

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 1074

By: Crain

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5  
6 AS INTRODUCED

7 An Act relating to criminal procedure; requiring  
8 certain persons submit to deoxyribonucleic acid (DNA)  
9 testing; stating persons responsible for collecting  
10 samples; requiring collectors of DNA samples be  
11 properly trained; providing immunity from civil  
12 liability; requiring collectors to mail DNA sample to  
13 the Oklahoma State Bureau of Investigation within  
14 certain time period; requiring collectors to use  
15 certain sample kits; providing list of misdemeanor  
16 crimes; amending 74 O.S. 2001, Section 150.27a, as  
17 last amended by Section 5, Chapter 441, O.S.L. 2005  
18 (74 O.S. Supp. 2008, Section 150.27a), which relates  
19 to the Oklahoma State Bureau of Investigation DNA  
20 Offender Database; modifying scope of DNA database  
21 collection requirements; deleting certain DNA  
22 specimen submission and maintenance provision;  
23 requiring DNA samples be taken by certain persons;  
24 providing list of misdemeanor crimes; 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.

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

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

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

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

23           C. As used in this section, "misdemeanor offense" shall include  
24 the following crimes:

- 1        1.    Outraging public decency as provided in Section 22 of Title  
2 21 of the Oklahoma Statutes;
- 3        2.    Resisting executive officer as provided in Section 268 of  
4 Title 21 of the Oklahoma Statutes;
- 5        3.    Escape or attempting to escape from arrest or detention as  
6 provided in Section 444 of Title 21 of the Oklahoma Statutes;
- 7        4.    Eluding a police officer as provided in Section 540A of  
8 Title 21 of the Oklahoma Statutes;
- 9        5.    Assault and battery as provided in subsection B of Section  
10 644 of Title 21 of the Oklahoma Statutes;
- 11       6.    Domestic abuse as provided in subsection C of Section 644 of  
12 Title 21 of the Oklahoma Statutes;
- 13       7.    Assault and battery upon a police officer as provided in  
14 Section 649 of Title 21 of the Oklahoma Statutes;
- 15       8.    Peeping Tom as provided in subsection A of Section 1171 of  
16 Title 21 of the Oklahoma Statutes;
- 17       9.    Stalking as provided in Section 1173 of Title 21 of the  
18 Oklahoma Statutes;
- 19       10.   Misdemeanor pointing a firearm as provided in Section 1279  
20 of Title 21 of the Oklahoma Statutes;
- 21       11.   Unlawful carrying a concealed weapon as provided in Section  
22 1289.8 of Title 21 of the Oklahoma Statutes;
- 23       12.   Carrying weapons under the influence of alcohol as provided  
24 in Section 1289.9 of Title 21 of the Oklahoma Statutes;

1 13. Transporting a loaded firearm as provided in Section  
2 1289.13 of Title 21 of the Oklahoma Statutes;

3 14. Discharging a firearm as provided in Section 1364 of Title  
4 21 of the Oklahoma Statutes;

5 15. Threatening to perform an act of violence as provided in  
6 subsection B of Section 1378 of Title 21 of the Oklahoma Statutes;

7 16. Breaking and entering as provided in Section 1438 of Title  
8 21 of the Oklahoma Statutes;

9 17. Malicious injury or destruction of property as provided in  
10 Section 1760 of Title 21 of the Oklahoma Statutes;

11 18. Negligent homicide as provided in Section 11-903 of Title  
12 47 of the Oklahoma Statutes;

13 19. Personal injury accident while under the influence of  
14 alcohol or other intoxicating substance as provided in Section 11-  
15 904 of Title 47 of the Oklahoma Statutes; and

16 20. Possession of any Schedule IV substance as provided in the  
17 Uniform Controlled Dangerous Substances Act.

18 SECTION 2. AMENDATORY 74 O.S. 2001, Section 150.27a, as  
19 last amended by Section 5, Chapter 441, O.S.L. 2005 (74 O.S. Supp.  
20 2007, Section 150.27a), is amended to read as follows:

21 Section 150.27a A. There is hereby established within the  
22 Oklahoma State Bureau of Investigation (OSBI) the OSBI Combined DNA  
23 Index System (CODIS) Database for the purpose of collecting and  
24 storing blood or saliva samples and ~~DNA~~ deoxyribonucleic acid (DNA)

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

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

19 C. ~~Upon the request to OSBI by the federal or state authority~~  
20 ~~having custody of the DNA samples shall be taken by employees or~~  
21 contractors of federal, state, county or municipal law enforcement  
22 or criminal justice agencies. Persons collecting blood or saliva  
23 for DNA testing pursuant to this section shall be immune from civil  
24 liabilities arising from this activity. The collecting agency shall

1 ensure the DNA samples are mailed to the Oklahoma State Bureau of  
2 Investigation within ten (10) days of the time the sample is  
3 collected. The collecting agency shall use sample kits provided by  
4 the OSBI and pursuant to procedures promulgated by the OSBI.

5 1. Subject to the availability of funds, any person who is  
6 arrested for a felony but is found guilty of a misdemeanor offense  
7 shall provide a DNA sample for law enforcement investigative  
8 purposes. As used in this paragraph, "misdemeanor offense" shall  
9 include the following crimes:

- 10 a. outraging public decency as provided in Section 22 of  
11 Title 21 of the Oklahoma Statutes,
- 12 b. resisting executive officer as provided in Section 268  
13 of Title 21 of the Oklahoma Statutes,
- 14 c. escape or attempting to escape from arrest or  
15 detention as provided in Section 444 of Title 21 of  
16 the Oklahoma Statutes,
- 17 d. eluding a police officer as provided in Section 540A  
18 of Title 21 of the Oklahoma Statutes,
- 19 e. assault and battery as provided in subsection B of  
20 Section 644 of Title 21 of the Oklahoma Statutes,
- 21 f. domestic abuse as provided in subsection C of Section  
22 644 of Title 21 of the Oklahoma Statutes,
- 23 g. assault and battery upon a police officer as provided  
24 in Section 649 of Title 21 of the Oklahoma Statutes,

- 1        h. Peeping Tom as provided in subsection A of Section  
2                1171 of Title 21 of the Oklahoma Statutes,
- 3        i. stalking as provided in Section 1173 of Title 21 of  
4                the Oklahoma Statutes,
- 5        j. misdemeanor pointing a firearm as provided in Section  
6                1279 of Title 21 of the Oklahoma Statutes,
- 7        k. unlawful carrying a concealed weapon as provided in  
8                Section 1289.8 of Title 21 of the Oklahoma Statutes,
- 9        l. carrying weapons under the influence of alcohol as  
10                provided in Section 1289.9 of Title 21 of the Oklahoma  
11                Statutes,
- 12        m. transporting a loaded firearm as provided in Section  
13                1289.13 of Title 21 of the Oklahoma Statutes,
- 14        n. discharging a firearm as provided in Section 1364 of  
15                Title 21 of the Oklahoma Statutes,
- 16        o. threatening to perform an act of violence as provided  
17                in subsection B of Section 1378 of Title 21 of the  
18                Oklahoma Statutes,
- 19        p. breaking and entering as provided in Section 1438 of  
20                Title 21 of the Oklahoma Statutes,
- 21        q. malicious injury or destruction of property as  
22                provided in Section 1760 of Title 21 of the Oklahoma  
23                Statutes,
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1        r. negligent homicide as provided in Section 11-903 of  
2        Title 47 of the Oklahoma Statutes,

3        s. personal injury accident while under the influence of  
4        alcohol or other intoxicating substance as provided in  
5        Section 11-904 of Title 47 of the Oklahoma Statutes,  
6        and

7        t. possession of any Schedule IV substance as provided in  
8        the Uniform Controlled Dangerous Substances Act;

9        2. Any person convicted of a felony offense after January 1,  
10       2006, whose sentence includes a term of incarceration shall provide  
11       a DNA sample upon entering the detention facility;

12       3. Any person convicted of a felony offense after January 1,  
13       2006, whose sentence does not include a term of incarceration shall  
14       provide a DNA sample within thirty (30) days of sentencing to the  
15       Department of Corrections, the sheriff of the county in which the  
16       person was sentenced, or other peace officer as directed by the  
17       court;

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

21       5. Any person required to register pursuant to the Sex  
22       Offenders Registration Act shall provide a DNA sample to the sheriff  
23       of the county in which the person was sentenced or other peace  
24       officer as directed by the court; and

1        6. Any person, ~~any individual~~ who was convicted of violating  
2 laws of another state or the federal government, but is currently  
3 incarcerated or residing in Oklahoma, shall ~~submit to~~ provide a DNA  
4 profiling for entry of the data into the OSBI DNA Offender Database  
5 sample to the law enforcement agency having custody of that person.

6 This provision shall only apply when such federal or state  
7 conviction carries a requirement of sex offender registration and/or  
8 DNA profiling. ~~The person to be profiled shall pay a fee of One~~  
9 ~~Hundred Fifty Dollars (\$150.00) to the OSBI.~~

10        C. The OSBI shall promulgate rules concerning the collection,  
11 storing, expungement and dissemination of information and samples  
12 for the OSBI Combined DNA Index System (CODIS) Database. The OSBI  
13 shall determine the type of equipment, collection procedures, and  
14 reporting documentation to be used by federal, state, county or  
15 municipal law enforcement or criminal justice agencies in submitting  
16 DNA samples to the OSBI. The OSBI shall provide training to  
17 designated employees of these agencies in the proper methods of  
18 performing the duties required by this section.

19        D. Persons subject to DNA testing shall pay a fee of One  
20 Hundred Fifty Dollars (\$150.00) to the OSBI for submission to the  
21 OSBI Combined DNA Index System (CODIS) in accordance with Section  
22 1313.2 of Title 20 of the Oklahoma Statutes.

23        E. The OSBI Combined DNA Index System (CODIS) Database is  
24 specifically exempt from any statute requiring disclosure of

1 information to the public. The DNA sample and the information  
2 contained in the database is privileged from discovery and  
3 inadmissible as evidence in any civil court proceeding. The  
4 information in the database is confidential and shall not be  
5 released to the public. Any person charged with the custody and  
6 dissemination of information from the database shall not divulge or  
7 disclose any such information except to federal, state, county or  
8 municipal law enforcement or criminal justice agencies. Any person  
9 violating the provisions of this section upon conviction shall be  
10 deemed guilty of a misdemeanor punishable by imprisonment in the  
11 county jail for not more than one (1) year.

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

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24

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

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

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

9 3. ~~Convicted offender~~ Offender index database consisting of DNA  
10 profiles from samples authorized pursuant to ~~subsection A~~ of this  
11 section; and

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

15 G. ~~Any person convicted of an offense provided in this section~~  
16 ~~who is in custody after July 1, 1996, shall provide a blood or~~  
17 ~~saliva sample prior to release. Every person who is convicted of an~~  
18 ~~offense provided in this section whose sentence does not include a~~  
19 ~~term of incarceration shall provide a blood or saliva sample as a~~  
20 ~~condition of sentence~~ DNA specimen taken in good faith by federal,  
21 state, county or municipal law enforcement or criminal justice  
22 personnel and submitted to the OSBI may be included, maintained, and  
23 kept by the OSBI in a database for criminal investigative purposes  
24

1 despite the specimen having not been taken in strict compliance with  
2 the provisions of this section.

3 SECTION 3. This act shall become effective November 1, 2009.

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5 52-1-86 TEK 3/6/2009 1:29:18 AM

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