

1 ENGROSSED HOUSE
2 BILL NO. 2941

By: Nelson and Roan of the
House

3 and

4 Jolley of the Senate
5
6

7 An Act relating to state government; amending 74 O.S.
8 2001, Section 150.27a, as last amended by Section 3,
9 Chapter 218, O.S.L. 2009 (74 O.S. Supp. 2009, Section
10 150.27a), which relates to the Combined DNA Index
11 System Database; adding definitions; modifying
12 purpose of the Combined DNA Index System; clarifying
13 collection requirements; making software and database
14 structures confidential and exempt from disclosure;
15 clarifying requirements for the disclosure,
16 dissemination or use of DNA information; modifying
17 and adding penalties; providing instances in which
18 disclosure of DNA information shall be permissible;
19 prohibiting electronic connection of CODIS to certain
20 system; prohibiting the invalidation of arrests,
21 pleas or convictions for noncompliance; and providing
22 an effective date.

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

24 SECTION 1. AMENDATORY 74 O.S. 2001, Section 150.27a, as
last amended by Section 3, Chapter 218, O.S.L. 2009 (74 O.S. Supp.
2009, Section 150.27a), is amended to read as follows:

Section 150.27a A. As used in this section:

1. "Biological sample" means biological material collected from
an individual or from evidence collected at a crime scene which
undergoes DNA analysis;

1 2. "Candidate match" means when any two DNA profiles contained
2 in CODIS share the specified number of loci. A candidate match is
3 not admissible in court;

4 3. "CODIS" means the Combined DNA Index System which is a
5 combination of the National DNA Index System (NDIS) and the State
6 DNA Index System (SDIS). The systems are operated using CODIS
7 software. The CODIS software is used to generate investigative
8 leads;

9 4. "CODIS record" means the information entered into CODIS by
10 the OSBI. A CODIS record contains the DNA profile and the specimen
11 identification number. The CODIS record does not contain any name,
12 address, date of birth, race, any personal identification
13 information, or any number or numbers other than the specimen
14 identification number and numbers corresponding to loci included in
15 a DNA profile;

16 5. "Database" refers to the CODIS, NDIS, SDIS and the LIMS
17 separately or collectively and includes all related data, samples,
18 specimens, records and software;

19 6. "DNA" means deoxyribonucleic acid;

20 7. "DNA laboratory" means the CODIS Unit of the OSBI Forensic
21 Science Center;

22 8. "DNA profile" means a pattern obtained by a scientific
23 process on a biological sample that reflects the unique DNA sequence
24 in a living organism or an evidentiary sample;

1 9. "Legally obtained known reference sample" means a biological
2 sample whose identity or type is established. A legally obtained
3 known reference sample is admissible in court;

4 10. "LIMS" means the Laboratory Information Management System
5 maintained by the OSBI;

6 11. "LIMS record" means the information submitted with a
7 biological sample to the DNA laboratory which is stored in the LIMS.
8 A LIMS record contains the specimen ID number and the personal
9 identification information. A LIMS record does not contain any DNA
10 profiles;

11 12. "Locus" means the position that a given gene occupies on a
12 chromosome or a site on the DNA that is analyzed for forensic
13 identification;

14 13. "Loci" is the plural of locus;

15 14. "NDIS" means the National DNA Index System, which is a
16 component of the CODIS, and is maintained by the Federal Bureau of
17 Investigation;

18 15. "Offender" means a person who has been convicted of a crime
19 which is specified in subsection I of Section 991a of Title 22 of
20 the Oklahoma Statutes or subsection C of this section and who is
21 required by law to submit a biological sample for DNA analysis and
22 inclusion in the database;

23 16. "OSBI" means the Oklahoma State Bureau of Investigation;
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1 17. "SDIS" means the State DNA Index System, which is a
2 component of the CODIS, and is maintained by the OSBI;

3 18. "Secure area" means a locked space including, but not
4 limited to, a cabinet, vault or room with access restricted to
5 authorized personnel of the OSBI; and

6 19. "Specimen ID number" means the number which is used to
7 identify a biological sample received by the DNA laboratory. The
8 specimen ID number shall be generated by the OSBI.

9 B. There is hereby established within the Oklahoma State Bureau
10 of Investigation the OSBI Combined DNA Index System (CODIS) Database
11 for the purpose of collecting and storing blood or saliva samples
12 and DNA profiles, generating investigative leads in crimes where
13 biological evidence is recovered from the crime scene and for the
14 identification of missing persons in which biological evidence is
15 recovered. CODIS uses specialized computer software to maintain and
16 electronically compare DNA profiles contained in CODIS records in
17 order to link crime scenes to each other and to offenders or to
18 identify missing persons. CODIS records and the DNA profiles they
19 contain are created by OSBI by analyzing and typing of the genetic
20 markers contained in or derived from DNA, and found in biological
21 samples submitted by law enforcement agencies. The OSBI is
22 responsible for maintaining the CODIS records and biological samples
23 of DNA of in a secure area.

1 C. Biological samples are required by law to be collected from
2 individuals convicted of any felony offense, of individuals required
3 to register pursuant to the Sex Offenders Registration Act, and
4 subject to the availability of funds, of individuals convicted of a
5 misdemeanor offense of assault and battery, domestic abuse,
6 stalking, possession of a controlled substance prohibited under
7 Schedule IV of the Uniform Controlled Dangerous Substances Act,
8 outraging public decency, resisting arrest, escape or attempting to
9 escape, eluding a police officer, peeping tom, pointing a firearm,
10 unlawful carry of a firearm, illegal transport of a firearm,
11 discharging of a firearm, threatening an act of violence, breaking
12 and entering a dwelling place, destruction of property, negligent
13 homicide, or causing a personal injury accident while driving under
14 the influence of any intoxicating substance, or, upon arrest, any
15 alien unlawfully present under federal immigration law. ~~The purpose~~
16 ~~of this database is the detection or exclusion of individuals who~~
17 ~~are subjects of the investigation or prosecution of sex-related~~
18 ~~crimes, violent crimes, or other crimes in which biological evidence~~
19 ~~is recovered, and such information shall be used for no other~~
20 ~~purpose~~ Biological samples collected pursuant to this section shall
21 be submitted by the agency collecting the sample to the DNA
22 laboratory according to rules promulgated by the OSBI.

23 ~~B. D.~~ Any DNA specimen biological sample taken in good faith
24 pursuant to this section by ~~the Department of Corrections, its~~

1 ~~employees or contractors, or the county sheriff, its employees or~~
2 ~~contractors,~~ any law enforcement or criminal justice agency and
3 submitted to the OSBI may be ~~included,~~ analyzed and maintained, ~~and~~
4 ~~kept~~ by the OSBI in a the database ~~for criminal investigative~~
5 ~~purposes~~ despite the specimen having not been taken in strict
6 compliance with the provisions of this section or Section 991a of
7 Title 22 of the Oklahoma Statutes.

8 C. E. Upon the request to OSBI by the federal or state
9 authority having custody of the person, any individual who was
10 convicted of violating laws of another state or the federal
11 government, but is currently incarcerated or residing in Oklahoma,
12 shall submit ~~to DNA profiling~~ a biological sample for entry of the
13 data into the ~~OSBI DNA Offender Database~~ database. This provision
14 shall only apply when such federal or state conviction carries a
15 requirement of sex offender registration and/or DNA profiling. The
16 person to be profiled shall pay a fee of One Hundred Fifty Dollars
17 (\$150.00) to the OSBI.

18 D. F. The ~~OSBI Combined DNA Index System (CODIS) Database~~
19 database is specifically exempt from any statute requiring
20 disclosure of information to the public. The information contained
21 in the database is privileged from discovery and inadmissible as
22 evidence in any civil court proceeding. The information in the
23 database is confidential and shall not be released to the public.
24 In order to maintain the computer system security of the database,

1 the computer software and database structures used by the DNA
2 laboratory to implement this section are confidential and
3 specifically exempt from any statute requiring disclosure of
4 information to the public.

5 G. Nothing in this section shall preclude law enforcement
6 personnel from including in the criminal history file of a person or
7 offender that is maintained by a federal, state, county or municipal
8 law enforcement or criminal justice agency, the fact that the DNA
9 samples required by this section have or have not been collected
10 from that person.

11 H. Any person charged with the custody and dissemination of
12 information from the database shall not ~~divulge or disclose,~~
13 disseminate, or use any such information except to federal, state,
14 county or municipal law enforcement or criminal justice agencies as
15 provided for in this section.

16 1. Any person violating the provisions of this section shall,
17 upon conviction shall, be deemed guilty of a misdemeanor punishable
18 by imprisonment in the county jail for not more than one (1) year
19 and a fine of not more than Five Thousand Dollars (\$5,000.00).

20 ~~E.~~ 2. Any person who knowingly discloses, disseminates or uses
21 a biological sample, OSBI Combined DNA Index System (CODIS) or DNA
22 profile of an offender collected pursuant to this section for any
23 purpose prohibited by this section or not provided for in this
24 section, or who knowingly discloses a biological sample, OSBI

1 Combined DNA Index System (CODIS) or DNA profile developed pursuant
2 to this section to an unauthorized individual or agency, for any
3 purpose prohibited by this section or not provided for in this
4 section shall, upon conviction, be deemed guilty of a misdemeanor
5 punishable by imprisonment in the county jail for not less than six
6 (6) months nor more than one (1) year, and a fine of not less than
7 Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred
8 Thousand Dollars (\$100,000.00).

9 3. Any person who, for the purpose of financial gain, knowingly
10 discloses, disseminates or uses a biological sample, database record
11 or DNA profile of an offender collected pursuant to this section for
12 any purpose prohibited by this section or not provided for in this
13 section, or who knowingly discloses a biological sample, database
14 record or DNA profile developed pursuant to this section to an
15 unauthorized individual or agency, for any purpose prohibited by
16 this section or not provided for in this section shall, in addition
17 to the penalty provided for in paragraph 2 of this subsection, be
18 punished by a fine in an amount three times that of any financial
19 gain received or One Hundred Thousand Dollars (\$100,000.00),
20 whichever is greater.

21 4. Each sample, record or profile disclosed, disseminated or
22 used in violation of this section shall constitute a separate
23 offense.

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1 5. The OSBI employee who discloses information in violation of
2 this section shall be absolutely immune from civil liability under
3 this or any other law.

4 I. 1. It is not a violation of this section for a law
5 enforcement agency in its discretion to publicly disclose the fact
6 of a candidate match, or the name of the person identified by the
7 candidate match when the match is the basis of the investigation,
8 arrest, or prosecution of a particular person, or the identification
9 of a missing person.

10 2. It is not a violation of this section to furnish the
11 biological samples, CODIS record or LIMS record of the offender to
12 the legal counsel of the offender for criminal defense purposes in
13 compliance with discovery requirements.

14 3. It is not a violation of this section for law enforcement to
15 release the biological samples, CODIS record or LIMS record
16 developed pursuant to this section to a jury or grand jury, in a
17 document filed with a court, or as part of a judicial proceeding.

18 Furthermore, it is not a violation of this section for a CODIS
19 record or LIMS record to become part of the public transcript or
20 record of proceedings when disclosure is necessary because the
21 information pertains to the basis of an investigation, arrest,
22 prosecution, or exclusion of a particular person related to a case.

23 4. It is not a violation of this section to include a CODIS
24 record or LIMS record obtained from the file of an offender in a

1 transcript or record of a judicial proceeding, or in any other
2 public record when the inclusion of the information in the public
3 record is authorized by a court or provision of the Oklahoma
4 Statutes.

5 5. It is not a violation of this section for the DNA
6 laboratory, an organization retained as an agent of the OSBI, or a
7 local public laboratory to use anonymous biological samples, CODIS
8 records or LIMS records or anonymous criminal history information
9 obtained pursuant to this section for forensic training or research,
10 statistical analysis of populations, for quality assurance or
11 quality control purposes.

12 J. The OSBI shall promulgate rules concerning the collection,
13 storing, expungement and dissemination of ~~information~~ database
14 ~~records~~ and biological samples ~~for the OSBI Combined DNA Index~~
15 ~~System (CODIS) Database~~ pursuant to this section. The OSBI shall
16 determine the type of equipment, collection procedures, and
17 reporting documentation to be used by ~~the Department of Corrections~~
18 ~~or a county sheriff's office~~ in law enforcement or criminal justice
19 agencies submitting ~~DNA~~ biological samples to the OSBI in accordance
20 with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI
21 shall provide training to designated employees of ~~the Department of~~
22 ~~Corrections and a county sheriff's office~~ law enforcement or
23 criminal justice agencies in the proper methods of performing the
24 duties required by this section.

1 ~~F. K.~~ The ~~OSBI Combined DNA Index System (CODIS) Database~~
2 database may include secondary databases and indexes including, but
3 not limited to:

4 1. Forensic index database consisting of unknown evidence
5 samples;

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

8 3. Convicted offender index database authorized pursuant to
9 subsection ~~A~~ C of this section; and

10 4. Missing persons and unidentified remains index or database
11 consisting of DNA profiles from unidentified remains and relatives
12 of missing persons.

13 ~~G. L.~~ Any person convicted of a felony offense who is in
14 custody shall provide a ~~blood or saliva~~ biological sample prior to
15 release. Subject to the availability of funds, any person convicted
16 of a misdemeanor offense of assault and battery, domestic abuse,
17 stalking, possession of a controlled substance prohibited under
18 Schedule IV of the Uniform Controlled Dangerous Substances Act,
19 outraging public decency, resisting arrest, escape or attempting to
20 escape, eluding a police officer, peeping tom, pointing a firearm,
21 unlawful carry of a firearm, illegal transport of a firearm,
22 discharging of a firearm, threatening an act of violence, breaking
23 and entering a dwelling place, destruction of property, negligent
24 homicide, or causing a personal injury incident while driving under

1 the influence of any intoxicating substance who is in custody shall
2 provide a ~~blood or saliva~~ biological sample prior to release. Every
3 person who is convicted of a felony offense whose sentence does not
4 include a term of incarceration shall provide a ~~blood or saliva~~
5 biological sample as a condition of sentence. Subject to the
6 availability of funds, every person who is convicted of a
7 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, escape or attempting to
11 escape, eluding a police officer, peeping tom, pointing a firearm,
12 unlawful carry of a firearm, illegal transport of a firearm,
13 discharging of a firearm, threatening an act of violence, breaking
14 and entering a dwelling place, destruction of property, negligent
15 homicide, or causing a personal injury accident while driving under
16 the influence of any intoxicating substance whose sentence does not
17 include a term of incarceration shall provide a ~~blood or saliva~~
18 biological sample as a condition of sentence.

19 M. The CODIS shall not be connected electronically or otherwise
20 linked to the LIMS and access to the systems shall be restricted to
21 a secure area.

22 N. The failure of the OSBI or other law enforcement or criminal
23 justice agency to comply with any provision of this section shall
24 not invalidate an arrest, plea, conviction, or disposition.

