

STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 2638

By: Denney

AS INTRODUCED

An Act relating to DNA testing; requiring submission of DNA samples under certain circumstances; providing exclusion for certain persons; providing procedures for testing; authorizing collection of fees; amending 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.

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

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

A. A person accused of committing an offense as provided in Section 13.1 of Title 21 of the Oklahoma Statutes or an offense listed in paragraph 2 of Section 571 of Title 57 of the Oklahoma Statutes shall, after a finding of probable cause for detention or upon an arrest on a valid felony arrest warrant, submit to deoxyribonucleic acid (DNA) testing for law enforcement identification purposes in accordance with Section 150.27a of Title 74 of the Oklahoma Statutes and the rules promulgated by the

1 Oklahoma State Bureau of Investigation (OSBI) for the OSBI Combined
2 DNA Index System (CODIS) Database. DNA samples shall be collected
3 by the arresting authority as qualified pursuant to subsection B of
4 this section. Convicted or arrested individuals who have previously
5 submitted to DNA testing pursuant to this section or Section 991a of
6 Title 22 of the Oklahoma Statutes and for whom a valid sample is on
7 file in the OSBI Combined DNA Index System (CODIS) Database shall
8 not be required to submit to additional testing.

9 B. Samples of blood or saliva for DNA testing required by
10 subsection A of this section shall be taken by peace officers, the
11 county sheriff or employees or contractors of the county sheriff's
12 office. The individuals shall be properly trained to collect blood
13 or saliva samples. Persons collecting blood or saliva for DNA
14 testing pursuant to this section shall be immune from civil
15 liabilities arising from this activity. All collectors of DNA
16 samples shall ensure the collection of samples are mailed to the
17 OSBI within ten (10) days of the time the DNA sample is collected
18 from the person. All collectors of DNA samples shall use sample
19 kits provided by the OSBI and procedures promulgated by the OSBI.
20 Persons subject to DNA testing shall be required to pay a fee of
21 Fifteen Dollars (\$15.00) to the agency collecting the sample for
22 submission to the OSBI Combined DNA Index System (CODIS) Database.
23 Any fees collected pursuant to this subsection shall be deposited in
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1 the revolving account or the service fee account of the collection
2 agency or department.

3 SECTION 2. 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 of any felony offense, of individuals required to register pursuant
12 to the Sex Offenders Registration Act, of individuals accused of
13 committing an offense as provided in Section 13.1 of Title 21 of the
14 Oklahoma Statutes or paragraph 2 of Section 571 of Title 57 of the
15 Oklahoma Statutes after a finding of probable cause for detention or
16 an arrest on a valid felony arrest warrant, and subject to the
17 availability of funds, of individuals convicted of a misdemeanor
18 offense of assault and battery, domestic abuse, stalking, possession
19 of a controlled substance prohibited under Schedule IV of the
20 Uniform Controlled Dangerous Substances Act, outraging public
21 decency, resisting arrest, escape or attempting to escape, eluding a
22 police officer, peeping tom, pointing a firearm, unlawful carry of a
23 firearm, illegal transport of a firearm, discharging of a firearm,
24 threatening an act of violence, breaking and entering a dwelling

1 place, destruction of property, negligent homicide, or causing a
2 personal injury accident while driving under the influence of any
3 intoxicating substance, or, upon arrest, any alien unlawfully
4 present under federal immigration law. The purpose of this database
5 is the detection or exclusion of individuals who are subjects of the
6 investigation or prosecution of sex-related crimes, violent crimes,
7 or other crimes in which biological evidence is recovered, and such
8 information shall be used for no other purpose.

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

16 C. Upon the request to OSBI by the federal or state authority
17 having custody of the person, any individual who was convicted of
18 violating laws of another state or the federal government, but is
19 currently incarcerated or residing in Oklahoma, shall submit to DNA
20 profiling for entry of the data into the OSBI DNA Offender Database.
21 This provision shall only apply when such federal or state
22 conviction carries a requirement of sex offender registration and/or
23 DNA profiling. The person to be profiled shall pay a fee of One
24 Hundred Fifty Dollars (\$150.00) to the OSBI.

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

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

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 unknown evidence
5 samples;

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

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

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

13 G. Any person convicted of a felony offense who is in custody
14 shall provide a blood or saliva sample prior to release. Any person
15 accused of committing an offense as provided in Section 13.1 of
16 Title 21 of the Oklahoma Statutes or paragraph 2 of Section 571 of
17 Title 57 of the Oklahoma Statutes shall, after a finding of probable
18 cause for detention or upon an arrest on a valid felony arrest
19 warrant, provide a blood or saliva sample. Subject to the
20 availability of funds, any person convicted of a misdemeanor offense
21 of assault and battery, domestic abuse, stalking, possession of a
22 controlled substance prohibited under Schedule IV of the Uniform
23 Controlled Dangerous Substances Act, outraging public decency,
24 resisting arrest, escape or attempting to escape, eluding a police

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

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

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