

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 3439, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Shaw

Shaw-BHG-FS-Req#3623
4/18/2018 11:55 AM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 3439

By: Bush of the House

and

Shaw of the Senate

FLOOR 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~~ required to submit a DNA
22 sample pursuant to Section 150.27a of Title 74 of the Oklahoma
23 Statutes shall pay a DNA fee of One Hundred Fifty Dollars (\$150.00)
24 to the OSBI. If the individual arrested or convicted submits a DNA

1 sample to an arresting authority, jail, or booking center for Rapid
2 DNA analysis, the individual shall be assessed the Rapid DNA fee of
3 One Hundred Fifty Dollars (\$150.00), in lieu of the DNA fee, by the
4 agency processing the sample. This fee shall not be collected if
5 The agency collecting the DNA sample shall be required to verify
6 prior to collection whether the person has a valid DNA sample in the
7 OSBI DNA Offender Database at the time of sentencing. If the
8 individual already has a valid DNA sample in the OSBI DNA Offender
9 Database, no sample will be collected and the DNA fee or Rapid DNA
10 fee shall not be assessed. It shall be the responsibility of the
11 district attorney to inform the court whether the OSBI DNA fee is
12 applicable at the time of conviction.

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

1 ~~subsection~~ from individuals required to submit a DNA sample pursuant
2 to Section 150.27a of Title 74 of the Oklahoma Statutes. The court
3 clerk shall remit the monies in ~~said~~ the fund on a monthly basis
4 directly to the OSBI who shall deposit the monies into the OSBI
5 Revolving Fund provided for in Section 150.19a of Title 74 of the
6 Oklahoma Statutes for services rendered or administered by the OSBI.

7 3. Collection of Rapid DNA fees shall be the responsibility of
8 the agency conducting Rapid DNA analysis. Any funds collected
9 through Rapid DNA fees shall be used to pay for expenses incurred to
10 perform Rapid DNA analysis of arrestee or offender samples.

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

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

22 SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, as
23 last amended by Section 3, Chapter 194, O.S.L. 2017 (74 O.S. Supp.
24 2017, Section 150.27a), is amended to read as follows:

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

7 1. Convicted of any felony offense;

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

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

16 a. the arrest was made upon a valid felony arrest
17 warrant,

18 b. the person has appeared before a judge or magistrate
19 judge who made a finding that there was probable cause
20 for the arrest, or

21 c. the person posted bond or was released prior to
22 appearing before a judge or magistrate judge and then
23 failed to appear for a scheduled hearing; and
24

1 4. Subject to the availability of funds, convicted of a
2 misdemeanor offense of assault and battery, domestic abuse,
3 stalking, possession of a controlled substance prohibited under
4 Schedule IV of the Uniform Controlled Dangerous Substances Act,
5 outraging public decency, resisting arrest, escaping or attempting
6 to escape, eluding a police officer, Peeping Tom, pointing a
7 firearm, threatening an act of violence, breaking and entering a
8 dwelling place, destruction of property, negligent homicide, or
9 causing a personal injury accident while driving under the influence
10 of any intoxicating substance, or, upon arrest, any alien unlawfully
11 present under federal immigration law.

12 The purpose of this database is the detection or exclusion of
13 individuals who are subjects of the investigation or prosecution of
14 sex-related crimes, violent crimes, or other crimes in which
15 biological evidence is recovered, and such information shall be used
16 for no other purpose.

17 B. Any DNA specimen taken in good faith by the Department of
18 Corrections, its employees or contractors, the county sheriff, its
19 employees or contractors or a peace officer, and submitted to the
20 OSBI may be included, maintained, and kept by the OSBI in a database
21 for criminal investigative purposes despite the specimen having not
22 been taken in strict compliance with the provisions of this section
23 or Section 991a of Title 22 of the Oklahoma Statutes.

1 C. Upon the request to OSBI by the federal or state authority
2 having custody of the person, any individual who was convicted of
3 violating laws of another state or the federal government, but is
4 currently incarcerated or residing in Oklahoma, shall submit to DNA
5 profiling for entry of the data into the OSBI DNA Offender Database.
6 This provision shall only apply when such federal or state
7 conviction carries a requirement of sex offender registration or DNA
8 profiling. The person to be profiled shall pay a fee of One Hundred
9 Fifty Dollars (\$150.00) to the OSBI.

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

22 E. The OSBI Criminalistics Services Division (CSD) shall
23 promulgate rules concerning the collection, ~~storing~~ storage,
24 analysis, expungement and dissemination of information and samples

1 for the OSBI CODIS Database. The OSBI CSD shall determine the type
2 of equipment, collection procedures, and reporting documentation to
3 be used by the Department of Corrections, a county sheriff's office
4 or a law enforcement agency in submitting DNA samples to the OSBI
5 CSD in accordance with Section 991a of Title 22 of the Oklahoma
6 Statutes. The OSBI CSD shall provide training to designated
7 employees of the Department of Corrections, a county sheriff's
8 office and a law enforcement agency in the proper methods of
9 performing the duties required by this section.

10 F. The OSBI CSD may approve the use of Rapid DNA systems by the
11 Department of Corrections, a county sheriff's office or a law
12 enforcement agency for the analysis of known DNA samples collected
13 upon arrest or conviction, once the Federal Bureau of Investigation
14 (FBI) has approved these systems for use with CODIS and issued
15 quality assurance standards and written procedures governing the use
16 of Rapid DNA Systems by law enforcement booking stations. The OSBI
17 CSD shall not approve the Department of Corrections, any county
18 sheriff's office or law enforcement agency to use Rapid DNA until
19 the Department, office or agency has documented or demonstrated
20 compliance with the requirements set forth by the FBI. The OSBI CSD
21 shall promulgate rules concerning the approval of agencies to use
22 Rapid DNA Systems and shall determine the collection procedures and
23 reporting documentation to be used by the Department of Corrections,
24 a county sheriff's office or law enforcement agency in submitting

1 arrestee or offender samples in accordance with Section 991a of
2 Title 22 of the Oklahoma Statutes, which have already been analyzed
3 by Rapid DNA. Rapid DNA shall not be used by any sheriff's office
4 or law enforcement agency for the analysis of any forensic, crime
5 scene or reference sample to be used for comparison to forensic or
6 crime scene samples unless the sheriff's office or law enforcement
7 agency complies with the requirements of Section 150.37 of this
8 title and the FBI's Quality Assurance Standards for Forensic DNA
9 Testing Laboratories.

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

12 1. Forensic index database consisting of unknown evidence
13 samples;

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

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

18 4. Missing persons and unidentified remains index or database
19 consisting of DNA profiles from unidentified remains and relatives
20 of missing persons.

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

23 2. Subject to the availability of funds, any person convicted
24 of a misdemeanor offense of assault and battery, domestic abuse,

1 stalking, possession of a controlled substance prohibited under
2 Schedule IV of the Uniform Controlled Dangerous Substances Act,
3 outraging public decency, resisting arrest, escaping or attempting
4 to escape, eluding a police officer, Peeping Tom, pointing a
5 firearm, threatening an act of violence, breaking and entering a
6 dwelling place, destruction of property, negligent homicide, or
7 causing a personal injury incident while driving under the influence
8 of any intoxicating substance who is in custody shall provide a
9 blood or saliva sample prior to release.

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

13 4. Subject to the availability of funds, every person who is
14 convicted of a misdemeanor offense of assault and battery, domestic
15 abuse, stalking, possession of a controlled substance prohibited
16 under Schedule IV of the Uniform Controlled Dangerous Substances
17 Act, outraging public decency, resisting arrest, escape or
18 attempting to escape, eluding a police officer, Peeping Tom,
19 pointing a firearm, threatening an act of violence, breaking and
20 entering a dwelling place, destruction of property, negligent
21 homicide, or causing a personal injury accident while driving under
22 the influence of any intoxicating substance whose sentence does not
23 include a term of incarceration shall provide a blood or saliva
24 sample as a condition of sentence.

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

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

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

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

16 d. the arrestee is booked into the facility on a felony
17 charge.

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

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20 56-2-3623 BHG 4/18/2018 11:55:11 AM
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