

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 3439

By: Bush

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 and obtain certification; directing booking facilities to execute Memorandum of Understanding; requiring booking facilities to adopt and implement Rapid DNA policies and procedures; and providing an effective date.

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

2 SECTION 1. AMENDATORY 20 O.S. 2011, Section 1313.2, as  
3 last amended by Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp.  
4 2017, Section 1313.2), is amended to read as follows:

5 Section 1313.2 A. As used in this section:

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

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

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

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

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

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

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

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

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

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

22 c. the appropriate municipality or county for services  
23 rendered or administered by a municipality or county.  
24

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

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

11        D. Upon conviction or bond forfeiture, the court shall collect  
12 the fee provided for in subsection B of this section and deposit it  
13 in an account created for that purpose. Except as otherwise  
14 provided in subsection E of this section, monies shall be forwarded  
15 monthly by the court clerk to the Council on Law Enforcement  
16 Education and Training (CLEET). Beginning July 1, 2003, deposits  
17 shall be due on the fifteenth day of each month for the preceding  
18 calendar month. There shall be a late fee imposed for failure to  
19 make timely deposits; provided, CLEET, in its discretion, may waive  
20 all or part of the late fee. Such late fee shall be one percent  
21 (1%) of the principal amount due per day beginning from the tenth  
22 day after payment is due and accumulating until the late fee reaches  
23 one hundred percent (100%) of the principal amount due. Beginning  
24 on July 1, 1987, ninety percent (90%) of the monies received by

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

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

1 prosecution training. The court clerk of any such municipality or  
2 county shall furnish to CLEET the report required by subsection D of  
3 this section.

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

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

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

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

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

1 substance as described in this subsection. The court clerk shall  
2 remit the monies in said fund on a monthly basis directly to the  
3 OSBI who shall deposit the monies into the OSBI Revolving Fund  
4 provided for in Section 150.19a of Title 74 of the Oklahoma Statutes  
5 for services rendered or administered by the OSBI.

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

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

17 SECTION 2. AMENDATORY Section 1, Chapter 181, O.S.L.  
18 2016 (22 O.S. Supp. 2017, Section 210), is amended to read as  
19 follows:

20 Section 210. A. Subject to the availability of funds, a person  
21 eighteen (18) years of age or older who is arrested ~~for the~~  
22 ~~commission of a felony~~ under the laws of this state or any other  
23 jurisdiction shall, upon being booked into a jail or detention  
24 facility, submit to deoxyribonucleic acid (DNA) testing for law

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

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

1 sample is collected from the person. ~~All~~ Except for those criminal  
2 justice agencies, jails and detention booking facilities using Rapid  
3 DNA instruments and resulting DNA analysis for identification  
4 purposes, all other collectors of DNA samples shall use sample kits  
5 provided by one of the following:

6 1. The OSBI and; or

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

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

14 D. Collection and analysis procedures ~~promulgated~~ required by  
15 the OSBI and Federal Bureau of Investigation shall be followed by  
16 booking facilities using Rapid DNA instruments and resulting DNA  
17 analysis conducted during booking for identification purposes. All  
18 other DNA testing and analysis shall be submitted to the OSBI  
19 Combined DNA Index System (CODIS) Database for the purpose of  
20 storing and maintaining the records and samples of the collected  
21 DNA.

22 As used in this subsection and subsections E through I of this  
23 section, the term "Rapid DNA" or "Rapid DNA analysis" is defined as  
24 a fully automated process of developing a CODIS DNA profile from a

1 reference DNA sample without human intervention or interpretation.

2 "Rapid DNA instruments" means instrumentation that carries a fully  
3 automated process to derive a DNA analysis from a DNA sample.

4 E. Law enforcement officers, jail and detention personnel and  
5 other criminal justice agencies shall use the Rapid DNA system,  
6 instruments, software, kits and technology approved by the Federal  
7 Bureau of Investigation and shall comply with the requirements for  
8 Rapid DNA standards and procedures in the booking environment issued  
9 by the Federal Bureau of Investigation.

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

16 G. Rapid DNA instruments and technology shall not be used by  
17 any county sheriff or law enforcement agency for the analysis of  
18 forensic or crime-scene samples until or unless Rapid DNA technology  
19 has been approved by the Federal Bureau of Investigation for  
20 forensic and crime-scene-sample purposes and the county sheriff or  
21 law enforcement agency complies with the collection procedures,  
22 rules and regulations of the Federal Bureau of Investigation for  
23 Rapid DNA 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 and been certified in the use of Rapid  
4 DNA instruments.

5       I. The criminal justice agency, jail or detention booking  
6 facility must execute a Memorandum of Understanding with the  
7 Oklahoma State Bureau of Investigation defining the roles and  
8 responsibilities with each facility planning to establish a Rapid  
9 DNA booking station for enrollment of arrestees in the OSBI Combined  
10 DNA Index System (CODIS) Database. Prior to implementing the Rapid  
11 DNA system, the criminal justice agency, jail or detention booking  
12 facility must adopt and implement Rapid DNA policies and procedures.

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

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

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

1        1. The felony offense for which the person was arrested does  
2 not result in charges either by information or indictment and the  
3 statute of limitations has expired;

4        2. The state voluntarily dismissed the felony charge filed  
5 against the person; or

6        3. The court dismissed the felony charge filed against the  
7 person.

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

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

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17        56-2-10040        GRS        02/28/18  
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