

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3439

By: Bush of the House

and

Shaw of the Senate

COMMITTEE SUBSTITUTE

[DNA testing requirements - Rapid DNA Fees - DNA
collection and testing requirements - establishing
guidelines for submitting samples - effective date]

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

Section 1313.2. A. As used in this section:

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

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

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

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

4 B. Any person convicted of an offense, including traffic
5 offenses but excluding parking and standing violations, punishable
6 by a fine of Ten Dollars (\$10.00) or more or by incarceration or any
7 person forfeiting bond when charged with such an offense, shall be
8 ordered by the court to pay Ten Dollars (\$10.00) as a separate fee,
9 which fee shall be in addition to and not in substitution for any
10 and all fines and penalties otherwise provided for by law for such
11 offense.

12 C. 1. Any person convicted of any misdemeanor or felony
13 offense shall pay a Laboratory Analysis Fee in the amount of One
14 Hundred Fifty Dollars (\$150.00) for each offense if forensic science
15 or laboratory services are rendered or administered by the Oklahoma
16 State Bureau of Investigation (OSBI), by the Toxicology Laboratory
17 of the Office of the Chief Medical Examiner or by any municipality
18 or county in connection with the case. This fee shall be in
19 addition to and not a substitution for any and all fines and
20 penalties otherwise provided for by law for this offense.

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

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

5 b. the Office of the Chief Medical Examiner who shall
6 deposit the monies into the Chief Medical Examiner
7 Revolving Fund provided for in Section 954 of Title 63
8 of the Oklahoma Statutes for services rendered or
9 administered by the Office of the Chief Medical
10 Examiner, or

11 c. the appropriate municipality or county for services
12 rendered or administered by a municipality or county.

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

15 a. providing criminalistic laboratory services,

16 b. the purchase and maintenance of equipment for use by
17 the laboratory in performing analysis,

18 c. education, training, and scientific development of
19 OSBI personnel, and

20 d. the destruction of seized property and chemicals as
21 prescribed in Sections 2-505 and 2-508 of Title 63 of
22 the Oklahoma Statutes.

23 D. Upon conviction or bond forfeiture, the court shall collect
24 the fee provided for in subsection B of this section and deposit it

1 in an account created for that purpose. Except as otherwise
2 provided in subsection E of this section, monies shall be forwarded
3 monthly by the court clerk to the Council on Law Enforcement
4 Education and Training (CLEET). Beginning July 1, 2003, deposits
5 shall be due on the fifteenth day of each month for the preceding
6 calendar month. There shall be a late fee imposed for failure to
7 make timely deposits; provided, CLEET, in its discretion, may waive
8 all or part of the late fee. Such late fee shall be one percent
9 (1%) of the principal amount due per day beginning from the tenth
10 day after payment is due and accumulating until the late fee reaches
11 one hundred percent (100%) of the principal amount due. Beginning
12 on July 1, 1987, ninety percent (90%) of the monies received by
13 CLEET from the court clerks pursuant to this section shall be
14 deposited in the CLEET Fund, and ten percent (10%) shall be
15 deposited in the General Revenue Fund. Beginning January 1, 2001,
16 sixty and fifty-three one-hundredths percent (60.53%) of the monies
17 received by CLEET from the court clerks pursuant to this section
18 shall be deposited in the CLEET Fund created pursuant to subsection
19 G of this section, five and eighty-three one-hundredths percent
20 (5.83%) shall be deposited in the General Revenue Fund and thirty-
21 three and sixty-four one-hundredths percent (33.64%) shall be
22 deposited in the CLEET Training Center Revolving Fund created
23 pursuant to Section 3311.6 of Title 70 of the Oklahoma Statutes.
24 Along with the deposits required by this subsection, each court

1 shall also submit a report stating the total amount of funds
2 collected and the total number of fees imposed during the preceding
3 quarter. The report may be made on computerized or manual
4 disposition reports.

5 E. Any municipality or county having a basic law enforcement
6 academy approved by CLEET pursuant to the criteria developed by
7 CLEET for training law enforcement officers shall retain from monies
8 collected pursuant to subsections A through D of this section, Two
9 Dollars (\$2.00) from each fee. These monies shall be deposited into
10 an account for the sole use of the municipality or county in
11 implementing its law enforcement training functions. Not more than
12 seven percent (7%) of the monies shall be used for court and
13 prosecution training. The court clerk of any such municipality or
14 county shall furnish to CLEET the report required by subsection D of
15 this section.

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

22 2. The court clerk shall cause to be deposited the amount of
23 Five Dollars (\$5.00) as collected, for every adjudicated or
24 otherwise convicted person as described in this subsection. The

1 court clerk shall remit the monies in the fund on a monthly basis
2 directly to the Bureau of Narcotics Drug Education Revolving Fund.

3 G. There is hereby created in the State Treasury a fund for the
4 Council on Law Enforcement Education and Training to be designated
5 the "CLEET Fund". The fund shall be subject to legislative
6 appropriation and shall consist of any monies received from fees and
7 receipts collected pursuant to the Oklahoma Open Records Act,
8 reimbursements for parts used in the repair of weapons of law
9 enforcement officers attending the basic academies, gifts, bequests,
10 contributions, tuition, fees, devises, and the assessments levied
11 pursuant to the fund pursuant to law.

12 H. 1. Any person arrested or convicted of a felony offense or
13 convicted of a misdemeanor offense of assault and battery, domestic
14 abuse, stalking, possession of a controlled substance prohibited
15 under Schedule IV of the Uniform Controlled Dangerous Substances
16 Act, outraging public decency, resisting arrest, escaping or
17 attempting to escape, eluding a police officer, Peeping Tom,
18 pointing a firearm, threatening an act of violence, breaking and
19 entering a dwelling place, destruction of property, negligent
20 homicide or causing a personal injury accident while driving under
21 the influence of any intoxicating substance shall pay a DNA fee of
22 One Hundred Fifty Dollars (\$150.00) to the OSBI. If the individual
23 arrested or convicted submits a DNA sample to an arresting
24 authority, jail, or booking center for Rapid DNA analysis, the

1 individual shall pay the agency processing the sample a Rapid DNA
2 fee of One Hundred Fifty Dollars (\$150.00) in lieu of the DNA fee.

3 This fee shall not be collected if the person has a valid DNA sample
4 in the OSBI DNA Offender Database at the time of sentencing.

5 2. The court clerk shall ~~cause to be deposited the amount of~~
6 ~~One Hundred Fifty Dollars (\$150.00)~~ deposit DNA fees as collected
7 for every felony arrest, felony conviction or every conviction for a
8 misdemeanor offense of assault and battery, domestic abuse,
9 stalking, possession of a controlled substance prohibited under
10 Schedule IV of the Uniform Controlled Dangerous Substances Act,
11 outraging public decency, resisting arrest, escaping or attempting
12 to escape, eluding a police officer, Peeping Tom, pointing a
13 firearm, threatening an act of violence, breaking and entering a
14 dwelling place, destruction of property, negligent homicide or
15 causing a personal injury accident while driving under the influence
16 of any intoxicating substance as described in this subsection. The
17 court clerk shall remit the monies in ~~said~~ the fund on a monthly
18 basis directly to the OSBI who shall deposit the monies into the
19 OSBI Revolving Fund provided for in Section 150.19a of Title 74 of
20 the Oklahoma Statutes for services rendered or administered by the
21 OSBI.

22 3. Collection of Rapid DNA fees shall be the responsibility of
23 the agency conducting Rapid DNA analysis. Any funds collected
24

1 through Rapid DNA fees shall be used to pay for expenses incurred to
2 perform Rapid DNA analysis of arrestee or offender samples.

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

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

14 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, as
15 last amended by Section 3, Chapter 194, O.S.L. 2017 (74 O.S. Supp.
16 2017, Section 150.27a), is amended to read as follows:

17 Section 150.27a. A. There is hereby established within the
18 Oklahoma State Bureau of Investigation (OSBI) the OSBI Combined DNA
19 Index System (CODIS) Database for the purpose of collecting and
20 storing blood or saliva samples and DNA profiles, analyzing and
21 typing of the genetic markers contained in or derived from DNA, and
22 maintaining the records and samples of DNA of individuals:

23 1. Convicted of any felony offense;
24

1 2. Required to register pursuant to the Sex Offenders
2 Registration Act;

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

9 a. the arrest was made upon a valid felony arrest
10 warrant,

11 b. the person has appeared before a judge or magistrate
12 judge who made a finding that there was probable cause
13 for the arrest, or

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

17 4. Subject to the availability of funds, convicted of a
18 misdemeanor offense of assault and battery, domestic abuse,
19 stalking, possession of a controlled substance prohibited under
20 Schedule IV of the Uniform Controlled Dangerous Substances Act,
21 outraging public decency, resisting arrest, escaping or attempting
22 to escape, eluding a police officer, Peeping Tom, pointing a
23 firearm, threatening an act of violence, breaking and entering a
24 dwelling place, destruction of property, negligent homicide, or

1 causing a personal injury accident while driving under the influence
2 of any intoxicating substance, or, upon arrest, any alien unlawfully
3 present under federal immigration law.

4 The purpose of this database is the detection or exclusion of
5 individuals who are subjects of the investigation or prosecution of
6 sex-related crimes, violent crimes, or other crimes in which
7 biological evidence is recovered, and such information shall be used
8 for no other purpose.

9 B. Any DNA specimen taken in good faith by the Department of
10 Corrections, its employees or contractors, the county sheriff, its
11 employees or contractors or a peace officer, and submitted to the
12 OSBI may be included, maintained, and kept by the OSBI in a database
13 for criminal investigative purposes despite the specimen having not
14 been taken in strict compliance with the provisions of this section
15 or 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 or DNA
23 profiling. The person to be profiled shall pay a fee of One Hundred
24 Fifty Dollars (\$150.00) to the OSBI.

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

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

1 F. The OSBI CSD may approve the use of Rapid DNA systems by the
2 Department of Corrections, a county sheriff's office or a law
3 enforcement agency for the analysis of known DNA samples collected
4 upon arrest or conviction, once the Federal Bureau of Investigation
5 (FBI) has approved these systems for use with CODIS and issued
6 quality assurance standards and written procedures governing the use
7 of Rapid DNA Systems by law enforcement booking stations. The OSBI
8 CSD shall not approve the Department of Corrections, any county
9 sheriff's office or law enforcement agency to use Rapid DNA until
10 the Department, office or agency has documented or demonstrated
11 compliance with the requirements set forth by the FBI. The OSBI CSD
12 shall promulgate rules concerning the approval of agencies to use
13 Rapid DNA Systems and shall determine the collection procedures and
14 reporting documentation to be used by the Department of Corrections,
15 a county sheriff's office or law enforcement agency in submitting
16 arrestee or offender samples in accordance with Section 991a of
17 Title 22 of the Oklahoma Statutes, which have already been analyzed
18 by Rapid DNA. Rapid DNA shall not be used by any sheriff's office
19 or law enforcement agency for the analysis of any forensic, crime
20 scene or reference sample to be used for comparison to forensic or
21 crime scene samples unless the sheriff's office or law enforcement
22 agency complies with the requirements of Section 150.37 of this
23 title and the FBI's Quality Assurance Standards for Forensic DNA
24 Testing Laboratories.

1 G. The OSBI CODIS Database may include secondary databases and
2 indexes including, but not limited to:

3 1. Forensic index database consisting of unknown evidence
4 samples;

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

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

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

12 ~~G.~~ H. 1. Any person convicted of a felony offense who is in
13 custody shall provide a blood or saliva sample prior to release.

14 2. Subject to the availability of funds, any person convicted
15 of a misdemeanor offense of assault and battery, domestic abuse,
16 stalking, possession of a controlled substance prohibited under
17 Schedule IV of the Uniform Controlled Dangerous Substances Act,
18 outraging public decency, resisting arrest, escaping or attempting
19 to escape, eluding a police officer, Peeping Tom, pointing a
20 firearm, threatening an act of violence, breaking and entering a
21 dwelling place, destruction of property, negligent homicide, or
22 causing a personal injury incident while driving under the influence
23 of any intoxicating substance who is in custody shall provide a
24 blood or saliva sample prior to release.

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

4 4. Subject to the availability of funds, every person who is
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 or
9 attempting to escape, eluding a police officer, Peeping Tom,
10 pointing a firearm, threatening an act of violence, breaking and
11 entering a dwelling place, destruction of property, negligent
12 homicide, or causing a personal injury accident while driving under
13 the influence of any intoxicating substance whose sentence does not
14 include a term of incarceration shall provide a blood or saliva
15 sample as a condition of sentence.

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

- 23 a. the arrest was made upon a valid felony arrest
24 warrant,

1 b. the person has appeared before a judge or magistrate
2 judge who made a finding that there was probable cause
3 for the arrest, or

4 c. the person posted bond or was released prior to
5 appearing before a judge or magistrate judge and then
6 failed to appear for a scheduled hearing.

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

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