

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 851

By: Jolley

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; requiring DNA
8 testing upon arrest for certain crimes; excluding
9 certain persons with previous samples; providing
10 procedures for testing; authorizing certain fees;
11 amending 74 O.S. 2001, Section 150.27a, as last
12 amended by Section 3, Chapter 218, O.S.L. 2009 (74
13 O.S. Supp. 2010, Section 150.27a), which relates to
14 the Oklahoma State Bureau of Investigation DNA
15 laboratory; clarifying purpose of laboratory;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 991a-2.1 of Title 22, unless
21 there is created a duplication in numbering, reads as follows:

22 A. Notwithstanding subsection I of Section 991a of Title 22 of
23 the Oklahoma Statutes, A person arrested of an offense as provided
24 in Section 843.5 of Title 21 of the Oklahoma Statutes or Section
645, subsection B of Section 649, Section 650, 650.2, 650.4, 650.5,
650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 716, 741, 759,
798, 799, 800, 801, 832, 885, 888, 891, subsection B of Section

1 1021, Section 1021.2, 1021.3, 1087, 1088, 1114, 1115, 1116, 1123,
2 1173, 1192, 1192.1, 1431 or 1435 of Title 21 of the Oklahoma
3 Statutes, shall submit to deoxyribonucleic acid DNA testing for law
4 enforcement identification purposes in accordance with Section
5 150.27 of Title 74 of the Oklahoma Statutes and the rules
6 promulgated by the Oklahoma State Bureau of Investigation for the
7 OSBI DNA Offender Database. DNA samples shall be collected by the
8 arresting authority as qualified pursuant to subsection B of this
9 section and shall be done in accordance with Section 530.1 of Title
10 57 of the Oklahoma Statutes. Convicted or arrested individuals who
11 have previously submitted to DNA testing pursuant to this section or
12 Section 991a of Title 22 of the Oklahoma Statutes and for whom a
13 valid sample is on file in the OSBI DNA Offender Database shall not
14 be required to submit to additional testing.

15 B. Samples of blood or saliva for DNA testing required by
16 subsection A of this section shall be taken by employees or
17 contractors of the Department of Corrections, peace officers, or the
18 county sheriff or employees or contractors of the sheriff's office.
19 The individuals shall be properly trained to collect blood or saliva
20 samples. Persons collecting blood or saliva for DNA testing pursuant
21 to this section shall be immune from civil liabilities arising from
22 this activity. All collectors of DNA samples shall ensure the
23 collection of samples are mailed to the Oklahoma State Bureau of
24 Investigation within ten (10) days of the time the subject appears

1 for testing or within ten (10) days of the date the subject comes
2 into physical custody to serve a term of incarceration. All
3 collectors of DNA samples shall use sample kits provided by the OSBI
4 and procedures promulgated by the OSBI. Persons subject to DNA
5 testing who are not received at the Lexington Assessment and
6 Reception Center shall be required to pay a fee of Fifteen Dollars
7 (\$15.00) to the agency collecting the sample for submission to the
8 OSBI Combined DNA Index System (CODIS) Database. Any fees collected
9 pursuant to this subsection shall be deposited in the revolving
10 account or the service fee account of the collection agency or
11 department.

12 SECTION 2. AMENDATORY 74 O.S. 2001, Section 150.27a, as
13 last amended by Section 3, Chapter 218, O.S.L. 2009 (74 O.S. Supp.
14 2010, Section 150.27a), is amended to read as follows:

15 Section 150.27a. A. There is hereby established within the
16 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
17 System (CODIS) Database for the purpose of collecting and storing
18 blood or saliva samples and DNA profiles, analyzing and typing of
19 the genetic markers contained in or derived from DNA, and
20 maintaining the records and samples of DNA of individuals convicted
21 of any felony offense or arrested for an offense pursuant to Section
22 1 of this act, of individuals required to register pursuant to the
23 Sex Offenders Registration Act, and subject to the availability of
24 funds, of individuals convicted of a misdemeanor offense of assault

1 and battery, domestic abuse, stalking, possession of a controlled
2 substance prohibited under Schedule IV of the Uniform Controlled
3 Dangerous Substances Act, outraging public decency, resisting
4 arrest, escape or attempting to escape, eluding a police officer,
5 peeping tom, pointing a firearm, unlawful carry of a firearm,
6 illegal transport of a firearm, discharging of a firearm,
7 threatening an act of violence, breaking and entering a dwelling
8 place, destruction of property, negligent homicide, or causing a
9 personal injury accident while driving under the influence of any
10 intoxicating substance, or, upon arrest, any alien unlawfully
11 present under federal immigration law. The purpose of this database
12 is the detection or exclusion of individuals who are subjects of the
13 investigation or prosecution of sex-related crimes, violent crimes,
14 or other crimes in which biological evidence is recovered, and such
15 information shall be used for no other purpose.

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

23 C. Upon the request to OSBI by the federal or state authority
24 having custody of the person, any individual who was convicted of

1 violating laws of another state or the federal government, but is
2 currently incarcerated or residing in Oklahoma, shall submit to DNA
3 profiling for entry of the data into the OSBI DNA Offender Database.
4 This provision shall only apply when such federal or state
5 conviction carries a requirement of sex offender registration and/or
6 DNA profiling. The person to be profiled shall pay a fee of One
7 Hundred Fifty Dollars (\$150.00) to the OSBI.

8 D. The OSBI Combined DNA Index System (CODIS) Database is
9 specifically exempt from any statute requiring disclosure of
10 information to the public. The information contained in the
11 database is privileged from discovery and inadmissible as evidence
12 in any civil court proceeding. The information in the database is
13 confidential and shall not be released to the public. Any person
14 charged with the custody and dissemination of information from the
15 database shall not divulge or disclose any such information except
16 to federal, state, county or municipal law enforcement or criminal
17 justice agencies. Any person violating the provisions of this
18 section upon conviction shall be deemed guilty of a misdemeanor
19 punishable by imprisonment in the county jail for not more than one
20 (1) year.

21 E. The OSBI shall promulgate rules concerning the collection,
22 storing, expungement and dissemination of information and samples
23 for the OSBI Combined DNA Index System (CODIS) Database. The OSBI
24 shall determine the type of equipment, collection procedures, and

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

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

11 1. Forensic index database consisting of unknown evidence
12 samples;

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

15 3. Convicted offender index database authorized pursuant to
16 subsection A of this section; and

17 4. Missing persons and unidentified remains index or database
18 consisting of DNA profiles from unidentified remains and relatives
19 of missing persons.

20 G. Any person convicted of a felony offense who is in custody
21 shall provide a blood or saliva sample prior to release. Subject to
22 the availability of funds, any person convicted of a misdemeanor
23 offense of assault and battery, domestic abuse, stalking, possession
24 of a controlled substance prohibited under Schedule IV of the

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

1 SECTION 3. This act shall become effective November 1, 2011.

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