

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2165

By: Russell

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5
6 AS INTRODUCED

7 An Act relating to criminal investigations; amending
8 21 O.S. 2001, Section 850, which relates to malicious
9 intimidation or harassment; requiring certain data be
10 deleted under certain circumstances; stating
11 authority of the Oklahoma State Bureau of
12 Investigation regarding certain data; amending 51
13 O.S. 2001, Section 24A.8, as last amended by Section
14 1, Chapter 36, O.S.L. 2009 (51 O.S. Supp. 2009,
15 Section 24A.8) and Section 24A.12, which relate to
16 the Oklahoma Open Records Act; expanding law
17 enforcement authority to deny access to certain
18 records; specifying authority to maintain
19 confidentiality of certain files and reports;
20 amending 74 O.S. 2001, Section 150.5, as last amended
21 by Section 162, Chapter 234, O.S.L. 2009 (74 O.S.
22 Supp. 2009, Section 150.5), which relates to the
23 Oklahoma State Bureau of Investigation; limiting
24 disclosure of certain investigative information;
prohibiting state employees from assisting a federal
agency under certain circumstances; declaring certain
evidence as not admissible; providing for
codification; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 850, is
amended to read as follows:

Section 850. A. No person shall maliciously and with the
specific intent to intimidate or harass another person because of

1 that person's race, color, religion, ancestry, national origin or
2 disability:

3 1. Assault or batter another person;

4 2. Damage, destroy, vandalize or deface any real or personal
5 property of another person; or

6 3. Threaten, by word or act, to do any act prohibited by
7 paragraph 1 or 2 of this subsection if there is reasonable cause to
8 believe that such act will occur.

9 B. No person shall maliciously and with specific intent to
10 incite or produce, and which is likely to incite or produce,
11 imminent violence, which violence would be directed against another
12 person because of that person's race, color, religion, ancestry,
13 national origin or disability, make or transmit, cause or allow to
14 be transmitted, any telephonic, computerized, or electronic message.

15 C. No person shall maliciously and with specific intent to
16 incite or produce, and which is likely to incite or produce,
17 imminent violence, which violence would be directed against another
18 person because of that person's race, color, religion, ancestry,
19 national origin or disability, broadcast, publish, or distribute,
20 cause or allow to be broadcast, published or distributed, any
21 message or material.

22 D. Any person convicted of violating any provision of
23 subsections A, B or C of this section shall be guilty of a
24 misdemeanor on a first offense and a felony punishable by not more

1 than ten (10) years incarceration in the custody of the Department
2 of Corrections for a second or subsequent offense. The fine for a
3 felony violation of this section shall not exceed Ten Thousand
4 Dollars (\$10,000.00). Furthermore, ~~said~~ the person shall be civilly
5 liable for any damages resulting from any violation of this section.

6 E. Upon conviction, any person guilty of a misdemeanor in
7 violation of this section shall be ~~punishable~~ punished by the
8 imposition of a fine not exceeding One Thousand Dollars (\$1,000.00),
9 or by imprisonment in the county jail for a period of not more than
10 one (1) year, or by both such fine and imprisonment.

11 F. The Oklahoma State Bureau of Investigation shall develop a
12 standard system for state and local law enforcement agencies to
13 report incidents of crime which are apparently directed against
14 members of racial, ethnic, religious groups or other groups
15 specified by this section. The Oklahoma State Bureau of
16 Investigation shall promulgate rules, regulations and procedures
17 necessary to develop, implement and maintain a standard system for
18 the collection and reporting of hate crime data. All state, county,
19 city and town law enforcement agencies shall submit a monthly report
20 to the Oklahoma State Bureau of Investigation on forms prescribed by
21 the Bureau. The report shall contain the number and nature of the
22 offenses committed within their respective jurisdictions, the
23 disposition of such matters and any other information the Bureau may
24 require, respecting information relating to the cause and prevention

1 of crime, recidivism, the rehabilitation of criminals and the proper
2 administration of criminal justice.

3 G. Any data collected and reports received on an individual
4 charged with the crime pursuant to this section that are later
5 determined by a state or local law enforcement agency, investigating
6 authority, or a court to be not guilty or otherwise acquitted or
7 improperly charged and dismissed as an incident of crime pursuant to
8 this section shall have such data and reports permanently deleted
9 from the database required by this subsection and any hard copies
10 associated with the data destroyed. All other existing data and
11 reports shall remain the property of the Oklahoma State Bureau of
12 Investigation and the Director shall have the authority to retain
13 and protect from additional disclosure any data or record pursuant
14 to Section 150.5 of Title 74 of the Oklahoma Statutes.

15 H. No person, partnership, company or corporation that installs
16 telephonic, computerized, or electronic message equipment shall be
17 required to monitor the use of such equipment for possible
18 violations of this section, nor shall such person, partnership,
19 company or corporation be held criminally or civilly liable for the
20 use by another person of the equipment in violation of this section,
21 unless the person, partnership, company or corporation that
22 installed the equipment had prior actual knowledge that the
23 equipment was to be used in violation of this section.

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1 SECTION 2. AMENDATORY 51 O.S. 2001, Section 24A.8, as
2 last amended by Section 1, Chapter 36, O.S.L. 2009 (51 O.S. Supp.
3 2009, Section 24A.8), is amended to read as follows:

4 Section 24A.8 A. Law enforcement agencies shall make available
5 for public inspection, if kept, the following records:

6 1. An arrestee description, including the name, date of birth,
7 address, race, sex, physical description, and occupation of the
8 arrestee;

9 2. Facts concerning the arrest, including the cause of arrest
10 and the name of the arresting officer;

11 3. A chronological list of incidents pertaining to the arrest,
12 including initial offense report information showing the offense,
13 date, time, general location, officer, and a brief summary of what
14 occurred; and

15 4. Radio logs, including a chronological listing of the calls
16 dispatched.

17 B. Law enforcement agencies shall make available for public
18 inspection, if kept, the following records:

19 1. Conviction information, including the name of any person
20 convicted of a criminal offense;

21 2. Disposition of all warrants, including orders signed by a
22 judge of any court commanding a law enforcement officer to arrest a
23 particular person;

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1 3. A crime summary, including an agency summary of crimes
2 reported and public calls for service by classification or nature
3 and number; and

4 4. Jail registers, including jail blotter data or jail booking
5 information recorded on persons at the time of incarceration showing
6 the name of each prisoner with the date and cause of commitment, the
7 authority committing the prisoner, whether committed for a criminal
8 offense, a description of the prisoner, and the date or manner of
9 discharge or escape of the prisoner.

10 C. Except for the records listed in subsections A and B of this
11 section and those made open by other state or local laws, law
12 enforcement agencies may deny access to law enforcement records
13 except where a court finds that the public interest or the interest
14 of an individual outweighs the reason for denial. In addition, law
15 enforcement agencies shall deny access to law enforcement records to
16 any federal agency when such request is made relating to a case
17 handled and completed by a law enforcement agency of this state and
18 the purpose is to attempt to investigate or prosecute the individual
19 or individuals pursuant to 18 U.S.C. Section 245, except for records
20 of any individuals convicted pursuant to Section 850 of Title 21 of
21 the Oklahoma Statutes and for those records listed in subsections A
22 and B of this section.

23 D. Nothing contained in this section imposes any new
24 recordkeeping requirements. Law enforcement records shall be kept

1 for as long as is now or may hereafter be specified by law. Absent
2 a legal requirement for the keeping of a law enforcement record for
3 a specific time period, law enforcement agencies shall maintain
4 their records for so long as needed for administrative purposes.

5 E. Registration files maintained by the Department of
6 Corrections pursuant to the provisions of the Sex Offenders
7 Registration Act shall be made available for public inspection in a
8 manner to be determined by the Department.

9 F. The Council on Law Enforcement Education and Training
10 (C.L.E.E.T.) shall keep confidential all records it maintains
11 pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and
12 deny release of records relating to any employed or certified full-
13 time officer, reserve officer, retired officer or other person;
14 teacher lesson plans, tests and other teaching materials; and
15 personal communications concerning individual students except under
16 the following circumstances:

17 1. To verify the current certification status of any peace
18 officer;

19 2. As may be required to perform the duties imposed by Section
20 3311 of Title 70 of the Oklahoma Statutes;

21 3. To provide to any peace officer copies of the records of
22 that peace officer upon submitting a written request;

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1 4. To provide, upon written request, to any law enforcement
2 agency conducting an official investigation, copies of the records
3 of any peace officer who is the subject of such investigation;

4 5. To provide final orders of administrative proceedings where
5 an adverse action was taken against a peace officer; and

6 6. Pursuant to an order of the district court of the State of
7 Oklahoma.

8 G. The Department of Public Safety shall keep confidential:

9 1. All records it maintains pursuant to its authority under
10 Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway
11 Patrol Division, the Communications Division, and other divisions of
12 the Department relating to:

13 a. training, lesson plans, teaching materials, tests, and
14 test results,

15 b. policies, procedures, and operations, any of which are
16 of a tactical nature, and

17 c. the following information from radio logs:

18 (1) telephone numbers,

19 (2) addresses other than the location of incidents to
20 which officers are dispatched, and

21 (3) personal information which is contrary to the
22 provisions of the Driver's Privacy Protection
23 Act, 18 United States Code, Sections 2721 through
24 2725; and

1 2. For the purpose of preventing identity theft and invasion of
2 law enforcement computer systems, except as provided in Title 47 of
3 the Oklahoma Statutes, all driving records.

4 SECTION 3. AMENDATORY 51 O.S. 2001, Section 24A.12, is
5 amended to read as follows:

6 Section 24A.12. Except as otherwise provided by state or local
7 law, the Attorney General of the State of Oklahoma and agency
8 attorneys authorized by law, the office of the district attorney of
9 any county of the state, and the office of the municipal attorney of
10 any municipality may keep its litigation files and investigatory
11 reports confidential, except they shall keep their litigation files
12 and investigatory reports confidential upon request of any federal
13 agency when such request is made for the purpose to attempt to
14 investigate or prosecute an individual or individuals pursuant to 18
15 U.S.C. Section 245, except for those records of any individuals
16 convicted pursuant to Section 850 of Title 21 of the Oklahoma
17 Statutes.

18 SECTION 4. AMENDATORY 74 O.S. 2001, Section 150.5, as
19 last amended by Section 162, Chapter 234, O.S.L. 2009 (74 O.S. Supp.
20 2009, Section 150.5), is amended to read as follows:

21 Section 150.5 A. 1. Oklahoma State Bureau of Investigation
22 investigations not covered under Section 150.2 of this title shall
23 be initiated at the request of the following persons:

- 24 a. the Governor,

- b. the Attorney General,
- c. the Council on Judicial Complaints upon a vote by a majority of the Council,
- d. the chair of any Legislative Investigating Committee which has been granted subpoena powers by resolution, upon authorization by a vote of the majority of the Committee,
- e. the Director of the Department of Human Services, or designee, as authorized by Section 7106 of Title 10 of the Oklahoma Statutes, or
- f. a district court judge as authorized by Section 7104.1 of Title 10 of the Oklahoma Statutes.

2. Requests for investigations shall be submitted in writing and shall contain specific allegations of wrongdoing under the laws of the State of Oklahoma.

B. The Governor may initiate special background investigations with the written consent of the person who is the subject of the investigation.

C. The chair of any Senate committee which is fulfilling the statutory responsibility for approving nominations made by the Governor may, upon a vote by a majority of the committee and with the written consent of the person who is to be the subject of the investigation, initiate a special background investigation of any nominee for the Oklahoma Horse Racing Commission as established by

1 Section 201 of Title 3A of the Oklahoma Statutes or any nominee for
2 the Board of Trustees of the Oklahoma Lottery Commission as
3 established by Section 704 of Title 3A of the Oklahoma Statutes.

4 The Bureau shall submit a report to the committee within thirty (30)
5 days of the receipt of the request. Any consideration by the
6 committee of a report from the Bureau shall be for the exclusive use
7 of the committee and shall be considered only in executive session.

8 D. 1. All records relating to any investigation being
9 conducted by the Bureau, including any records of laboratory
10 services provided to law enforcement agencies pursuant to paragraph
11 1 of Section 150.2 of this title, shall be confidential and shall
12 not be open to the public or to the Commission except as provided in
13 Section 150.4 of this title; provided, however, officers and agents
14 of the Bureau may disclose, at the discretion of the Director, such
15 investigative information to:

16 a. officers and agents of federal, state, county, or
17 municipal law enforcement agencies and to district
18 attorneys, in the furtherance of criminal
19 investigations within their respective jurisdictions,
20 except that disclosure shall not occur when the
21 request is from a federal agency and the purpose is to
22 attempt to investigate or prosecute an individual or
23 individuals pursuant to 18 U.S.C. Section 245, except
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1 when such individual is convicted pursuant to Section
2 850 of Title 21 of the Oklahoma Statutes,

3 b. employees of the Department of Human Services in the
4 furtherance of child abuse investigations, and

5 c. appropriate accreditation bodies for the purposes of
6 the Bureau's obtaining or maintaining accreditation.

7 2. Any unauthorized disclosure of any information contained in
8 the confidential files of the Bureau shall be a misdemeanor. The
9 person or entity authorized to initiate investigations in this
10 section, and the Attorney General in the case of investigations
11 initiated by the Insurance Commissioner, shall receive a report of
12 the results of the requested investigation. The person or entity
13 requesting the investigation may give that information only to the
14 appropriate prosecutorial officer or agency having statutory
15 authority in the matter if that action appears proper from the
16 information contained in the report, and shall not reveal or give
17 such information to any other person or agency. Violation hereof
18 shall be deemed willful neglect of duty and shall be grounds for
19 removal from office.

20 E. It shall not be a violation of this section to reveal
21 otherwise confidential information to outside agencies or
22 individuals who are providing interpreter services, questioned
23 document analysis, and other laboratory services that are necessary
24 in the assistance of Bureau investigations. Individuals or agencies

1 receiving the confidential and investigative information or records
2 or results of laboratory services provided to the Bureau by those
3 agencies or individuals, shall be subject to the confidentiality
4 provisions and requirements established in subsection D of this
5 section.

6 F. The State Treasurer shall initiate a complete background
7 investigation of the positions with the written consent of the
8 persons who are the subject of the investigation pursuant to
9 subsection I of Section 71.1 of Title 62 of the Oklahoma Statutes.
10 The Bureau shall advise the State Treasurer and the Cash Management
11 and Investment Oversight Commission in writing of the results of the
12 investigation.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 3120 of Title 74, unless there
15 is created a duplication in numbering, reads as follows:

16 Notwithstanding any other provision of law, no state employee in
17 any branch or department of state government shall be required to
18 assist in any manner any federal agency that investigates or
19 prosecutes an individual pursuant to 18 U.S.C. Section 245, unless
20 requested and approved to assist subsequent to that individual being
21 convicted pursuant to Section 850 of Title 21 of the Oklahoma
22 Statutes.

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1 SECTION 6. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3011 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 Evidence requested for admission as substantive evidence of
5 assemblage in the exercise of free speech or display of religious
6 beliefs that is not connected to the direct conduct of planning,
7 conspiring, or committing an act of violence as prescribed by law is
8 not admissible.

9 SECTION 7. This act shall become effective November 1, 2010.

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