
- 13 2. Required to register pursuant to the Sex Offenders  
14 Registration Act;
- 15 3. Subject to the availability of funds, eighteen (18) years of  
16 age or older arrested for the commission of a felony under the laws  
17 of this state or any other jurisdiction, upon being booked into a  
18 jail or detention facility. Provided, the DNA sample shall not be  
19 analyzed and shall be destroyed unless one of the following  
20 conditions has been met:

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

23  
24

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

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

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

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

8 C. Upon the request to OSBI by the federal or state authority  
9 having custody of the person, any individual who was convicted of  
10 violating laws of another state or the federal government, but is  
11 currently incarcerated or residing in Oklahoma, shall submit to DNA  
12 profiling for entry of the data into the OSBI DNA Offender Database.  
13 This provision shall only apply when such federal or state  
14 conviction carries a requirement of sex offender registration or DNA  
15 profiling. The person to be profiled shall pay a fee of One Hundred  
16 Fifty Dollars (\$150.00) to the OSBI.

17 D. The OSBI CODIS Database is specifically exempt from any  
18 statute requiring disclosure of information to the public. The  
19 information contained in the database is privileged from discovery  
20 and inadmissible as evidence in any civil court proceeding. The  
21 information in the database is confidential and shall not be  
22 released to the public. Any person charged with the custody and  
23 dissemination of information from the database shall not divulge or  
24 disclose any such information except to federal, state, county or

1 municipal law enforcement or criminal justice agencies. Any person  
2 violating the provisions of this section upon conviction shall be  
3 deemed guilty of a misdemeanor punishable by imprisonment in the  
4 county jail for not more than one (1) year.

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

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

18 1. Forensic index database consisting of unknown evidence  
19 samples;

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

22 3. Convicted offender index database authorized pursuant to  
23 subsection A of this section; and  
24

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

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

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

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

20           4. Subject to the availability of funds, every person who is  
21 convicted of a misdemeanor offense of assault and battery, domestic  
22 abuse, stalking, possession of a controlled substance prohibited  
23 under Schedule IV of the Uniform Controlled Dangerous Substances  
24 Act, outraging public decency, resisting arrest, escape or

1 attempting to escape, eluding a police officer, Peeping Tom,  
2 pointing a firearm, threatening an act of violence, breaking and  
3 entering a dwelling place, destruction of property, negligent  
4 homicide, or causing a personal injury accident while driving under  
5 the influence of any intoxicating substance whose sentence does not  
6 include a term of incarceration shall provide a blood or saliva  
7 sample as a condition of sentence.

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

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

