

ENROLLED HOUSE
BILL NO. 1318

By: Ingmire, Nance and
Wesselhoft of the House

and

Bass of the Senate

An Act relating to fingerprints; amending 51 O.S. 2001, Section 24A.5, which relates to inspection, copying, and mechanical reproduction of records; modifying certain exception for criminal history records of Oklahoma State Bureau of Investigation; amending 74 O.S. 2001, Section 150.8a, as amended by Section 1, Chapter 140, O.S.L. 2004 (74 O.S. Supp. 2004, Section 150.8a), which relates to employee recognition program for Oklahoma State Bureau of Investigation; authorizing additional expenditure of funds for certain purpose; amending 74 O.S. 2001, Section 150.12, as last amended by Section 2, Chapter 556, O.S.L. 2004 (74 O.S. Supp. 2004, Section 150.12), which relates to mandatory reporting of fingerprint and criminal history information; providing for the electronic transmittal of fingerprint images; amending 74 O.S. 2001, Section 500.2, as amended by Section 11, Chapter 130, O.S.L. 2004 (74 O.S. Supp. 2004, Section 500.2), which relates to reimbursable expenses of state officials; authorizing the Director of the Oklahoma State Bureau of Investigation to enter into contracts and agreements for certain expenses; providing certain expense limitation; and providing an effective date.

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

SECTION 1. AMENDATORY 51 O.S. 2001, Section 24A.5, is amended to read as follows:

Section 24A.5 All records of public bodies and public officials shall be open to any person for inspection, copying, and/or mechanical reproduction during regular business hours; provided:

1. The Oklahoma Open Records Act, Section 24A.1 et seq. of this title, does not apply to records specifically required by law to be kept confidential including:

- a. records protected by a state evidentiary privilege such as the attorney-client privilege, the work product immunity from discovery and the identity of informer privileges, or

- b. records of what transpired during meetings of a public body lawfully closed to the public such as executive sessions authorized under the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes, or
- c. personal information within driver records as defined by the Driver's Privacy Protection Act, 18 United States Code, Sections 2721 through 2725, or
- d. information in the files of the Board of Medicolegal Investigations obtained pursuant to Sections 940 and 941 of Title 63 of the Oklahoma Statutes that may be hearsay, preliminary unsubstantiated investigation-related findings, or confidential medical information.

2. Any reasonably segregable portion of a record containing exempt material shall be provided after deletion of the exempt portions, provided however, the Oklahoma Department of Public Safety shall not be required to assemble for the requesting person specific information requested from the Oklahoma Department of Public Safety's Driver License file relating to persons whose names and dates of birth or whose driver license numbers are not furnished by the requesting person. The Oklahoma State Bureau of Investigation shall not be required to assemble for the requesting person any criminal history records relating to persons whose names, ~~and~~ and other identifying information required by the Oklahoma State Bureau of Investigation pursuant to administrative rule are not furnished by the requesting person.

3. Any request for a record which contains individual records of persons and the cost of copying, reproducing or certifying such individual record which is otherwise prescribed by state law, the cost may be assessed for each individual record, or portion thereof requested as prescribed by state law. Otherwise, a public body may charge a fee only for recovery of the reasonable, direct costs of document copying, or mechanical reproduction. Notwithstanding any state or local provision to the contrary, in no instance shall said document copying fee exceed twenty-five cents (\$0.25) per page for documents having the dimensions of eight and one-half (8 1/2) by fourteen (14) inches or smaller, or a maximum of One Dollar (\$1.00) per copied page for a certified copy. However, if the request:

- a. is solely for commercial purpose, or
- b. would clearly cause excessive disruption of the public body's essential functions,

then the public body may charge a reasonable fee to recover the direct cost of document search; however, publication in a newspaper or broadcast by news media for news purposes shall not constitute a resale or use of data for trade or commercial purpose and charges for providing copies of electronic data to the news media for a news purpose shall not exceed the direct cost of making the copy.

Any public body establishing fees under this act shall post a written schedule of said fees at its principal office and with the county clerk.

In no case shall a search fee be charged when the release of said documents is in the public interest, including, but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.

The fees shall not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information.

4. The land description tract index of all recorded instruments concerning real property required to be kept by the county clerk of any county shall be available for inspection or copying in accordance with the provisions of the Oklahoma Open Records Act; provided, however, such index shall not be copied and/or mechanically reproduced for the purpose of sale of such information.

5. A public body must provide prompt, reasonable access to its records but may establish reasonable procedures which protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

6. A public body shall designate certain persons who are authorized to release records of the public body for inspection, copying, or mechanical reproduction. At least one such person shall be available at all times to release records during the regular business hours of the public body.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 150.8a, as amended by Section 1, Chapter 140, O.S.L. 2004 (74 O.S. Supp. 2004, Section 150.8a), is amended to read as follows:

Section 150.8a A. The Oklahoma State Bureau of Investigation is authorized to establish an employee performance recognition program that encourages outstanding job performance and productivity within the Bureau. The Bureau is authorized to expend funds for:

1. The purchase of recognition awards to be presented to members of work units or individual employees having exceptional job performance records or other significant contributions to the operation of the Bureau;

2. The purchase of recognition awards to be presented to nonemployees of the Bureau in recognition of exemplary service or assistance to the Bureau and law enforcement; and

3. A formal ceremony or banquet where the awards may be presented.

B. Recognition awards may consist of distinctive wearing apparel, service pins, plaques, writing pens, or other distinguished awards of a value not exceeding One Hundred Fifty Dollars (\$150.00) per award to recognize the achievement of the work unit or individual employee. In addition to recognition awards, the Bureau may establish an employee benefit program not exceeding Five Thousand Dollars (\$5,000.00) each fiscal year for cash awards to recognize outstanding performance in the workplace by Bureau employees.

C. The Bureau may expend funds not exceeding Three Thousand Dollars (\$3,000.00) each fiscal year for the purpose of distributing commemorative items including, but not limited to, pens, patches, and notebook portfolios bearing the seal or other identification of the Bureau to nonemployees of the Bureau. The Bureau may expend additional funds to provide awards and commemorative items including, but not limited to, pens, patches and notebook portfolios bearing the seal or other identification of the Bureau to participants in OSBI Citizen Academies designed and held to foster better public relations and to educate members of the community about the Bureau's mission and operations.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 150.12, as last amended by Section 2, Chapter 556, O.S.L. 2004 (74 O.S. Supp. 2004, Section 150.12), is amended to read as follows:

Section 150.12 A. 1. It is hereby the duty of any sheriff, chief of police, city marshal, constable and any other law enforcement officer who takes custody of a person who has been arrested and who, in the best judgment of the arresting officer, is believed to have committed any offense, except an offense exempted by the rules promulgated by the Oklahoma State Bureau of Investigation pursuant to the provisions of Section 150.1 et seq. of this title, to take or cause to be taken the fingerprint impressions of such person or persons and to forward such fingerprint impressions together with identification information to the Oklahoma State Bureau of Investigation, at its Oklahoma City office. In the case of any sheriff, chief of police, city marshal, constable, or any other law enforcement officer equipped with a live-scan device designed for the electronic capture and transmission of fingerprint images approved by the Oklahoma State Bureau of Investigation, fingerprint images may instead be taken and transmitted to the Bureau electronically. If the sheriff, chief of police, city marshal, or constable has contracted for the custody of prisoners, such contractor shall be required to take the fingerprint impressions of such person.

2. It shall not be the responsibility of, nor shall the sheriff, chief of police, city marshal, constable, other law enforcement officer, or contractor receiving custody of an arrested person as a prisoner require the arresting officer to take the fingerprint impressions of the arrested person; provided, if the arresting officer is employed by the same law enforcement agency as the sheriff, chief of police, city marshal, or constable receiving custody of such person, the arresting officer may be required to take such impressions.

3. The law enforcement officers shall also forward the prosecution filing report and the disposition report forms to the appropriate prosecuting authority within seventy-two (72) hours. If fingerprint impressions have not been taken at the time of an arrest, the court shall order the fingerprints to be taken by the sheriff at the arraignment, first appearance, or at the time of final adjudication of a defendant whose court attendance has been secured by a summons or citation for any offense, except an offense exempted by the rules promulgated by the Bureau. If a person is in the custody of a law enforcement or correctional agency and a warrant issues or an information is filed alleging the person to have committed an offense other than the offense for which the person is in custody, the custodial law enforcement or correctional

agency shall take the fingerprints of such person in connection with the new offense, provided the offense is not exempted by the rules of the Bureau. Any fingerprint impressions and identification information required by this subsection shall be sent to the Bureau within seventy-two (72) hours after taking such fingerprints.

B. In order to maintain a complete criminal history record, the court shall inquire at the time of sentencing whether or not the person has been fingerprinted for the offense upon which the sentence is based and, if not, shall order the fingerprints be taken immediately of such person and those fingerprints shall be sent by the law enforcement agency taking the fingerprint impressions to the Bureau within seventy-two (72) hours after taking the fingerprint impressions.

C. In addition to any other fingerprints which may have been taken of a person in a criminal matter, the Department of Corrections shall take the fingerprints of all prisoners received at the Lexington Reception and Assessment Center or otherwise received into the custody of the Department and shall send copies of such fingerprints together with identification information to the Bureau within seventy-two (72) hours of taking such fingerprints.

D. The Bureau shall, upon receipt of fingerprint impressions and identification information for offenses not exempt by rule of the Bureau, send one copy of the fingerprint impressions to the Federal Bureau of Investigation, at its Washington, D.C., office, and the other copy shall be filed in the Oklahoma State Bureau of Investigation's office. The rules promulgated by the Bureau pursuant to the provision of this act exempting certain offenses from mandatory reporting shall be based upon recommended Federal Bureau of Investigation standards for reporting criminal history information and are not intended to include violators of city or town ordinances and great care shall be exercised to exclude the reporting of criminal history information for such offenses, except when recommended by the Federal Bureau of Investigation standards.

E. The reporting to the Oklahoma State Bureau of Investigation of criminal history information on each person subject to the mandatory reporting requirements of Section 150.1 et seq. of this title shall be mandatory for all law enforcement agencies, courts, judicial officials, district attorneys and correctional administrators participating in criminal matters, whether reported directly or indirectly, manually or by automated system as may be provided by the rules promulgated by the Bureau.

F. Except for offenses exempted by the rules promulgated by the Bureau, the following events shall be reported to the Bureau within seventy-two (72) hours and the Bureau shall have seventy-two (72) hours after receipt of the report to enter such information into a criminal record data base:

1. An arrest;
2. The release of a person after arrest without the filing of any charge; and
3. A decision of a prosecutor not to commence criminal proceedings or to defer or postpone prosecution.

G. Except for offenses exempted by the rules promulgated by the Bureau, the following events shall be reported to the Bureau within thirty (30) days and the Bureau shall have thirty (30) days after receipt of the report to enter such information into a criminal record data base:

1. A decision by a prosecutor to modify or amend initial charges upon which the arrest was made, including deletions or additions of charges or counts;

2. The presentment of an indictment or the filing of a criminal information or other statement of charges;

3. The dismissal of an indictment or criminal information or any charge specified in such indictment or criminal information;

4. An acquittal, conviction or other court disposition at trial or before, during or following trial, including dispositions resulting from pleas or other agreements;

5. The imposition of a sentence;

6. The commitment to or release from the custody of the Department of Corrections or incarceration in any jail or other correctional facility;

7. The escape from custody of any correctional facility, jail or authority;

8. The commitment to or release from probation or parole;

9. An order of any appellate court;

10. A pardon, reprieve, commutation of sentence or other change in sentence, including a change ordered by the court;

11. A revocation of probation or parole or other change in probation or parole status; and

12. Any other event arising out of or occurring during the course of criminal proceedings or terms of the sentence deemed necessary as provided by the rules established by the Bureau.

The Bureau shall have authority to withhold any entry on a criminal history record when there is reason to believe the entry is based on error or an unlawful order. The Bureau shall in such case take immediate action to clarify or correct the entry.

H. Information reportable under the provisions of this section shall be reportable by the law enforcement officer or person directly responsible for the action, event or decision, unless otherwise provided by rule or agreement. The form and content of information to be reported and methods for reporting information, including fingerprint impressions and other identification information, shall be established by the rules promulgated by the Bureau. The Bureau is hereby directed to establish rules to implement the provisions of Section 150.1 et seq. of this title, provided any rule relating to reporting by courts or judicial officials shall be issued jointly by the Bureau and the Oklahoma Supreme Court.

I. Any person or agency subject to the mandatory reporting of criminal history information or fingerprints as required by the provisions of this act shall take appropriate steps to ensure that appropriate agency officials and employees understand such requirements. Each agency shall establish, and in appropriate cases impose, administrative sanctions for failure of an official or employee to report as provided by law. Refusal or persistent failure of a person or agency to comply with the mandatory reporting requirements of this act may result in the discontinued access to Bureau information or assistance until such agency complies with the law.

SECTION 4. AMENDATORY 74 O.S. 2001, Section 500.2, as amended by Section 11, Chapter 130, O.S.L. 2004 (74 O.S. Supp. 2004, Section 500.2), is amended to read as follows:

Section 500.2 A. Officials and employees of the state, traveling on authorized state business, may be reimbursed for expenses incurred in such travel in accordance with the provisions of the State Travel Reimbursement Act and existing statutes relating to state travel. Persons who are not state employees, but who are performing substantial and necessary services to the state which have been directed or approved by the appropriate department official shall enjoy the protection of the sovereign immunity of the state to the same extent as a paid employee. Such persons may be reimbursed for expenses incurred during authorized official travel under these same statutory provisions, provided it is indicated on the claim the person is not a state employee, a description of services performed is entered, and the agency head by his approval of the claim certifies such services were substantial and necessary, and germane to the duties and functions of the reimbursing agency. Travel expenses incurred by a person during the course of seeking employment with a state agency, unless such travel is performed at the request of the employing agency, shall not be considered expenses incurred in performing substantial and necessary services to the state and shall not be reimbursed under the provisions of the State Travel Reimbursement Act.

B. The chief administrative officer of the Department of Public Safety, the Oklahoma State Bureau of Investigation, the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control, the ~~Oklahoma~~ Military Department of the State of Oklahoma, the Department of Corrections, the Department of Central Services, the Alcoholic Beverage Laws Enforcement Commission, the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry, the Department of Civil Emergency Management, and the State Fire Marshal may arrange for and charge meals and lodging for a contingent of state personnel moved into an area for the purpose of preserving the public health, safety, or welfare or for the protection of life or property. The cost for meals or lodging so charged shall not exceed the amount authorized in the State Travel Reimbursement Act. The chief administrative officer of each agency involved in such an operation shall require the vendor furnishing meals, lodging, or both meals and lodging to submit an itemized statement for payment. When a claim for lodging is made for a contingent of state personnel, individual members of the contingent may not submit a claim for lodging. When a claim for meals is made for a contingent of state personnel, individual members of the contingent may not submit a claim for meals.

C. The Oklahoma Department of Commerce, the Oklahoma Center for the Advancement of Science and Technology, and the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry are hereby authorized to enter into contracts and agreements for the payment of food, lodging, meeting facility and beverage expenses as may be necessary for sponsoring seminars and receptions relating to economic development and science and technology issues. Such expenses may be paid directly to the contracting agency or business establishment. The Director of the Oklahoma Department of Commerce, the President of the Oklahoma Center for the Advancement of Science and Technology, and the Commissioner of Agriculture shall each provide a quarterly report of such expenditures to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

D. The Native American Cultural and Educational Authority is hereby authorized to enter into contracts and agreements for the payment of food, lodging, and meeting facility as may be necessary to pursue the promotion of fund-raising, marketing, and development of Native American educational programs and cultural projects, or to sponsor luncheons, seminars, and receptions relating to Native American educational, cultural, museum, and economic development issues. Such expenses may be paid directly to the contracting agency or business establishment. The Executive Director shall provide a monthly report of expenditures to the Board.

E. For purposes of this section:

1. "State agency" means any constitutionally or statutorily created state board, commission, or department, including the Legislature and the Courts;

2. State agencies are authorized to enter into contracts and agreements for the payment of food and lodging expenses as may be necessary for employees or other persons who are performing substantial and necessary services to the state by attending official conferences, meetings, seminars, workshops, or training sessions or in the performance of their duties. Such expenses may be paid directly to the contracting agency or business establishment, provided the meeting qualifies for overnight travel for the employees and the cost for food and lodging for each employee shall not exceed the total daily rate as provided in the State Travel Reimbursement Act, ~~Section 500.1 et seq. of this title;~~ and

3. State agencies are authorized to enter into contracts and agreements for the payment of conference registration expenses as may be necessary for employees or other persons who are performing substantial and necessary services to the state by attending official conferences, meetings, seminars, workshops, or training sessions. Such expenses may be paid directly to the contracting agency or business establishment.

F. State agencies are authorized to make direct purchases of commercial airline tickets for use by employees in approved out-of-state travel. Each claim or invoice submitted to the Director of State Finance for the payment of the purchase shall bear the airline identifying ticket number, the name of the airline, total cost of each ticket purchased, class of accommodation, social security number, and name of the employee for whom the ticket was purchased,

and shall be filed on claim forms as prescribed by the Director of State Finance. The employee shall sign an affidavit stating that the employee did use any direct purchase commercial airline ticket received for his or her approved out-of-state travel.

G. 1. The Administrator of the Office of Personnel Management is hereby authorized to enter into contracts and agreements for the payment of food, lodging, and other authorized expenses as may be necessary to host, conduct, sponsor, or participate in conferences, meetings, or training sessions. The Administrator may establish accounts as necessary for the collection and distribution of funds, including funds of sponsors and registration fees, related to such conferences, meetings, and training sessions. Expenses incurred may be paid directly to the contracting agency or business establishment.

2. The cost of food for persons attending any conferences, meetings, and training sessions that do not require overnight travel shall not exceed the total daily rate as provided in the State Travel Reimbursement Act.

H. 1. The Commissioner of the Department of Mental Health and Substance Abuse Services is hereby authorized to enter into contracts and agreements for the payment of food, lodging, and other authorized expenses as may be necessary to host, conduct, sponsor, or participate in conferences, meetings, or training sessions. The Commissioner may establish accounts as necessary for the collection and distribution of funds, including funds of sponsors and registration fees, related to such conferences, meetings, and training sessions. Any expenses incurred may be paid directly to the contracting agency or business establishment.

2. The cost of food for persons attending any conferences, meetings, and training sessions that do not require overnight travel shall not exceed the total daily rate as provided in the State Travel Reimbursement Act.

I. The Oklahoma Indigent Defense System is hereby authorized to enter into contracts and agreements for the payment of lodging as necessary for employees to carry out their duties in representing any client whom the System has been properly appointed to represent. Such expenses may be paid directly to the contracting agency or business establishment. The cost for lodging for each employee shall not exceed the daily rate as provided in the State Travel Reimbursement Act.

J. The Oklahoma Tourism and Recreation Department is hereby authorized to enter into contracts and agreements for the payment of food, lodging, and meeting facility and beverage expenses as may be necessary for seminars and receptions relating to familiarization tours and tourism development. The expenses may be paid directly to the contracting agency or business establishment. The Executive Director of Oklahoma Tourism and Recreation Department shall provide a monthly report of any such expenditures to the Oklahoma Tourism and Recreation Commission.

K. The Oklahoma Tourism and Recreation Department is hereby authorized to enter into contracts and agreements for the payment of exhibitor fees and display space charges at expositions to promote the Department's recreational facilities and the tourism and

recreation industry. The expenses may be paid directly to the contracting agency or business establishment; provided that no payment shall be made prior to the event unless it conveys a property right to the state for future availability and use.

L. 1. The Oklahoma Highway Safety Office of the Department of Public Safety is hereby authorized to enter into contracts and agreements for the payment of food, lodging, and other authorized expenses as may be necessary, to host, conduct, sponsor, or participate in highway-safety-related conferences, workshops, seminars, meetings, or training sessions. The payments shall be for all persons in attendance, including, but not limited to, employees of political subdivisions or employees of the state or federal government. For purposes specified in this paragraph, only federal highway safety funds may be used in accordance with federal guidelines and regulations, and no appropriated state funds shall be used.

2. The cost of food for persons attending any highway safety conferences, workshops, seminars, meetings, and training sessions that do not require overnight travel shall not exceed the total daily rate as provided in the State Travel Reimbursement Act.

M. 1. The Director of the Oklahoma State Bureau of Investigation is hereby authorized to enter into contracts and agreements for the payment of food, lodging and other authorized expenses as may be necessary to host, conduct, sponsor or participate in any conference, meeting, training session or initiative to promote the mission and purposes of the Bureau. The payments may be for all persons in attendance, including, but not limited to, employees of political subdivisions or employees of the state or federal government.

2. The cost of food for persons that do not require overnight travel shall not exceed the total daily rate as provided in the State Travel Reimbursement Act.

SECTION 5. This act shall become effective November 1, 2005.

Passed the House of Representatives the 19th day of May, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the 20th day of May, 2005.

Presiding Officer of the Senate