

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2275 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Lee Denney _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2275

By: Denney

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to DNA testing; requiring submission
9 of DNA samples from persons arrested for felony
10 crimes; providing procedures for testing DNA samples;
11 stating persons responsible for taking DNA samples;
12 providing collectors of DNA samples immunity from
13 civil liability; stating time limitation for mailing
14 DNA samples; requiring destruction of DNA samples
15 unless certain conditions met; providing for the
16 automatic expungement of DNA samples under certain
17 circumstances; directing the Oklahoma State Bureau of
18 Investigation to promulgate certain rules; amending
19 20 O.S. 2011, Section 1313.2, which relates to court
20 fund fees; adding definition; directing certain
21 persons to pay DNA fee; amending 74 O.S. 2011,
22 Section 150.27a, which relates to the OSBI Combined
23 DNA Index System (CODIS) Database; modifying purpose
24 of database to include DNA samples from certain
persons; providing for codification; and providing an
effective date.

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

21 SECTION 1. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 210 of Title 22, unless there is
23 created a duplication in numbering, reads as follows:
24

1 A. Subject to the availability of funds, a person eighteen (18)
2 years of age or older who is arrested for the commission of a felony
3 under the laws of this state or any other jurisdiction shall, upon
4 being booked into a jail or detention facility, submit to
5 deoxyribonucleic acid (DNA) testing for law enforcement
6 identification purposes in accordance with Section 150.27a of Title
7 74 of the Oklahoma Statutes and the rules promulgated by the
8 Oklahoma State Bureau of Investigation (OSBI) for the OSBI Combined
9 DNA Index System (CODIS) Database. DNA samples shall be collected
10 by the arresting authority as qualified pursuant to subsection B of
11 this section. Convicted or arrested individuals who have previously
12 submitted to DNA testing pursuant to this section or Section 991a of
13 Title 22 of the Oklahoma Statutes and for whom a valid sample is on
14 file in the OSBI CODIS Database shall not be required to submit to
15 additional testing.

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

1 person. All collectors of DNA samples shall use sample kits
2 provided by the OSBI and procedures promulgated by the OSBI.

3 C. A DNA sample shall not be analyzed and shall be destroyed
4 unless one of the following conditions has been met:

- 5 1. The arrest was made upon a valid felony arrest warrant;
- 6 2. The person has appeared before a judge or magistrate judge
7 who made a finding that there was probable cause for the arrest; or
- 8 3. The person posted bond or was released prior to appearing
9 before a judge or magistrate judge and then failed to appear for a
10 scheduled hearing.

11 D. All DNA samples, records and identifiable information
12 generated pursuant to the provisions of this section shall be
13 automatically expunged from the OSBI Combined DNA Index System
14 (CODIS) Database under the following circumstances:

- 15 1. The felony offense for which the person was arrested does
16 not result in charges either by information or indictment and the
17 statute of limitations has expired;
- 18 2. The state voluntarily dismissed the felony charge filed
19 against the person; or
- 20 3. The court dismissed the felony charge filed against the
21 person.

22 The Oklahoma State Bureau of Investigation shall promulgate
23 rules establishing procedures relating to the automatic expungement
24 of DNA samples, records and identifiable information collected under

1 the provisions of this section. Fees related to the expungement of
2 DNA samples, records and identifiable information shall not be
3 assessed for persons who qualify for an automatic expungement under
4 the provisions of this subsection.

5 SECTION 2. AMENDATORY 20 O.S. 2011, Section 1313.2, is
6 amended to read as follows:

7 Section 1313.2 A. As used in this section:

8 1. "Arrested" means taking custody of another for the purpose
9 of holding or detaining him or her to answer a criminal charge;

10 2. "Convicted" means any final adjudication of guilt, whether
11 pursuant to a plea of guilty or nolo contendere or otherwise, and
12 any deferred or suspended sentence or judgment;

13 ~~2.~~ 3. "Court" means any state or municipal court having
14 jurisdiction to impose a criminal fine or penalty; and

15 ~~3.~~ 4. "DNA" means Deoxyribonucleic acid.

16 B. Any person convicted of an offense, including traffic
17 offenses but excluding parking and standing violations, punishable
18 by a fine of Ten Dollars (\$10.00) or more or by incarceration or any
19 person forfeiting bond when charged with such an offense, shall be
20 ordered by the court to pay Nine Dollars (\$9.00) as a separate fee,
21 which fee shall be in addition to and not in substitution for any
22 and all fines and penalties otherwise provided for by law for such
23 offense.
24

1 C. 1. Any person convicted of any misdemeanor or felony
2 offense shall pay a Laboratory Analysis Fee in the amount of One
3 Hundred Fifty Dollars (\$150.00) for each offense if forensic science
4 or laboratory services are rendered or administered by the Oklahoma
5 State Bureau of Investigation, by the Toxicology Laboratory of the
6 Office of the Chief Medical Examiner or by any municipality or
7 county in connection with the case. This fee shall be in addition
8 to and not a substitution for any and all fines and penalties
9 otherwise provided for by law for this offense.

10 2. The court clerk shall cause to be deposited the amount of
11 One Hundred Fifty Dollars (\$150.00) as collected, for every felony
12 conviction as described in this subsection. The court clerk shall
13 remit the monies in the fund on a monthly basis directly either to:

14 a. the Oklahoma State Bureau of Investigation who shall
15 deposit the monies into the OSBI Revolving Fund
16 provided for in Section 150.19a of Title 74 of the
17 Oklahoma Statutes for services rendered or
18 administered by the Oklahoma State Bureau of
19 Investigation,

20 b. the Office of the Chief Medical Examiner who shall
21 deposit the monies into the Office of the Chief
22 Medical Examiner Toxicology Laboratory Revolving Fund
23 provided for in Section 954 of Title 63 of the
24 Oklahoma Statutes for services rendered or

1 administered by the Toxicology Laboratory of the
2 Office of the Chief Medical Examiner, or

- 3 c. the appropriate municipality or county for services
4 rendered or administered by a municipality or county.

5 3. The monies from the Laboratory Analysis Fee Fund deposited
6 into the OSBI Revolving Fund shall be used for the following:

- 7 a. providing criminalistic laboratory services,
8 b. the purchase and maintenance of equipment for use by
9 the laboratory in performing analysis,
10 c. education, training, and scientific development of
11 Oklahoma State Bureau of Investigation personnel, and
12 d. the destruction of seized property and chemicals as
13 prescribed in Sections 2-505 and 2-508 of Title 63 of
14 the Oklahoma Statutes.

15 D. Upon conviction or bond forfeiture, the court shall collect
16 the fee provided for in subsection B of this section and deposit it
17 in an account created for that purpose. Except as otherwise
18 provided in subsection E of this section, monies shall be forwarded
19 monthly by the court clerk to the Council on Law Enforcement
20 Education and Training. Beginning July 1, 2003, deposits shall be
21 due on the fifteenth day of each month for the preceding calendar
22 month. There shall be a late fee imposed for failure to make timely
23 deposits; provided, the Council on Law Enforcement Education and
24 Training, in its discretion, may waive all or part of the late fee.

1 Such late fee shall be one percent (1%) of the principal amount due
2 per day beginning from the tenth day after payment is due and
3 accumulating until the late fee reaches one hundred percent (100%)
4 of the principal amount due. Beginning on July 1, 1987, ninety
5 percent (90%) of the monies received by the Council on Law
6 Enforcement Education and Training from the court clerks pursuant to
7 this section shall be deposited in the CLEET Fund, and ten percent
8 (10%) shall be deposited in the General Revenue Fund. Beginning
9 January 1, 2001, sixty and fifty-three one-hundredths percent
10 (60.53%) of the monies received by the Council on Law Enforcement
11 Education and Training from the court clerks pursuant to this
12 section shall be deposited in the CLEET Fund created pursuant to
13 subsection G of this section, five and eighty-three one-hundredths
14 percent (5.83%) shall be deposited in the General Revenue Fund and
15 thirty-three and sixty-four one-hundredths percent (33.64%) shall be
16 deposited in the CLEET Training Center Revolving Fund created
17 pursuant to Section 3311.6 of Title 70 of the Oklahoma Statutes.
18 Along with the deposits required by this subsection, each court
19 shall also submit a report stating the total amount of funds
20 collected and the total number of fees imposed during the preceding
21 quarter. The report may be made on computerized or manual
22 disposition reports.

23 E. Any municipality or county having a basic law enforcement
24 academy approved by the Council on Law Enforcement Education and

1 Training pursuant to the criteria developed by the Council for
2 training law enforcement officers shall retain from monies collected
3 pursuant to subsections A through D of this section, Two Dollars
4 (\$2.00) from each fee. These monies shall be deposited into an
5 account for the sole use of the municipality or county in
6 implementing its law enforcement training functions. Not more than
7 seven percent (7%) of the monies shall be used for court and
8 prosecution training. The court clerk of any such municipality or
9 county shall furnish to the Council on Law Enforcement Education and
10 Training the report required by subsection D of this section.

11 F. 1. Any person entering a plea of guilty or nolo contendere
12 or is found guilty of the crime of misdemeanor possession of
13 marijuana or drug paraphernalia shall be ordered by the court to pay
14 a five-dollar fee, which shall be in addition to and not in
15 substitution for any and all fines and penalties otherwise provided
16 for by law for such offense.

17 2. The court clerk shall cause to be deposited the amount of
18 Five Dollars (\$5.00) as collected, for every adjudicated or
19 otherwise convicted person as described in this subsection. The
20 court clerk shall remit the monies in the fund on a monthly basis
21 directly to the Bureau of Narcotics Drug Education Revolving Fund.

22 G. There is hereby created in the State Treasury a fund for the
23 Council on Law Enforcement Education and Training to be designated
24 the "CLEET Fund". The fund shall be subject to legislative

1 appropriation and shall consist of any monies received from fees and
2 receipts collected pursuant to the Oklahoma Open Records Act,
3 reimbursements for parts used in the repair of weapons of law
4 enforcement officers attending the basic academies, gifts, bequests,
5 contributions, tuition, fees, devises, and the assessments levied
6 pursuant to the fund pursuant to law.

7 H. 1. Any person arrested or convicted of a felony offense or
8 convicted of a misdemeanor offense of assault and battery, domestic
9 abuse, stalking, possession of a controlled substance prohibited
10 under Schedule IV of the Uniform Controlled Dangerous Substances
11 Act, outraging public decency, resisting arrest, escaping or
12 attempting to escape, eluding a police officer, Peeping Tom,
13 pointing a firearm, unlawful carry of a firearm, illegal transport
14 of a firearm, discharging of a firearm, threatening an act of
15 violence, breaking and entering a dwelling place, destruction of
16 property, negligent homicide or causing a personal injury accident
17 while driving under the influence of any intoxicating substance
18 shall pay a DNA fee of One Hundred Fifty Dollars (\$150.00). This
19 fee shall not be collected if the person has a valid DNA sample in
20 the OSBI DNA Offender Database at the time of sentencing.

21 2. The court clerk shall cause to be deposited the amount of
22 One Hundred Fifty Dollars (\$150.00) as collected, for every felony
23 arrest, felony conviction or every conviction for a misdemeanor
24 offense of assault and battery, domestic abuse, stalking, possession

1 of a controlled substance prohibited under Schedule IV of the
2 Uniform Controlled Dangerous Substances Act, outraging public
3 decency, resisting arrest, escaping or attempting to escape, eluding
4 a police officer, Peeping Tom, pointing a firearm, unlawful carry of
5 a firearm, illegal transport of a firearm, discharging of a firearm,
6 threatening an act of violence, breaking and entering a dwelling
7 place, destruction of property, negligent homicide or causing a
8 personal injury accident while driving under the influence of any
9 intoxicating substance as described in this subsection. The court
10 clerk shall remit the monies in said fund on a monthly basis
11 directly to the Oklahoma State Bureau of Investigation who shall
12 deposit the monies into the OSBI Revolving Fund provided for in
13 Section 150.19a of Title 74 of the Oklahoma Statutes for services
14 rendered or administered by the Oklahoma State Bureau of
15 Investigation.

16 3. The monies from the DNA sample fee deposited into the OSBI
17 Revolving Fund shall be used for creating, staffing, and maintaining
18 the OSBI DNA Laboratory and OSBI Combined DNA Index System (CODIS)
19 Database.

20 I. It shall be the responsibility of the court clerk to account
21 for and ensure the correctness and accuracy of payments made to the
22 state agencies identified in Sections 1313.2 through 1313.4 of this
23 title. Payments made directly to an agency by the court clerk as a
24 result of different types of assessments and fees pursuant to

1 Sections 1313.2 through 1313.4 of this title shall be made monthly
2 to each state agency.

3 SECTION 3. AMENDATORY 74 O.S. 2011, Section 150.27a, is
4 amended to read as follows:

5 Section 150.27a A. There is hereby established within the
6 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
7 System (CODIS) Database for the purpose of collecting and storing
8 blood or saliva samples and DNA profiles, analyzing and typing of
9 the genetic markers contained in or derived from DNA, and
10 maintaining the records and samples of DNA of individuals ~~convicted:~~

11 1. Convicted of any felony offense, ~~of individuals required;~~

12 2. Required to register pursuant to the Sex Offenders
13 Registration Act, ~~and subject;~~

14 3. Subject to the availability of funds, eighteen (18) years of
15 age or older arrested for the commission of a felony under the laws
16 of this state or any other jurisdiction, upon being booked into a
17 jail or detention facility. Provided, the DNA sample shall not be
18 analyzed and shall be destroyed unless one of the following
19 conditions has been met:

20 a. the arrest was made upon a valid felony arrest
21 warrant,

22 b. the person has appeared before a judge or magistrate
23 judge who made a finding that there was probable cause
24 for the arrest, or

1 c. the person posted bond or was released prior to
2 appearing before a judge or magistrate judge and then
3 failed to appear for a scheduled hearing; and

4 4. Subject to the availability of funds, ~~of individuals~~
5 convicted of a misdemeanor offense of assault and battery, domestic
6 abuse, stalking, possession of a controlled substance prohibited
7 under Schedule IV of the Uniform Controlled Dangerous Substances
8 Act, outraging public decency, resisting arrest, ~~escape~~ escaping or
9 attempting to escape, eluding a police officer, ~~peeping tom~~ Peeping
10 Tom, pointing a firearm, unlawful carry of a firearm, illegal
11 transport of a firearm, discharging of a firearm, threatening an act
12 of violence, breaking and entering a dwelling place, destruction of
13 property, negligent homicide, or causing a personal injury accident
14 while driving under the influence of any intoxicating substance, or,
15 upon arrest, any alien unlawfully present under federal immigration
16 law.

17 The purpose of this database is the detection or exclusion of
18 individuals who are subjects of the investigation or prosecution of
19 sex-related crimes, violent crimes, or other crimes in which
20 biological evidence is recovered, and such information shall be used
21 for no other purpose.

22 B. Any DNA specimen taken in good faith by the Department of
23 Corrections, its employees or contractors, ~~or~~ the county sheriff,
24 its employees or contractors or a peace officer, and submitted to

1 the OSBI may be included, maintained, and kept by the OSBI in a
2 database for criminal investigative purposes despite the specimen
3 having not been taken in strict compliance with the provisions of
4 this section or Section 991a of Title 22 of the Oklahoma Statutes.

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

14 D. The OSBI ~~Combined DNA Index System (CODIS)~~ Database is
15 specifically exempt from any statute requiring disclosure of
16 information to the public. The information contained in the
17 database is privileged from discovery and inadmissible as evidence
18 in any civil court proceeding. The information in the database is
19 confidential and shall not be released to the public. Any person
20 charged with the custody and dissemination of information from the
21 database shall not divulge or disclose any such information except
22 to federal, state, county or municipal law enforcement or criminal
23 justice agencies. Any person violating the provisions of this
24 section upon conviction shall be deemed guilty of a misdemeanor

1 punishable by imprisonment in the county jail for not more than one
2 (1) year.

3 E. The OSBI shall promulgate rules concerning the collection,
4 storing, expungement and dissemination of information and samples
5 for the OSBI ~~Combined DNA Index System (CODIS)~~ Database. The OSBI
6 shall determine the type of equipment, collection procedures, and
7 reporting documentation to be used by the Department of Corrections
8 ~~or,~~ a county sheriff's office or a law enforcement agency in
9 submitting DNA samples to the OSBI in accordance with Section 991a
10 of Title 22 of the Oklahoma Statutes. The OSBI shall provide
11 training to designated employees of the Department of Corrections
12 ~~and,~~ a county sheriff's office and a law enforcement agency in the
13 proper methods of performing the duties required by this section.

14 F. The OSBI ~~Combined DNA Index System (CODIS)~~ Database may
15 include secondary databases and indexes including, but not limited
16 to:

- 17 1. Forensic index database consisting of unknown evidence
18 samples;
 - 19 2. Suspect index database consisting of samples taken from
20 individuals as a result of criminal investigations;
 - 21 3. Convicted offender index database authorized pursuant to
22 subsection A of this section; and
- 23
24

1 4. Missing persons and unidentified remains index or database
2 consisting of DNA profiles from unidentified remains and relatives
3 of missing persons.

4 G. 1. Any person convicted of a felony offense who is in
5 custody shall provide a blood or saliva sample prior to release.

6 2. Subject to the availability of funds, any person convicted
7 of a misdemeanor offense of assault and battery, domestic abuse,
8 stalking, possession of a controlled substance prohibited under
9 Schedule IV of the Uniform Controlled Dangerous Substances Act,
10 outraging public decency, resisting arrest, ~~escape~~ escaping or
11 attempting to escape, eluding a police officer, ~~peeping tom~~ Peeping
12 Tom, pointing a firearm, unlawful carry of a firearm, illegal
13 transport of a firearm, discharging of a firearm, threatening an act
14 of violence, breaking and entering a dwelling place, destruction of
15 property, negligent homicide, or causing a personal injury incident
16 while driving under the influence of any intoxicating substance who
17 is in custody shall provide a blood or saliva sample prior to
18 release.

19 3. Every person who is convicted of a felony offense whose
20 sentence does not include a term of incarceration shall provide a
21 blood or saliva sample as a condition of sentence.

22 4. Subject to the availability of funds, every person who is
23 convicted of a misdemeanor offense of assault and battery, domestic
24 abuse, stalking, possession of a controlled substance prohibited

1 under Schedule IV of the Uniform Controlled Dangerous Substances
2 Act, outraging public decency, resisting arrest, escape or
3 attempting to escape, eluding a police officer, peeping tom,
4 pointing a firearm, unlawful carry of a firearm, illegal transport
5 of a firearm, discharging of a firearm, threatening an act of
6 violence, breaking and entering a dwelling place, destruction of
7 property, negligent homicide, or causing a personal injury accident
8 while driving under the influence of any intoxicating substance
9 whose sentence does not include a term of incarceration shall
10 provide a blood or saliva sample as a condition of sentence.

11 5. Subject to the availability of funds, any person eighteen
12 (18) years of age or older who is arrested for the commission of a
13 felony under the laws of this state or any other jurisdiction shall,
14 upon being booked into a jail or detention facility, submit to DNA
15 testing for law enforcement identification purposes. Provided, the
16 DNA sample shall not be analyzed and shall be destroyed unless one
17 of the following conditions has been met:

18 a. the arrest was made upon a valid felony arrest
19 warrant,

20 b. the person has appeared before a judge or magistrate
21 judge who made a finding that there was probable cause
22 for the arrest, or

1 c. the person posted bond or was released prior to
2 appearing before a judge or magistrate judge and then
3 failed to appear for a scheduled hearing.

4 SECTION 4. This act shall become effective November 1, 2016.

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6 55-2-9013 GRS 02/10/16
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