

EHB 1426

1 THE STATE SENATE  
2 Tuesday, April 3, 2001

3 ENGROSSED

4 House Bill No. 1426

5 ENGROSSED HOUSE BILL NO. 1426 - By: BRADDOCK and NANCE of the House  
6 and HENRY of the Senate.

7 An Act relating to deoxyribonucleic acid; amending 22 O.S.  
8 1991, Section 751.1, which relates to use of DNA evidence in  
9 criminal proceedings; modifying notice requirements;  
10 requiring attendance of person preparing report under  
11 certain circumstances; amending Section 2, Chapter 40,  
12 O.S.L. 1994, as last amended by Section 10, Chapter 260,  
13 O.S.L. 1997 (74 O.S. Supp. 2000, Section 150.27a), which  
14 relates to DNA database; adding crimes to list for which DNA  
15 samples shall be maintained; and providing an effective  
16 date.

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

18 SECTION 1. AMENDATORY 22 O.S. 1991, Section 751.1, is  
19 amended to read as follows:

20 Section 751.1 A. As used in this act:

21 1. "Deoxyribonucleic Acid (DNA)" means the molecules in all  
22 cellular forms that contain genetic information in a patterned  
23 chemical structure of each individual; and

24 2. "DNA Profile" means an analysis of DNA resulting in the  
25 identification of an individual's patterned chemical structure of  
26 genetic information.

27 B. 1. At any hearing prior to trial or at a forfeiture  
28 hearing, a report of the findings of a laboratory report from a

1 forensic laboratory operated by the State of Oklahoma or any  
2 political subdivision thereof regarding DNA Profile, which has been  
3 made available to the accused by the office of the district attorney  
4 at least five (5) days prior to the hearing, when certified as  
5 correct by the persons making the report, shall be received as  
6 evidence of the facts and findings stated, if relevant and otherwise  
7 admissible in evidence. If a report is deemed relevant by the state  
8 or the accused, the court shall admit the report without the  
9 testimony of the person making the report, unless the court,  
10 pursuant to this section, orders the person making the report to  
11 appear. If the accused is not served with a report, by the district  
12 attorney, at least five (5) days prior to a hearing, the accused may  
13 be allowed a continuance of the portion of the hearing to which the  
14 report is relevant, to allow at least five (5) days' preparation  
15 subsequent to the furnishing of the report by the district attorney.

16 2. The court, upon motion of the state or accused, shall order  
17 the attendance of any person preparing such a report submitted as  
18 evidence in any hearing prior to trial or forfeiture hearing, when  
19 it appears there is a substantial likelihood that material evidence  
20 not contained in the report may be produced by the testimony of the  
21 person having prepared the report. The motion shall be filed and  
22 notice given of the hearing on the motion to order the attendance of  
23 the person having prepared the report. A hearing shall be held and,

1 if the motion is sustained, an order issued giving not less than  
2 five (5) days' prior notice to the time when the testimony shall be  
3 required. If, within five (5) days prior to the hearing or during a  
4 hearing, a motion is made pursuant to this subsection requiring a  
5 person having prepared a report to testify, the court may hear the  
6 report or other evidence but shall continue the hearing until such  
7 time notice of the motion and hearing is given to the person having  
8 prepared the report, the motion is heard, and, if sustained,  
9 testimony ordered can be given.

10 C. If the state decides to offer evidence of a DNA profile in  
11 any ~~criminal proceeding~~ trial on the merits, the state shall:

12 1. At least fifteen (15) days before the criminal proceeding,  
13 notify in writing the defendant or the defendant's attorney and  
14 mail, deliver, or make available to the defendant or the defendant's  
15 attorney a copy of any report or statement to be introduced; and

16 2. Upon written demand of the defendant filed at least five (5)  
17 days before the ~~criminal proceeding~~ trial on the merits, require the  
18 presence of any person in the chain of custody as a prosecution  
19 witness. Provided, however, failure to make such demand shall not  
20 waive any rights of the defendant nor relieve the prosecution of the  
21 burden of proof.

1 SECTION 2. AMENDATORY Section 2, Chapter 40, O.S.L.  
2 1994, as last amended by Section 10, Chapter 260, O.S.L. 1997 (74  
3 O.S. Supp. 2000, Section 150.27a), is amended to read as follows:  
4 Section 150.27a A. There is hereby established within the  
5 Oklahoma State Bureau of Investigation the OSBI DNA Offender  
6 Database for the purpose of collecting and storing blood samples,  
7 analyzing and typing of the genetic markers contained in or derived  
8 from DNA, and maintaining the records and samples of DNA of  
9 individuals convicted of violation of Section 7115 of Title 10 of  
10 the Oklahoma Statutes or Section 645, subsection B of Section 649,  
11 650, 650.2, 650.4, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7,  
12 701.8, 711, 716, 741, 759, 798, 799, 800, 801, 832, 885, 888, 891,  
13 1114, 1115, 1116, subsection B of Section 1021, 1021.2, 1021.3,  
14 1087, 1088, 1123, 1173, 1192 or 1192.1 of Title 21 of the Oklahoma  
15 Statutes and of individuals required to register pursuant to the Sex  
16 Offenders Registration Act. The purpose of this database is the  
17 detection or exclusion of individuals who are subjects of the  
18 investigation or prosecution of sex-related crimes, violent crimes,  
19 or other crimes in which biological evidence is recovered, and such  
20 information shall be used for no other purpose.

21 B. Upon the request to OSBI by the federal or state authority  
22 having custody of the person, any individual who was convicted of  
23 violating laws of another state or the federal government, but is

1 currently incarcerated or residing in Oklahoma, shall submit to DNA  
2 profiling for entry of the data into the OSBI DNA Offender Database.  
3 This provision shall only apply when such federal or state  
4 conviction carries a requirement of sex offender registration and/or  
5 DNA profiling. The person to be profiled shall pay a fee of One  
6 Hundred Fifty Dollars (\$150.00) to the OSBI.

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

19 D. The OSBI shall promulgate rules concerning the collection,  
20 storing, expungement and dissemination of information and samples  
21 for the OSBI DNA Offender Database. The OSBI shall determine the  
22 type of equipment, collection procedures, and reporting  
23 documentation to be used by the Department of Corrections in

1 submitting DNA samples to the OSBI in accordance with Section 991a  
2 of Title 22 of the Oklahoma Statutes. The OSBI shall provide  
3 training to designated employees of the Department of Corrections in  
4 the proper methods of performing the duties required by this  
5 section.

6 SECTION 3. This act shall become effective November 1, 2001.

7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-28-01 - DO  
8 PASS.