

1 ENGROSSED HOUSE
2 BILL NO. 3439

By: Bush of the House

3 and

4 Shaw of the Senate

5
6
7 [DNA testing requirements - Rapid DNA Fees - DNA
8 collection and testing requirements - establishing
9 guidelines for submitting samples - effective date]
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11

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

13 SECTION 1. AMENDATORY 20 O.S. 2011, Section 1313.2, as
14 last amended by Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp.
15 2017, Section 1313.2), is amended to read as follows:

16 Section 1313.2 A. As used in this section:

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

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

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

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

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

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

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

23 a. the OSBI who shall deposit the monies into the OSBI
24 Revolving Fund provided for in Section 150.19a of

1 Title 74 of the Oklahoma Statutes for services
2 rendered or administered by the OSBI,

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

9 c. the appropriate municipality or county for services
10 rendered or administered by a municipality or county.

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

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

21 D. Upon conviction or bond forfeiture, the court shall collect
22 the fee provided for in subsection B of this section and deposit it
23 in an account created for that purpose. Except as otherwise
24 provided in subsection E of this section, monies shall be forwarded

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

1 quarter. The report may be made on computerized or manual
2 disposition reports.

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

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

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

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

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

23 2. The court clerk shall cause to be deposited the amount of
24 One Hundred Fifty Dollars (\$150.00) as collected for every felony

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

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

19 I. It shall be the responsibility of the court clerk to account
20 for and ensure the correctness and accuracy of payments made to the
21 state agencies identified in Sections 1313.2 through 1313.4 of this
22 title. Payments made directly to an agency by the court clerk as a
23 result of different types of assessments and fees pursuant to
24

1 Sections 1313.2 through 1313.4 of this title shall be made monthly
2 to each state agency.

3 SECTION 2. AMENDATORY Section 1, Chapter 181, O.S.L.
4 2016 (22 O.S. Supp. 2017, Section 210), is amended to read as
5 follows:

6 Section 210. A. Subject to the availability of funds, a person
7 eighteen (18) years of age or older who is arrested ~~for the~~
8 ~~commission of a felony~~ under the laws of this state or any other
9 jurisdiction shall, upon being booked into a jail or detention
10 facility, submit to deoxyribonucleic acid (DNA) testing for law
11 enforcement identification purposes in accordance with Section
12 150.27a of Title 74 of the Oklahoma Statutes and the rules
13 promulgated by the Federal Bureau of Investigation or the Oklahoma
14 State Bureau of Investigation (OSBI) for the OSBI Combined DNA Index
15 System (CODIS) Database. DNA samples shall be collected by the
16 arresting authority, jail or detention center personnel as qualified
17 pursuant to subsection B of this section. Convicted or arrested
18 individuals who have previously submitted to DNA testing pursuant to
19 this section or Section 991a of ~~Title 22 of the Oklahoma Statutes~~
20 this title and for whom a valid sample is on file in the OSBI CODIS
21 Database shall not be required to submit to additional testing.

22 B. Samples of blood or saliva for DNA testing required by
23 subsection A of this section shall be taken by peace officers, the
24 county sheriff or employees or contractors of the county sheriff's

1 office. The individuals shall be properly trained to collect blood
2 or saliva samples. Persons collecting blood or saliva for DNA
3 testing pursuant to this section shall be immune from civil
4 liabilities arising from this activity. ~~All collectors~~ Except for
5 those criminal justice agencies, jails and detention booking
6 facilities using Rapid DNA instruments and DNA analysis in booking
7 facilities, all other collectors of DNA samples shall ensure the
8 collected samples are mailed or delivered to the OSBI or to an
9 accredited laboratory operated by a municipality or county for the
10 purpose of conducting DNA testing within ten (10) days after the DNA
11 sample is collected from the person. ~~All~~ Except for those criminal
12 justice agencies, jails and detention booking facilities using Rapid
13 DNA instruments and resulting DNA analysis for identification
14 purposes, all other collectors of DNA samples shall use sample kits
15 provided by one of the following:

16 1. The OSBI and; or

17 2. An accredited laboratory operated by a municipality or
18 county.

19 C. The cost incurred by the criminal justice agency, jail or
20 detention booking facility for collecting and analyzing DNA from
21 single-source known-arrestee profile samples at booking shall be
22 paid by the convicted person pursuant to the provisions of Section
23 1313.2 of Title 20 of the Oklahoma Statutes.

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1 D. Collection and analysis procedures promulgated required by
2 the OSBI and Federal Bureau of Investigation shall be followed by
3 booking facilities using Rapid DNA instruments and resulting DNA
4 analysis conducted during booking for identification purposes. All
5 other DNA testing and analysis shall be submitted to the OSBI
6 Combined DNA Index System (CODIS) Database for the purpose of
7 storing and maintaining the records and samples of the collected
8 DNA.

9 As used in this subsection and subsections E through I of this
10 section, the term "Rapid DNA" or "Rapid DNA analysis" is defined as
11 a fully automated process of developing a CODIS DNA profile from a
12 reference DNA sample without human intervention or interpretation.
13 "Rapid DNA instruments" means instrumentation that carries a fully
14 automated process to derive a DNA analysis from a DNA sample.

15 E. Law enforcement officers, jail and detention personnel and
16 other criminal justice agencies shall use the Rapid DNA system,
17 instruments, software, kits and technology approved by the Federal
18 Bureau of Investigation and shall comply with the requirements for
19 Rapid DNA standards and procedures in the booking environment issued
20 by the Federal Bureau of Investigation.

21 F. The use of Rapid DNA instruments and technology is
22 restricted exclusively, at this time, for use at booking facilities
23 in jails and detention centers utilizing single-source known-
24 arrestee reference samples until such time as usage for comparison

1 to forensic or crime-scene samples have been approved by the Federal
2 Bureau of Investigation.

3 G. Rapid DNA instruments and technology shall not be used by
4 any county sheriff or law enforcement agency for the analysis of
5 forensic or crime-scene samples until or unless Rapid DNA technology
6 has been approved by the Federal Bureau of Investigation for
7 forensic and crime-scene-sample purposes and the county sheriff or
8 law enforcement agency complies with the collection procedures,
9 rules and regulations of the Federal Bureau of Investigation for
10 Rapid DNA testing.

11 H. All law enforcement officers, jail and detention personnel
12 in booking facilities that have Rapid DNA instruments and technology
13 shall have completed training and been certified in the use of Rapid
14 DNA instruments.

15 I. The criminal justice agency, jail or detention booking
16 facility must execute a Memorandum of Understanding with the
17 Oklahoma State Bureau of Investigation defining the roles and
18 responsibilities with each facility planning to establish a Rapid
19 DNA booking station for enrollment of arrestees in the OSBI Combined
20 DNA Index System (CODIS) Database. Prior to implementing the Rapid
21 DNA system, the criminal justice agency, jail or detention booking
22 facility must adopt and implement Rapid DNA policies and procedures.

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

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

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

- 11 1. The felony offense for which the person was arrested does
- 12 not result in charges either by information or indictment and the
- 13 statute of limitations has expired;
- 14 2. The state voluntarily dismissed the felony charge filed
- 15 against the person; or
- 16 3. The court dismissed the felony charge filed against the
- 17 person.

18 The Oklahoma State Bureau of Investigation shall promulgate
19 rules establishing procedures relating to the automatic expungement
20 of DNA samples, records and identifiable information collected under
21 the provisions of this section. Fees related to the expungement of
22 DNA samples, records and identifiable information shall not be
23 assessed for persons who qualify for an automatic expungement under
24 the provisions of this subsection.

