

THE HOUSE OF REPRESENTATIVES
Wednesday, February, 24, 2010

House Bill No. 2941

HOUSE BILL NO. 2941 - By: NELSON of the House.

An Act relating to state government; amending 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), which relates to the Combined DNA Index System Database; adding definitions; modifying purpose of the Combined DNA Index System; clarifying collection requirements; making software and database structures confidential and exempt from disclosure; clarifying requirements for the disclosure, dissemination or use of DNA information; modifying and adding penalties; providing instances in which disclosure of DNA information shall be permissible; prohibiting electronic connection of CODIS to certain system; prohibiting the invalidation of arrests, pleas or convictions for noncompliance; and providing an effective date.

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

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

4 Section 150.27a A. As used in this section:

- 5 1. “Biological sample” means biological material collected from an individual or
6 from evidence collected at a crime scene which undergoes DNA analysis;
7 2. “Candidate match” means when any two DNA profiles contained in CODIS share
8 the specified number of loci. A candidate match is not admissible in court;

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

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

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

12 6. "DNA" means deoxyribonucleic acid;

13 7. "DNA laboratory" means the DNA unit of the Central Laboratory of the OSBI;

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

17 9. "Legally obtained known reference sample" means a biological sample whose
18 identity or type is established. A legally obtained known reference sample is admissible
19 in court;

20 10. "LIMS" means the Laboratory Information Management System maintained by
21 the OSBI;

1 11. “LIMS record” means the information submitted with a biological sample to the
2 DNA laboratory which is stored in the LIMS. A LIMS record contains the specimen ID
3 number and the personal identification information. A LIMS record does not contain any
4 DNA profiles;

5 12. “Locus” means the position that a given gene occupies on a chromosome;

6 13. “Loci” is the plural of locus;

7 14. “NDIS” means the National DNA Index System, which is a component of the
8 CODIS, and is maintained by the Federal Bureau of Investigation;

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

13 16. "OSBI" means the Oklahoma State Bureau of Investigation;

14 17. “SDIS” means the State DNA Index System, which is a component of the
15 CODIS, and is maintained by the OSBI;

16 18. “Secure area” means a locked space including, but not limited to, a cabinet,
17 vault or room with access restricted to authorized personnel of the OSBI; and

18 19. “Specimen ID number” means the number which is used to identify a biological
19 sample received by the DNA laboratory. The specimen ID number shall be generated by
20 the OSBI.

21 B. There is hereby established within the Oklahoma State Bureau of Investigation
22 the OSBI Combined DNA Index System (CODIS) Database for the purpose of collecting

1 ~~and storing blood or saliva samples and DNA profiles, generating investigative leads in~~
2 crimes where biological evidence is recovered from the crime scene and for the
3 identification of missing persons in which biological evidence is recovered. CODIS uses
4 specialized computer software to maintain and electronically compare DNA profiles
5 contained in CODIS records in order to link crime scenes to each other and to offenders
6 or to identify missing persons. CODIS records and the DNA profiles they contain are
7 created by OSBI by analyzing and typing of the genetic markers contained in or derived
8 from DNA, and found in biological samples submitted by law enforcement agencies. The
9 OSBI is responsible for maintaining the CODIS records and biological samples of DNA of
10 in a secure area.

11 C. Biological samples are required by law to be collected from individuals convicted
12 of any felony offense, of individuals required to register pursuant to the Sex Offenders
13 Registration Act, and subject to the availability of funds, of individuals convicted of a
14 misdemeanor offense of assault and battery, domestic abuse, stalking, possession of a
15 controlled substance prohibited under Schedule IV of the Uniform Controlled Dangerous
16 Substances Act, outraging public decency, resisting arrest, escape or attempting to
17 escape, eluding a police officer, peeping tom, pointing a firearm, unlawful carry of a
18 firearm, illegal transport of a firearm, discharging of a firearm, threatening an act of
19 violence, breaking and entering a dwelling place, destruction of property, negligent
20 homicide, or causing a personal injury accident while driving under the influence of any
21 intoxicating substance, or, upon arrest, any alien unlawfully present under federal
22 immigration law. ~~The purpose of this database is the detection or exclusion of~~

1 ~~individuals who are subjects of the investigation or prosecution of sex-related crimes,~~
2 ~~violent crimes, or other crimes in which biological evidence is recovered, and such~~
3 ~~information shall be used for no other purpose~~ Biological samples collected pursuant to
4 this section shall be submitted by the agency collecting the sample to the DNA laboratory
5 according to rules promulgated by the OSBI.

6 ~~B. D. Any DNA specimen~~ biological sample taken in good faith pursuant to this
7 section by the ~~Department of Corrections, its employees or contractors, or the county~~
8 ~~sheriff, its employees or contractors,~~ any law enforcement or criminal justice agency and
9 submitted to the OSBI may be ~~included,~~ analyzed and maintained, ~~and kept~~ by the OSBI
10 in a the database ~~for criminal investigative purposes~~ despite the specimen having not
11 been taken in strict compliance with the provisions of this section or Section 991a of Title
12 22 of the Oklahoma Statutes.

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

20 ~~D. F. The OSBI Combined DNA Index System (CODIS) Database~~ database is
21 specifically exempt from any statute requiring disclosure of information to the public.
22 The information contained in the database is privileged from discovery and inadmissible

1 as evidence in any civil court proceeding. The information in the database is confidential
2 and shall not be released to the public. In order to maintain the computer system
3 security of the database, the computer software and database structures used by the
4 DNA laboratory to implement this section are confidential and specifically exempt from
5 any statute requiring disclosure of information to the public.

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

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

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

17 ~~E.~~ 2. Any person who knowingly discloses, disseminates or uses a biological sample,
18 database record or DNA profile of an offender collected pursuant to this section for any
19 purpose prohibited by this section or not provided for in this section, or who knowingly
20 discloses a biological sample, database record or DNA profile developed pursuant to this
21 section to an unauthorized individual or agency, for any purpose prohibited by this
22 section or not provided for in this section shall, upon conviction, be deemed guilty of a

1 misdemeanor punishable by imprisonment in the county jail for not less than six (6)
2 months nor more than one (1) year, and a fine of not less than Twenty-five Thousand
3 Dollars (\$25,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00).

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

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

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

17 I. 1. It is not a violation of this section for a law enforcement agency in its
18 discretion to publicly disclose the fact of a candidate match, or the name of the person
19 identified by the candidate match when the match is the basis of the investigation,
20 arrest, or prosecution of a particular person, or the identification of a missing person.

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

4 3. It is not a violation of this section for law enforcement to release the biological
5 samples, CODIS record or LIMS record developed pursuant to this section to a jury or
6 grand jury, in a document filed with a court, or as part of a judicial proceeding.
7 Furthermore, it is not a violation of this section for a CODIS record or LIMS record to
8 become part of the public transcript or record of proceedings when disclosure is necessary
9 because the information pertains to the basis of an investigation, arrest, prosecution, or
10 exclusion of a particular person related to a case.

11 4. It is not a violation of this section to include a CODIS record or LIMS record
12 obtained from the file of an offender in a transcript or record of a judicial proceeding, or
13 in any other public record when the inclusion of the information in the public record is
14 authorized by a court or provision of the Oklahoma Statutes.

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

20 J. The OSBI shall promulgate rules concerning the collection, storing,
21 expungement and dissemination of ~~information~~ database records and biological samples
22 for the OSBI Combined DNA Index System (CODIS) Database pursuant to this section.

1 The OSBI shall determine the type of equipment, collection procedures, and reporting
2 documentation to be used by ~~the Department of Corrections or a county sheriff's office in~~
3 law enforcement or criminal justice agencies submitting ~~DNA biological~~ samples to the
4 OSBI in accordance with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI
5 shall provide training to designated employees of ~~the Department of Corrections and a~~
6 ~~county sheriff's office~~ law enforcement or criminal justice agencies in the proper methods
7 of performing the duties required by this section.

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

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

17 ~~G. L.~~ Any person convicted of a felony offense who is in custody shall provide a
18 ~~blood or saliva~~ biological sample prior to release. Subject to the availability of funds, any
19 person convicted of a misdemeanor offense of assault and battery, domestic abuse,
20 stalking, possession of a controlled substance prohibited under Schedule IV of the
21 Uniform Controlled Dangerous Substances Act, outraging public decency, resisting
22 arrest, escape or attempting to escape, eluding a police officer, peeping tom, pointing a

1 firearm, unlawful carry of a firearm, illegal transport of a firearm, discharging of a
2 firearm, threatening an act of violence, breaking and entering a dwelling place,
3 destruction of property, negligent homicide, or causing a personal injury incident while
4 driving under the influence of any intoxicating substance who is in custody shall provide
5 a ~~blood or saliva~~ biological sample prior to release. Every person who is convicted of a
6 felony offense whose sentence does not include a term of incarceration shall provide a
7 ~~blood or saliva~~ biological sample as a condition of sentence. Subject to the availability of
8 funds, every person who is convicted of a misdemeanor offense of assault and battery,
9 domestic abuse, stalking, possession of a controlled substance prohibited under Schedule
10 IV of the Uniform Controlled Dangerous Substances Act, outraging public decency,
11 resisting arrest, escape or attempting to escape, eluding a police officer, peeping tom,
12 pointing a firearm, unlawful carry of a firearm, illegal transport of a firearm, discharging
13 of a firearm, threatening an act of violence, breaking and entering a dwelling place,
14 destruction of property, negligent homicide, or causing a personal injury accident while
15 driving under the influence of any intoxicating substance whose sentence does not
16 include a term of incarceration shall provide a ~~blood or saliva~~ biological sample as a
17 condition of sentence.

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

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

1 SECTION 2. This act shall become effective November 1, 2010.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET,
3 dated 02-23-10 - DO PASS.