

THE HOUSE OF REPRESENTATIVES
Monday, April 14, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 2041

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2041 - By:
NICHOLS AND COFFEE of the Senate and TERRILL, DERBY AND ROAN of the
House.

An Act relating to criminal procedure; requiring certain persons submit to deoxyribonucleic acid (DNA) testing; stating persons responsible for collecting samples; requiring collectors of DNA samples be properly trained; providing immunity from civil liability; requiring collectors to mail DNA sample to the Oklahoma State Bureau of Investigation within certain time period; requiring collectors to use certain sample kits; amending 74 O.S. 2001, Section 150.27a, as last amended by Section 5, Chapter 441, O.S.L. 2005 (74 O.S. Supp. 2007, Section 150.27a), which relates to the Oklahoma State Bureau of Investigation DNA Offender Database; modifying scope of DNA database collection requirements; deleting certain DNA specimen submission and maintenance provision; requiring DNA samples be taken by certain persons; providing immunity from civil liability; directing agencies to mail DNA samples within certain number of days; directing use of certain kits and procedures; providing enumerated list of persons required to submit a DNA sample; clarifying DNA collection guidelines; requiring payment of DNA testing fee; deleting certain DNA collection guidelines; allowing inclusion of DNA specimens under certain circumstances; providing for codification; and declaring an emergency.

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

- 1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
- 2 Statutes as Section 241 of Title 22, unless there is created a duplication in numbering,
- 3 reads as follows:

1 A. Subject to the availability of funds, any person who is arrested for a felony but is
2 found guilty of a misdemeanor offense within this state shall submit to deoxyribonucleic
3 acid (DNA) testing for law enforcement identification purposes in accordance with
4 Section 150.27a of Title 74 of the Oklahoma Statutes and the rules promulgated by the
5 Oklahoma State Bureau of Investigation for the OSBI Combined DNA Index System
6 (CODIS) Database.

7 B. Samples of blood or saliva for DNA testing required by subsection A of this
8 section shall be taken by employees or contractors of federal, state, county or municipal
9 law enforcement or criminal justice agencies. The individuals shall be properly trained
10 to collect blood or saliva samples. The person or persons collecting blood or saliva for
11 DNA testing pursuant to this section shall be immune from civil liabilities arising from
12 this activity. All collectors of DNA samples shall ensure the collection of samples is
13 mailed to the Oklahoma State Bureau of Investigation within ten (10) days from the date
14 the sample is taken from the person. All collectors of DNA samples shall use sample kits
15 provided by the OSBI and procedures promulgated by the OSBI.

16 SECTION 2. AMENDATORY 74 O.S. 2001, Section 150.27a, as last amended
17 by Section 5, Chapter 441, O.S.L. 2005 (74 O.S. Supp. 2007, Section 150.27a), is amended
18 to read as follows:

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

1 the records and samples of DNA of all individuals convicted of any felony offense, and of
2 individuals required to register pursuant to the Sex Offenders Registration Act
3 mentioned in this section. The purpose of this database is ~~the detection or exclusion to~~
4 maintain a DNA record of individuals ~~who are subjects of the investigation or~~
5 ~~prosecution of sex-related crimes, violent crimes, or other~~ listed in this section, to provide
6 investigative leads to law enforcement officials regarding potential DNA matches to
7 crimes or to identify human remains in which biological evidence is recovered, and such
8 information shall be used for no other purpose.

9 B. ~~Any DNA specimen taken in good faith by the Department of Corrections, its~~
10 ~~employees or contractors, and submitted to the OSBI may be included, maintained, and~~
11 ~~kept by the OSBI in a database for criminal investigative purposes despite the specimen~~
12 ~~having not been taken in strict compliance with the provisions of this section or Section~~
13 ~~991a of Title 22 of the Oklahoma Statutes.~~

14 C. ~~Upon the request to OSBI by the federal or state authority having custody of the~~
15 DNA samples shall be taken by employees or contractors of federal, state, county or
16 municipal law enforcement or criminal justice agencies. Persons collecting blood or
17 saliva for DNA testing pursuant to this section shall be immune from civil liabilities
18 arising from this activity. The collecting agency shall ensure the DNA samples are
19 mailed to the Oklahoma State Bureau of Investigation within ten (10) days of the time
20 the sample is collected. The collecting agency shall use sample kits provided by the OSBI
21 and pursuant to procedures promulgated by the OSBI.

1 1. Subject to the availability of funds, any person who is arrested for a felony but is
2 found guilty of a misdemeanor offense shall provide a DNA sample for law enforcement
3 investigative purposes.

4 2. Any person convicted of a felony offense after January 1, 2006, whose sentence
5 includes a term of incarceration shall provide a DNA sample upon entering the detention
6 facility.

7 3. Any person convicted of a felony offense after January 1, 2006, whose sentence
8 does not include a term of incarceration shall provide a DNA sample within thirty (30)
9 days of sentencing to the Department of Corrections, the sheriff of the county in which
10 the person was sentenced, or other peace officer as directed by the court.

11 4. Any person convicted of a felony offense who is incarcerated in the custody of the
12 Department of Corrections after July 1, 1996, shall provide a DNA sample prior to
13 release.

14 5. Any person required to register pursuant to the Sex Offenders Registration Act
15 shall provide a DNA sample to the sheriff of the county in which the person was
16 sentenced or other peace officer as directed by the court.

17 6. Any person, ~~any individual~~ who was convicted of violating laws of another state
18 or the federal government, but is currently incarcerated or residing in Oklahoma, shall
19 submit to provide a DNA profiling for entry of the data into the OSBI DNA Offender
20 Database sample to the law enforcement agency having custody of that person. This
21 provision shall only apply when such federal or state conviction carries a requirement of

1 sex offender registration and/or DNA profiling. ~~The person to be profiled shall pay a fee~~
2 ~~of One Hundred Fifty Dollars (\$150.00) to the OSBI.~~

3 C. The OSBI shall promulgate rules concerning the collection, storing,
4 expungement and dissemination of information and samples for the OSBI Combined
5 DNA Index System (CODIS) Database. The OSBI shall determine the type of
6 equipment, collection procedures, and reporting documentation to be used by federal,
7 state, county or municipal law enforcement or criminal justice agencies in submitting
8 DNA samples to the OSBI. The OSBI shall provide training to designated employees of
9 these agencies in the proper methods of performing the duties required by this section.

10 D. Persons subject to DNA testing shall pay a fee of One Hundred Fifty Dollars
11 (\$150.00) to the OSBI for submission to the OSBI Combined DNA Index System (CODIS)
12 in accordance with Section 1313.2 of Title 20 of the Oklahoma Statutes.

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

1 E. ~~The OSBI shall promulgate rules concerning the collection, storing,~~
2 ~~expungement and dissemination of information and samples for the OSBI Combined~~
3 ~~DNA Index System (CODIS) Database. The OSBI shall determine the type of~~
4 ~~equipment, collection procedures, and reporting documentation to be used by the~~
5 ~~Department of Corrections or a county sheriff's office in submitting DNA samples to the~~
6 ~~OSBI in accordance with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI~~
7 ~~shall provide training to designated employees of the Department of Corrections and a~~
8 ~~county sheriff's office in the proper methods of performing the duties required by this~~
9 ~~section.~~

10 F. The OSBI Combined DNA Index System (CODIS) Database may include
11 secondary databases and indexes including, but not limited to:

- 12 1. Forensic index database consisting of DNA profiles from unknown evidence
13 samples;
- 14 2. Suspect index database consisting of DNA profiles from samples taken from
15 individuals as a result of criminal investigations;
- 16 3. ~~Convicted offender~~ Offender index database consisting of DNA profiles from
17 samples authorized pursuant to ~~subsection A~~ of this section; and
- 18 4. Missing persons and unidentified remains index or database consisting of DNA
19 profiles from unidentified remains and relatives of missing persons.

20 G. ~~Any person convicted of an offense provided in this section who is in custody~~
21 ~~after July 1, 1996, shall provide a blood or saliva sample prior to release. Every person~~
22 ~~who is convicted of an offense provided in this section whose sentence does not include a~~

1 ~~term of incarceration shall provide a blood or saliva sample as a condition of sentence~~
2 DNA specimen taken in good faith by federal, state, county or municipal law enforcement
3 or criminal justice personnel and submitted to the OSBI may be included, maintained,
4 and kept by the OSBI in a database for criminal investigative purposes despite the
5 specimen having not been taken in strict compliance with the provisions of this section.

6 SECTION 3. It being immediately necessary for the preservation of the public
7 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
8 this act shall take effect and be in full force from and after its passage and approval.

9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND PUBLIC SAFETY,
10 dated 04-10-08 - DO PASS, As Amended and Coauthored.