

EHB 1318

THE STATE SENATE
Monday, April 4, 2005

ENGROSSED

House Bill No. 1318

As Amended

ENGROSSED HOUSE BILL NO. 1318 - By: INGMIRE and NANCE of the House and BASS of the Senate.

[fingerprints - records - criminal history - Oklahoma State Bureau of Investigation - mandatory reporting - electronic transmittal - 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

1 sessions authorized under the Oklahoma Open Meeting
2 Act, Section 301 et seq. of Title 25 of the Oklahoma
3 Statutes, or
4 c. personal information within driver records as defined
5 by the Driver's Privacy Protection Act, 18 United
6 States Code, Sections 2721 through 2725, or
7 d. information in the files of the Board of Medicolegal
8 Investigations obtained pursuant to Sections 940 and
9 941 of Title 63 of the Oklahoma Statutes that may be
10 hearsay, preliminary unsubstantiated investigation-
11 related findings, or confidential medical information.

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

1 State Bureau of Investigation pursuant to administrative rule are
2 not furnished by the requesting person.

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

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

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

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

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

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

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

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

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

6 **SECTION 2. AMENDATORY 51 O.S. 2001, Section 24A.8, is**
7 **amended to read as follows:**

8 Section 24A.8 A. Law enforcement agencies shall make available
9 for public inspection, if kept, the following records:

10 1. An arrestee description, including the name, date of birth,
11 address, race, sex, physical description, and occupation of the
12 arrestee;

13 2. Facts concerning the arrest, including the cause of arrest
14 and the name of the arresting officer;

15 3. Conviction information, including the name of any person
16 convicted of a criminal offense;

17 4. Disposition of all warrants, including orders signed by a
18 judge of any court commanding a law enforcement officer to arrest a
19 particular person;

20 5. A chronological list of incidents, including initial offense
21 report information showing the offense, date, time, general
22 location, officer and a brief summary of what occurred;

1 6. A crime summary, including a departmental summary of crimes
2 reported and public calls for service by classification or nature
3 and number;

4 7. Radio logs, including a chronological listing of the calls
5 dispatched; and

6 8. Jail registers, including jail blotter data or jail booking
7 information recorded on persons at the time of incarceration showing
8 the name of each prisoner with the date and cause of his commitment,
9 the authority committing the prisoner, whether committed for a
10 criminal offense, a description of the prisoner, and the date or
11 manner of his discharge or escape.

12 B. Except for the records listed in subsection A of this
13 section and those made open by other state or local laws, law
14 enforcement agencies may deny access to law enforcement records
15 except where a court finds that the public interest or the interest
16 of an individual outweighs the reason for denial. It shall be a
17 rebuttable presumption that the public interest or the interest of
18 an individual outweighs the reason for denial after ten (10) years
19 since the last records were entered in a case.

20 C. Nothing contained in this section imposes any new
21 recordkeeping requirements. Law enforcement records shall be kept
22 for as long as is now or may hereafter be specified by law. Absent
23 a legal requirement for the keeping of a law enforcement record for

1 a specific time period, law enforcement agencies shall maintain
2 their records for so long as needed for administrative purposes.

3 D. Registration files maintained by the Department of
4 Corrections pursuant to the provisions of the Sex Offenders
5 Registration Act shall be made available for public inspection in a
6 manner to be determined by the Department.

7 E. The Council on Law Enforcement Education and Training
8 (C.L.E.E.T.) shall keep confidential all records it maintains
9 pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and
10 deny release of records relating to any employed or certified full-
11 time officer, reserve officer, retired officer or other person;
12 teacher lesson plans, tests and other teaching materials; and
13 personal communications concerning individual students except under
14 the following circumstances:

15 1. To verify the current certification status of any peace
16 officer;

17 2. As may be required to perform the duties imposed by Section
18 3311 of Title 70 of the Oklahoma Statutes;

19 3. To provide to any peace officer copies of the records of
20 that peace officer upon submitting a written request;

21 4. To provide final orders of administrative proceedings where
22 an adverse action was taken against a peace officer; and

1 5. Pursuant to an order of the district court of the State of
2 Oklahoma.

3 **SECTION 3.** AMENDATORY 74 O.S. 2001, Section 150.12, as
4 last amended by Section 2, Chapter 556, O.S.L. 2004 (74 O.S. Supp.
5 2004, Section 150.12), is amended to read as follows:

6 Section 150.12 A. 1. It is hereby the duty of any sheriff,
7 chief of police, city marshal, constable and any other law
8 enforcement officer who takes custody of a person who has been
9 arrested and who, in the best judgment of the arresting officer, is
10 believed to have committed any offense, except an offense exempted
11 by the rules promulgated by the Oklahoma State Bureau of
12 Investigation pursuant to the provisions of Section 150.1 et seq. of
13 this title, to take or cause to be taken the fingerprint impressions
14 of such person or persons and to forward such fingerprint
15 impressions together with identification information to the Oklahoma
16 State Bureau of Investigation, at its Oklahoma City office. In the
17 case of any sheriff, chief of police, city marshal, constable, or
18 any other law enforcement officer equipped with a livescan device
19 designed for the electronic capture and transmission of fingerprint
20 images approved by the Oklahoma State Bureau of Investigation,
21 fingerprint images may instead be taken and transmitted to the
22 Bureau electronically. If the sheriff, chief of police, city
23 marshal, or constable has contracted for the custody of prisoners,

1 such contractor shall be required to take the fingerprint
2 impressions of such person.

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

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

1 person is in custody, the custodial law enforcement or correctional
2 agency shall take the fingerprints of such person in connection with
3 the new offense, provided the offense is not exempted by the rules
4 of the Bureau. Any fingerprint impressions and identification
5 information required by this subsection shall be sent to the Bureau
6 within seventy-two (72) hours after taking such fingerprints.

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

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

22 D. The Bureau shall, upon receipt of fingerprint impressions
23 and identification information for offenses not exempt by rule of

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

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

20 F. Except for offenses exempted by the rules promulgated by the
21 Bureau, the following events shall be reported to the Bureau within
22 seventy-two (72) hours and the Bureau shall have seventy-two (72)

1 hours after receipt of the report to enter such information into a
2 criminal record data base:

3 1. An arrest;

4 2. The release of a person after arrest without the filing of
5 any charge; and

6 3. A decision of a prosecutor not to commence criminal
7 proceedings or to defer or postpone prosecution.

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

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

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

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

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

23 5. The imposition of a sentence;

- 1 6. The commitment to or release from the custody of the
2 Department of Corrections or incarceration in any jail or other
3 correctional facility;
- 4 7. The escape from custody of any correctional facility, jail
5 or authority;
- 6 8. The commitment to or release from probation or parole;
- 7 9. An order of any appellate court;
- 8 10. A pardon, reprieve, commutation of sentence or other change
9 in sentence, including a change ordered by the court;
- 10 11. A revocation of probation or parole or other change in
11 probation or parole status; and
- 12 12. Any other event arising out of or occurring during the
13 course of criminal proceedings or terms of the sentence deemed
14 necessary as provided by the rules established by the Bureau.

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

19 H. Information reportable under the provisions of this section
20 shall be reportable by the law enforcement officer or person
21 directly responsible for the action, event or decision, unless
22 otherwise provided by rule or agreement. The form and content of
23 information to be reported and methods for reporting information,

1 including fingerprint impressions and other identification
2 information, shall be established by the rules promulgated by the
3 Bureau. The Bureau is hereby directed to establish rules to
4 implement the provisions of Section 150.1 et seq. of this title,
5 provided any rule relating to reporting by courts or judicial
6 officials shall be issued jointly by the Bureau and the Oklahoma
7 Supreme Court.

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

19 **SECTION 4.** This act shall become effective November 1, 2005.

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-29-05 - DO
21 PASS, As Amended.