

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB3439 _____
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

Amendment submitted by: Carol Bush

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 3439

By: Bush

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to DNA testing requirements; amending 20 O.S. 2011, Section 1313.2, as last amended by Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp. 2017, Section 1313.2), which relates to fees assessed in criminal cases; providing for the assessment of Rapid DNA Fees; amending Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp. 2017, Section 210), which relates to DNA collection and testing requirements; requiring all arrested persons to submit to DNA testing; allowing certain persons to collect DNA samples; updating statutory reference; modifying DNA collection and test kit requirements; providing exception for Rapid DNA testing; requiring convicted persons to pay for costs of collecting and analyzing DNA samples; directing law enforcement agencies to follow certain collection procedures; providing an exception for agencies using Rapid DNA instruments and technology; establishing guidelines for submitting samples; defining terms; directing law enforcement agencies to comply with Rapid DNA standards and procedures of the Federal Bureau of Investigation; restricting use of Rapid DNA instruments and technology; prohibiting use of Rapid DNA instruments and technology for certain purposes; providing an exception; requiring law enforcement personnel to complete training; authorizing law enforcement agencies to upload DNA profiles into certain system; and providing an effective date.

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

1 SECTION 1. AMENDATORY 20 O.S. 2011, Section 1313.2, as
2 last amended by Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp.
3 2017, Section 1313.2), is amended to read as follows:

4 Section 1313.2 A. As used in this section:

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

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

10 3. "Court" means any state or municipal court having
11 jurisdiction to impose a criminal fine or penalty; and

12 4. "DNA" means ~~Deoxyribonucleic~~ deoxyribonucleic acid.

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

21 C. 1. Any person convicted of any misdemeanor or felony
22 offense shall pay a Rapid DNA Fee or a Laboratory Analysis Fee in
23 the amount of One Hundred Fifty Dollars (\$150.00) for each offense
24 if forensic science ~~or~~, laboratory services or Rapid DNA testing

1 services are rendered or administered by the Oklahoma State Bureau
2 of Investigation (OSBI), by the Toxicology Laboratory of the Office
3 of the Chief Medical Examiner or by any municipality or county in
4 connection with the case. This fee shall be in addition to and not
5 a substitution for any and all fines and penalties otherwise
6 provided for by law for this offense.

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

11 a. the OSBI who shall deposit the monies into the OSBI
12 Revolving Fund provided for in Section 150.19a of
13 Title 74 of the Oklahoma Statutes for services
14 rendered or administered by the OSBI,

15 b. the Office of the Chief Medical Examiner who shall
16 deposit the monies into the Chief Medical Examiner
17 Revolving Fund provided for in Section 954 of Title 63
18 of the Oklahoma Statutes for services rendered or
19 administered by the Office of the Chief Medical
20 Examiner, or

21 c. the appropriate municipality or county for services
22 rendered or administered by a municipality or county.

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

- a. providing criminalistic laboratory services,
- b. the purchase and maintenance of equipment for use by the laboratory in performing analysis,
- c. education, training, and scientific development of OSBI personnel, and
- d. the destruction of seized property and chemicals as prescribed in Sections 2-505 and 2-508 of Title 63 of the Oklahoma Statutes.

D. Upon conviction or bond forfeiture, the court shall collect the fee provided for in subsection B of this section and deposit it in an account created for that purpose. Except as otherwise provided in subsection E of this section, monies shall be forwarded monthly by the court clerk to the Council on Law Enforcement Education and Training (CLEET). Beginning July 1, 2003, deposits shall be due on the fifteenth day of each month for the preceding calendar month. There shall be a late fee imposed for failure to make timely deposits; provided, CLEET, in its discretion, may waive all or part of the late fee. Such late fee shall be one percent (1%) of the principal amount due per day beginning from the tenth day after payment is due and accumulating until the late fee reaches one hundred percent (100%) of the principal amount due. Beginning on July 1, 1987, ninety percent (90%) of the monies received by CLEET from the court clerks pursuant to this section shall be deposited in the CLEET Fund, and ten percent (10%) shall be

1 deposited in the General Revenue Fund. Beginning January 1, 2001,
2 sixty and fifty-three one-hundredths percent (60.53%) of the monies
3 received by CLEET from the court clerks pursuant to this section
4 shall be deposited in the CLEET Fund created pursuant to subsection
5 G of this section, five and eighty-three one-hundredths percent
6 (5.83%) shall be deposited in the General Revenue Fund and thirty-
7 three and sixty-four one-hundredths percent (33.64%) shall be
8 deposited in the CLEET Training Center Revolving Fund created
9 pursuant to Section 3311.6 of Title 70 of the Oklahoma Statutes.
10 Along with the deposits required by this subsection, each court
11 shall also submit a report stating the total amount of funds
12 collected and the total number of fees imposed during the preceding
13 quarter. The report may be made on computerized or manual
14 disposition reports.

15 E. Any municipality or county having a basic law enforcement
16 academy approved by CLEET pursuant to the criteria developed by
17 CLEET for training law enforcement officers shall retain from monies
18 collected pursuant to subsections A through D of this section, Two
19 Dollars (\$2.00) from each fee. These monies shall be deposited into
20 an account for the sole use of the municipality or county in
21 implementing its law enforcement training functions. Not more than
22 seven percent (7%) of the monies shall be used for court and
23 prosecution training. The court clerk of any such municipality or
24

1 county shall furnish to CLEET the report required by subsection D of
2 this section.

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

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

14 G. There is hereby created in the State Treasury a fund for the
15 Council on Law Enforcement Education and Training to be designated
16 the "CLEET Fund". The fund shall be subject to legislative
17 appropriation and shall consist of any monies received from fees and
18 receipts collected pursuant to the Oklahoma Open Records Act,
19 reimbursements for parts used in the repair of weapons of law
20 enforcement officers attending the basic academies, gifts, bequests,
21 contributions, tuition, fees, devises, and the assessments levied
22 pursuant to the fund pursuant to law.

23 H. 1. Any person arrested or convicted of a felony offense or
24 convicted of a misdemeanor offense of assault and battery, domestic

1 abuse, stalking, possession of a controlled substance prohibited
2 under Schedule IV of the Uniform Controlled Dangerous Substances
3 Act, outraging public decency, resisting arrest, escaping or
4 attempting to escape, eluding a police officer, Peeping Tom,
5 pointing a firearm, threatening an act of violence, breaking and
6 entering a dwelling place, destruction of property, negligent
7 homicide or causing a personal injury accident while driving under
8 the influence of any intoxicating substance shall pay a DNA fee of
9 One Hundred Fifty Dollars (\$150.00). This fee shall not be
10 collected if the person has a valid DNA sample in the OSBI DNA
11 Offender Database at the time of sentencing.

12 2. The court clerk shall cause to be deposited the amount of
13 One Hundred Fifty Dollars (\$150.00) as collected for every felony
14 arrest, felony conviction or every conviction for a misdemeanor
15 offense of assault and battery, domestic abuse, stalking, possession
16 of a controlled substance prohibited under Schedule IV of the
17 Uniform Controlled Dangerous Substances Act, outraging public
18 decency, resisting arrest, escaping or attempting to escape, eluding
19 a police officer, Peeping Tom, pointing a firearm, threatening an
20 act of violence, breaking and entering a dwelling place, destruction
21 of property, negligent homicide or causing a personal injury
22 accident while driving under the influence of any intoxicating
23 substance as described in this subsection. The court clerk shall
24 remit the monies in said fund on a monthly basis directly to the

OSBI who shall deposit the monies into the OSBI Revolving Fund provided for in Section 150.19a of Title 74 of the Oklahoma Statutes for services rendered or administered by the OSBI.

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

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

SECTION 2. AMENDATORY Section 1, Chapter 181, O.S.L. 2016 (22 O.S. Supp. 2017, Section 210), is amended to read as follows:

Section 210. A. ~~Subject to the availability of funds, a~~ A person eighteen (18) years of age or older who is arrested ~~for the commission of a felony~~ under the laws of this state or any other jurisdiction shall, upon being booked into a jail or detention facility, 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

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

10 B. Samples of blood or saliva for DNA testing required by
11 subsection A of this section shall be taken by peace officers, the
12 county sheriff or employees or contractors of the county sheriff's
13 office. The individuals shall be properly trained to collect blood
14 or saliva samples. Persons collecting blood or saliva for DNA
15 testing pursuant to this section shall be immune from civil
16 liabilities arising from this activity. ~~All collectors~~ Except for
17 those criminal justice agencies, jails and detention facilities
18 using Rapid DNA instruments and DNA analysis in booking facilities,
19 all collectors of DNA samples shall ensure the collected samples are
20 mailed or delivered to the OSBI, an accredited laboratory operating
21 under contract with the OSBI or an accredited laboratory operated by
22 a municipality or county for the purpose of conducting DNA testing
23 within ten (10) days after the DNA sample is collected from the
24 person. All Except for those criminal justice agencies, jails and

1 detention facilities using Rapid DNA instruments and resulting DNA
2 analysis for identification purposes, all other collectors of DNA
3 samples shall use sample kits provided by one of the following:

4 1. The OSBI and;

5 2. An accredited laboratory operating under contract with the
6 OSBI; or

7 3. An accredited laboratory operated by a municipality or
8 county.

9 C. The cost incurred by the criminal justice agency, jail or
10 detention facility for collecting and analyzing DNA from single-
11 source known-arrestee profile samples at booking shall be paid by
12 the convicted person pursuant to the provisions of Section 1313.2 of
13 Title 20 of the Oklahoma Statutes.

14 D. Collection procedures promulgated by the OSBI and Federal
15 Bureau of Investigation shall be followed by the collectors of DNA
16 samples, except criminal justice agencies, jails and detention
17 facilities using Rapid DNA instruments and resulting DNA analysis
18 conducted during booking, which shall follow collection policies and
19 procedures promulgated by either the Federal Bureau of Investigation
20 or the OSBI. All other results of the analysis, except for Rapid
21 DNA collected samples, shall be submitted to the OSBI Combined DNA
22 Index System (CODIS) Database for the purpose of storing and
23 maintaining the records and samples of the collected DNA.

1 As used in this subsection and subsections E through I of this
2 section, the term "Rapid DNA" or "Rapid DNA analysis" is defined as
3 a fully automated process of developing a CODIS DNA profile from a
4 reference DNA sample without human intervention or interpretation.
5 "Rapid DNA instruments" means instrumentation that carries a fully
6 automated process to derive a DNA analysis from a DNA sample.

7 E. Law enforcement officers, jail and detention personnel and
8 other criminal justice agencies using Rapid DNA instruments and
9 technology shall be approved by the Federal Bureau of Investigation
10 and shall comply with the Rapid DNA standards and procedures issued
11 by the Federal Bureau of Investigation.

12 F. The use of Rapid DNA instruments and technology is
13 restricted exclusively, at this time, for use at booking facilities
14 in jails and detention centers utilizing single-source known
15 arrestee reference samples until such time as usage for comparison
16 to forensic or crime scene samples have been approved by the Federal
17 Bureau of Investigation.

18 G. Rapid DNA instruments and technology shall not be used by
19 any county sheriff or law enforcement agency for the analysis of
20 forensic or crime scene samples unless the county sheriff or law
21 enforcement agency complies with the collection procedures, rules
22 and regulations of the Federal Bureau of Investigation for Rapid DNA
23 testing.

1 H. All law enforcement officers, jail and detention personnel
2 in booking facilities that have Rapid DNA instruments and technology
3 shall have completed training in the use of Rapid DNA instruments.

4 I. Criminal justice agencies, jails and detention facilities
5 using Rapid DNA instruments and technology are authorized to upload
6 arrestee DNA profiles directly into the Combined DNA Index System
7 (CODIS).

8 ~~C.~~ J. A DNA sample shall not be analyzed and shall be destroyed
9 unless one of the following conditions has been met:

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

16 ~~D.~~ K. All DNA samples, records and identifiable information
17 generated pursuant to the provisions of this section shall be
18 automatically expunged from the OSBI Combined DNA Index System
19 (CODIS) Database under the following circumstances:

- 20 1. The felony offense for which the person was arrested does
21 not result in charges either by information or indictment and the
22 statute of limitations has expired;
23 2. The state voluntarily dismissed the felony charge filed
24 against the person; or

1 3. The court dismissed the felony charge filed against the
2 person.

3 The Oklahoma State Bureau of Investigation shall promulgate
4 rules establishing procedures relating to the automatic expungement
5 of DNA samples, records and identifiable information collected under
6 the provisions of this section. Fees related to the expungement of
7 DNA samples, records and identifiable information shall not be
8 assessed for persons who qualify for an automatic expungement under
9 the provisions of this subsection.

10 SECTION 3. This act shall become effective November 1, 2018.

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12 56-2-9721 GRS 02/16/18
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