

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 HOUSE BILL 2638

 By: Denney of the House

5 and

6 Jolley of the Senate

7
8
9 AS INTRODUCED

10 An Act relating to DNA testing; requiring submission
11 of DNA samples under certain circumstances; providing
12 exclusion for certain persons; providing procedures
13 for testing; authorizing collection of fees; amending
14 74 O.S. 2011, Section 150.27a, which relates to the
 OSBI Combined DNA Index System (CODIS) Database;
 modifying purpose of database; providing for
 codification; and providing an effective date.

15
16
17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 281 of Title 22, unless there is
20 created a duplication in numbering, reads as follows:

21 A. A person accused of committing an offense as provided in
22 Section 13.1 of Title 21 of the Oklahoma Statutes or an offense
23 listed in paragraph 2 of Section 571 of Title 57 of the Oklahoma
24 Statutes shall, after a finding of probable cause for detention or

1 upon an arrest on a valid felony arrest warrant, submit to
2 deoxyribonucleic acid (DNA) testing for law enforcement
3 identification purposes in accordance with Section 150.27a of Title
4 74 of the Oklahoma Statutes and the rules promulgated by the
5 Oklahoma State Bureau of Investigation (OSBI) for the OSBI Combined
6 DNA Index System (CODIS) Database. DNA samples shall be collected
7 by the arresting authority as qualified pursuant to subsection B of
8 this section. Convicted or arrested individuals who have previously
9 submitted to DNA testing pursuant to this section or Section 991a of
10 Title 22 of the Oklahoma Statutes and for whom a valid sample is on
11 file in the OSBI Combined DNA Index System (CODIS) Database shall
12 not be required to submit to additional testing.

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

1 Fifteen Dollars (\$15.00) to the agency collecting the sample for
2 submission to the OSBI Combined DNA Index System (CODIS) Database.
3 Any fees collected pursuant to this subsection shall be deposited in
4 the revolving account or the service fee account of the collection
5 agency or department.

6 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, is
7 amended to read as follows:

8 Section 150.27a A. There is hereby established within the
9 Oklahoma State Bureau of Investigation the OSBI Combined DNA Index
10 System (CODIS) Database for the purpose of collecting and storing
11 blood or saliva samples and DNA profiles, analyzing and typing of
12 the genetic markers contained in or derived from DNA, and
13 maintaining the records and samples of DNA of individuals convicted
14 of any felony offense, of individuals required to register pursuant
15 to the Sex Offenders Registration Act, of individuals accused of
16 committing an offense as provided in Section 13.1 of Title 21 of the
17 Oklahoma Statutes or paragraph 2 of Section 571 of Title 57 of the
18 Oklahoma Statutes after a finding of probable cause for detention or
19 an arrest on a valid felony arrest warrant, and subject to the
20 availability of funds, of individuals convicted of a misdemeanor
21 offense of assault and battery, domestic abuse, stalking, possession
22 of a controlled substance prohibited under Schedule IV of the
23 Uniform Controlled Dangerous Substances Act, outraging public
24 decency, resisting arrest, escape or attempting to escape, eluding a

1 police officer, peeping tom, pointing a firearm, unlawful carry of a
2 firearm, illegal transport of a firearm, discharging of a firearm,
3 threatening an act of violence, breaking and entering a dwelling
4 place, destruction of property, negligent homicide, or causing a
5 personal injury accident while driving under the influence of any
6 intoxicating substance, or, upon arrest, any alien unlawfully
7 present under federal immigration law. The purpose of this database
8 is the detection or exclusion of individuals who are subjects of the
9 investigation or prosecution of sex-related crimes, violent crimes,
10 or other crimes in which biological evidence is recovered, and such
11 information shall be used for no other purpose.

12 B. Any DNA specimen taken in good faith by the Department of
13 Corrections, its employees or contractors, or the county sheriff,
14 its employees or contractors, and submitted to the OSBI may be
15 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 person, any individual who was convicted of
21 violating laws of another state or the federal government, but is
22 currently incarcerated or residing in Oklahoma, shall submit to DNA
23 profiling for entry of the data into the OSBI DNA Offender Database.
24 This provision shall only apply when such federal or state

1 conviction carries a requirement of sex offender registration and/or
2 DNA profiling. The person to be profiled shall pay a fee of One
3 Hundred Fifty Dollars (\$150.00) to the OSBI.

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

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

1 of the Department of Corrections and a county sheriff's office in
2 the proper methods of performing the duties required by this
3 section.

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

7 1. Forensic index database consisting of unknown evidence
8 samples;

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

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

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

16 G. Any person convicted of a felony offense who is in custody
17 shall provide a blood or saliva sample prior to release. Any person
18 accused of committing an offense as provided in Section 13.1 of
19 Title 21 of the Oklahoma Statutes or paragraph 2 of Section 571 of
20 Title 57 of the Oklahoma Statutes shall, after a finding of probable
21 cause for detention or upon an arrest on a valid felony arrest
22 warrant, provide a blood or saliva sample. Subject to the
23 availability of funds, any person convicted of a misdemeanor offense
24 of assault and battery, domestic abuse, stalking, possession of a

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

1 whose sentence does not include a term of incarceration shall
2 provide a blood or saliva sample as a condition of sentence.

3 SECTION 3. This act shall become effective November 1, 2014.
4

5 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/19/2014 - DO
6 PASS, As Coauthored.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24