

EHB 2941

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THE STATE SENATE
Monday, April 5, 2010

ENGROSSED

House Bill No. 2941

ENGROSSED HOUSE BILL NO. 2941 - By: Nelson and Roan of the House and Jolley of the Senate.

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:

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;

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

4 9. "Legally obtained known reference sample" means a biological
5 sample whose identity or type is established. A legally obtained
6 known reference sample is admissible in court;

7 10. "LIMS" means the Laboratory Information Management System
8 maintained by the OSBI;

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

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

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

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

21 15. "Offender" means a person who has been convicted of a crime
22 which is specified in subsection I of Section 991a of Title 22 of
23 the Oklahoma Statutes or subsection C of this section and who is

1 required by law to submit a biological sample for DNA analysis and
2 inclusion in the database;

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

4 17. "SDIS" means the State DNA Index System, which is a
5 component of the CODIS, and is maintained by the OSBI;

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

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

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

1 samples submitted by law enforcement agencies. The OSBI is
2 responsible for maintaining the CODIS records and biological samples
3 of DNA of in a secure area.

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

1 be submitted by the agency collecting the sample to the DNA
2 laboratory according to rules promulgated by the OSBI.

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

12 ~~C. E.~~ Upon the request to OSBI by the federal or state
13 authority having custody of the person, any individual who was
14 convicted of violating laws of another state or the federal
15 government, but is currently incarcerated or residing in Oklahoma,
16 shall submit ~~to DNA profiling~~ a biological sample for entry of the
17 data into the ~~OSBI DNA Offender Database~~ database. This provision
18 shall only apply when such federal or state conviction carries a
19 requirement of sex offender registration and/or DNA profiling. The
20 person to be profiled shall pay a fee of One Hundred Fifty Dollars
21 (\$150.00) to the OSBI.

22 ~~D. F.~~ The ~~OSBI Combined DNA Index System (CODIS) Database~~
23 database is specifically exempt from any statute requiring

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

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

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

21 1. Any person violating the provisions of this section shall,
22 upon conviction ~~shall,~~ be deemed guilty of a misdemeanor punishable

1 by imprisonment in the county jail for not more than one (1) year
2 and a fine of not more than Five Thousand Dollars (\$5,000.00).

3 E- 2. Any person who knowingly discloses, disseminates or uses
4 a biological sample, OSBI Combined DNA Index System (CODIS) or DNA
5 profile of an offender collected pursuant to this section for any
6 purpose prohibited by this section or not provided for in this
7 section, or who knowingly discloses a biological sample, OSBI
8 Combined DNA Index System (CODIS) or DNA profile developed pursuant
9 to this section to an unauthorized individual or agency, for any
10 purpose prohibited by this section or not provided for in this
11 section shall, upon conviction, be deemed guilty of a misdemeanor
12 punishable by imprisonment in the county jail for not less than six
13 (6) months nor more than one (1) year, and a fine of not less than
14 Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred
15 Thousand Dollars (\$100,000.00).

16 3. Any person who, for the purpose of financial gain, knowingly
17 discloses, disseminates or uses a biological sample, database record
18 or DNA profile of an offender collected pursuant to this section for
19 any purpose prohibited by this section or not provided for in this
20 section, or who knowingly discloses a biological sample, database
21 record or DNA profile developed pursuant to this section to an
22 unauthorized individual or agency, for any purpose prohibited by
23 this section or not provided for in this section shall, in addition

1 to the penalty provided for in paragraph 2 of this subsection, be
2 punished by a fine in an amount three times that of any financial
3 gain received or One Hundred Thousand Dollars (\$100,000.00),
4 whichever is greater.

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

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

11 I. 1. It is not a violation of this section for a law
12 enforcement agency in its discretion to publicly disclose the fact
13 of a candidate match, or the name of the person identified by the
14 candidate match when the match is the basis of the investigation,
15 arrest, or prosecution of a particular person, or the identification
16 of a missing person.

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

21 3. It is not a violation of this section for law enforcement to
22 release the biological samples, CODIS record or LIMS record
23 developed pursuant to this section to a jury or grand jury, in a

1 document filed with a court, or as part of a judicial proceeding.
2 Furthermore, it is not a violation of this section for a CODIS
3 record or LIMS record to become part of the public transcript or
4 record of proceedings when disclosure is necessary because the
5 information pertains to the basis of an investigation, arrest,
6 prosecution, or exclusion of a particular person related to a case.

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

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

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

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

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

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

22 ~~G. L.~~ L. Any person convicted of a felony offense who is in
23 custody shall provide a ~~blood or saliva~~ biological sample prior to

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

1 and entering a dwelling place, destruction of property, negligent
2 homicide, or causing a personal injury accident while driving under
3 the influence of any intoxicating substance whose sentence does not
4 include a term of incarceration shall provide a ~~blood or saliva~~
5 biological sample as a condition of sentence.

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

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

12 SECTION 2. This act shall become effective November 1, 2010.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-10 - DO
14 PASS.