

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3439

By: Bush of the House

and

Shaw of the Senate

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8
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10 COMMITTEE SUBSTITUTE

11 An Act relating to DNA testing requirements; amending
12 20 O.S. 2011, Section 1313.2, as last amended by
13 Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp.
14 2017, Section 1313.2), which relates to fees assessed
15 in criminal cases; providing for the assessment of
16 Rapid DNA Fees; amending Section 1, Chapter 181,
17 O.S.L. 2016 (22 O.S. Supp. 2017, Section 210), which
18 relates to DNA collection and testing requirements;
19 requiring all arrested persons to submit to DNA
20 testing; allowing certain persons to collect DNA
21 samples; updating statutory reference; modifying DNA
22 collection and test kit requirements; providing
23 exception for Rapid DNA testing; requiring convicted
24 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

1 execute Memorandum of Understanding; requiring
2 booking facilities to adopt and implement Rapid DNA
3 policies and procedures; and providing an effective
4 date.

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

6 SECTION 1. AMENDATORY 20 O.S. 2011, Section 1313.2, as
7 last amended by Section 1, Chapter 343, O.S.L. 2017 (20 O.S. Supp.
8 2017, Section 1313.2), is amended to read as follows:

9 Section 1313.2 A. As used in this section:

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

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

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

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

18 B. Any person convicted of an offense, including traffic
19 offenses but excluding parking and standing violations, punishable
20 by a fine of Ten Dollars (\$10.00) or more or by incarceration or any
21 person forfeiting bond when charged with such an offense, shall be
22 ordered by the court to pay Ten Dollars (\$10.00) as a separate fee,
23 which fee shall be in addition to and not in substitution for any
24

1 and all fines and penalties otherwise provided for by law for such
2 offense.

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

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

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

21 b. the Office of the Chief Medical Examiner who shall
22 deposit the monies into the Chief Medical Examiner
23 Revolving Fund provided for in Section 954 of Title 63
24 of the Oklahoma Statutes for services rendered or

1 administered by the Office of the Chief Medical
2 Examiner, or

- 3 c. the appropriate municipality or county for services
4 rendered or administered by a municipality or county.

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

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

15 D. Upon conviction or bond forfeiture, the court shall collect
16 the fee provided for in subsection B of this section and deposit it
17 in an account created for that purpose. Except as otherwise
18 provided in subsection E of this section, monies shall be forwarded
19 monthly by the court clerk to the Council on Law Enforcement
20 Education and Training (CLEET). Beginning July 1, 2003, deposits
21 shall be due on the fifteenth day of each month for the preceding
22 calendar month. There shall be a late fee imposed for failure to
23 make timely deposits; provided, CLEET, in its discretion, may waive
24 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 deposited in the General Revenue Fund. Beginning January 1, 2001, sixty and fifty-three one-hundredths percent (60.53%) of the monies received by CLEET from the court clerks pursuant to this section shall be deposited in the CLEET Fund created pursuant to subsection G of this section, five and eighty-three one-hundredths percent (5.83%) shall be deposited in the General Revenue Fund and thirty-three and sixty-four one-hundredths percent (33.64%) shall be deposited in the CLEET Training Center Revolving Fund created pursuant to Section 3311.6 of Title 70 of the Oklahoma Statutes. Along with the deposits required by this subsection, each court shall also submit a report stating the total amount of funds collected and the total number of fees imposed during the preceding quarter. The report may be made on computerized or manual disposition reports.

E. Any municipality or county having a basic law enforcement academy approved by CLEET pursuant to the criteria developed by CLEET for training law enforcement officers shall retain from monies collected pursuant to subsections A through D of this section, Two

1 Dollars (\$2.00) from each fee. These monies shall be deposited into
2 an account for the sole use of the municipality or county in
3 implementing its law enforcement training functions. Not more than
4 seven percent (7%) of the monies shall be used for court and
5 prosecution training. The court clerk of any such municipality or
6 county shall furnish to CLEET the report required by subsection D of
7 this section.

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

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

19 G. There is hereby created in the State Treasury a fund for the
20 Council on Law Enforcement Education and Training to be designated
21 the "CLEET Fund". The fund shall be subject to legislative
22 appropriation and shall consist of any monies received from fees and
23 receipts collected pursuant to the Oklahoma Open Records Act,
24 reimbursements for parts used in the repair of weapons of law

1 enforcement officers attending the basic academies, gifts, bequests,
2 contributions, tuition, fees, devises, and the assessments levied
3 pursuant to the fund pursuant to law.

4 H. 1. Any person arrested or convicted of a felony offense or
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, escaping 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 shall pay a DNA fee of
14 One Hundred Fifty Dollars (\$150.00). This fee shall not be
15 collected if the person has a valid DNA sample in the OSBI DNA
16 Offender Database at the time of sentencing.

17 2. The court clerk shall cause to be deposited the amount of
18 One Hundred Fifty Dollars (\$150.00) as collected for every felony
19 arrest, felony conviction or every conviction for a misdemeanor
20 offense of assault and battery, domestic abuse, stalking, possession
21 of a controlled substance prohibited under Schedule IV of the
22 Uniform Controlled Dangerous Substances Act, outraging public
23 decency, resisting arrest, escaping or attempting to escape, eluding
24 a police officer, Peeping Tom, pointing a firearm, threatening an

1 act of violence, breaking and entering a dwelling place, destruction
2 of property, negligent homicide or causing a personal injury
3 accident while driving under the influence of any intoxicating
4 substance as described in this subsection. The court clerk shall
5 remit the monies in said fund on a monthly basis directly to the
6 OSBI who shall deposit the monies into the OSBI Revolving Fund
7 provided for in Section 150.19a of Title 74 of the Oklahoma Statutes
8 for services rendered or administered by the OSBI.

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

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

20 SECTION 2. AMENDATORY Section 1, Chapter 181, O.S.L.
21 2016 (22 O.S. Supp. 2017, Section 210), is amended to read as
22 follows:

23 Section 210. A. Subject to the availability of funds, a person
24 eighteen (18) years of age or older who is arrested ~~for the~~

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

15 B. Samples of blood or saliva for DNA testing required by
16 subsection A of this section shall be taken by peace officers, the
17 county sheriff or employees or contractors of the county sheriff's
18 office. The individuals shall be properly trained to collect blood
19 or saliva samples. Persons collecting blood or saliva for DNA
20 testing pursuant to this section shall be immune from civil
21 liabilities arising from this activity. ~~All collectors~~ Except for
22 those criminal justice agencies, jails and detention booking
23 facilities using Rapid DNA instruments and DNA analysis in booking
24 facilities, all other collectors of DNA samples shall ensure the

1 collected samples are mailed or delivered to the OSBI or to an
2 accredited laboratory operated by a municipality or county for the
3 purpose of conducting DNA testing within ten (10) days after the DNA
4 sample is collected from the person. ~~All~~ Except for those criminal
5 justice agencies, jails and detention booking facilities using Rapid
6 DNA instruments and resulting DNA analysis for identification
7 purposes, all other collectors of DNA samples shall use sample kits
8 provided by one of the following:

9 1. The OSBI ~~and~~; or

10 2. An accredited laboratory operated by a municipality or
11 county.

12 C. The cost incurred by the criminal justice agency, jail or
13 detention booking facility for collecting and analyzing DNA from
14 single-source known-arrestee profile samples at booking shall be
15 paid by the convicted person pursuant to the provisions of Section
16 1313.2 of Title 20 of the Oklahoma Statutes.

17 D. Collection and analysis procedures ~~promulgated~~ required by
18 the OSBI and Federal Bureau of Investigation shall be followed by
19 booking facilities using Rapid DNA instruments and resulting DNA
20 analysis conducted during booking for identification purposes. All
21 other DNA testing and analysis shall be submitted to the OSBI
22 Combined DNA Index System (CODIS) Database for the purpose of
23 storing and maintaining the records and samples of the collected
24 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 shall use the Rapid DNA system,
9 instruments, software, kits and technology approved by the Federal
10 Bureau of Investigation and shall comply with the requirements for
11 Rapid DNA standards and procedures in the booking environment issued
12 by the Federal Bureau of Investigation.

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

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

1 rules and regulations of the Federal Bureau of Investigation for
2 Rapid DNA testing.

3 H. All law enforcement officers, jail and detention personnel
4 in booking facilities that have Rapid DNA instruments and technology
5 shall have completed training and been certified in the use of Rapid
6 DNA instruments.

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

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

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

23 ~~D.~~ K. All DNA samples, records and identifiable information
24 generated pursuant to the provisions of this section shall be

1 automatically expunged from the OSBI Combined DNA Index System
2 (CODIS) Database under the following circumstances:

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

6 2. The state voluntarily dismissed the felony charge filed
7 against the person; or

8 3. The court dismissed the felony charge filed against the
9 person.

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

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

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/01/2018 - DO
20 PASS, As Amended and Coauthored.