

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 184, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Shaw

Shaw-TEK-FS-Req#1967
2/25/2019 2:09 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

FLOOR SUBSTITUTE

FOR

SENATE BILL NO. 184

By: Shaw of the Senate

and

Bush of the House

FLOOR SUBSTITUTE

[criminal procedure - deoxyribonucleic acid (DNA)
testing - DNA samples - collection instruments -
testing or storing DNA samples - effective date]

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

SECTION 1. AMENDATORY Section 1, Chapter 181, O.S.L.
2016 (22 O.S. Supp. 2018, Section 210), is amended to read as
follows:

Section 210. A. Subject to the availability of funds, a person
eighteen (18) years of age or older who is arrested for the
commission of a felony under the laws of this state or any other
jurisdiction shall, upon being booked into a jail or detention
facility, submit to deoxyribonucleic acid (DNA) sample collection
for testing for law enforcement identification DNA-identification-
matching purposes in accordance with Section 150.27a of Title 74 of

1 the Oklahoma Statutes and the rules promulgated by the Oklahoma
2 State Bureau of Investigation (OSBI) for the OSBI Combined DNA Index
3 System (CODIS) Database. DNA samples shall be collected by ~~the~~
4 ~~arresting authority~~ trained medical personnel, law enforcement or
5 employees or medical contractors of these organizations as qualified
6 pursuant to subsection B of this section. ~~Convicted or arrested~~
7 ~~individuals who have previously submitted to DNA testing pursuant to~~
8 ~~this section or Section 991a of Title 22 of the Oklahoma Statutes~~
9 ~~and for whom a valid sample is on file in the OSBI CODIS Database~~
10 ~~shall not be required to submit to additional testing.~~

11 B. Samples of blood or saliva for DNA testing or for DNA-
12 identification-matching purposes required by subsection A of this
13 section shall be taken by ~~peace officers, the county sheriff~~ trained
14 medical personnel, law enforcement or employees or medical
15 contractors of the county sheriff's office these organizations. The
16 individuals shall be properly trained to collect blood or saliva
17 samples. Persons collecting blood or saliva for DNA testing or for
18 DNA-identification-matching purposes pursuant to this section shall
19 be immune from civil liabilities arising from this activity. All
20 collectors of DNA samples shall ensure the collected samples are
21 mailed or delivered to the OSBI within ten (10) days after the DNA
22 sample is collected from the person. ~~All collectors of DNA samples~~
23 ~~shall use~~ using sample kits provided by the OSBI and procedures
24 promulgated by the OSBI, or if the jail, detention facility or other

1 designated facility is using Rapid DNA technology, the collector
2 shall use the provided collection instruments. Once the DNA-
3 identification-matching process has concluded and a sample has been
4 mailed or delivered to the OSBI, the collector shall discard the
5 Rapid DNA sample taken in the jail, detention facility or other
6 designated facility.

7 If a jail, detention facility or other designated facility is
8 using Rapid DNA technology to take the DNA sample for DNA
9 identification purposes, said sample shall not be retained, tested
10 or stored after completion of the Rapid DNA identification process.
11 Any person charged with the custody and dissemination of DNA samples
12 and profiles shall not divulge or disclose any such information
13 except to federal, state, county or municipal law enforcement or
14 criminal justice agencies nor shall the person tamper with the
15 samples and profiles taken. Any person violating the provisions of
16 this section shall, upon conviction, be guilty of a misdemeanor
17 punishable by imprisonment in the county jail for not more than one
18 (1) year.

19 C. A DNA sample shall not be analyzed and shall be destroyed
20 unless one of the following conditions has been met:

21 1. The arrest was made upon a valid felony arrest or warrant;

22 2. The person has appeared before a judge or magistrate judge

23 who made a finding that there was probable cause for the arrest; ~~or~~

1 3. The person posted bond or was released prior to appearing
2 before a judge or magistrate judge and then failed to appear for a
3 scheduled hearing; or

4 4. The DNA sample is provided as a condition of a plea
5 agreement.

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

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

13 2. The state voluntarily dismissed the felony charge filed
14 against the person; or

15 3. The court dismissed the felony charge filed against the
16 person.

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

SECTION 2. AMENDATORY 74 O.S. 2011, Section 150.27a, as last amended by Section 3, Chapter 194, O.S.L. 2017 (74 O.S. Supp. 2018, Section 150.27a), is amended to read as follows:

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

1. Convicted of any felony offense;

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

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

a. the arrest was made upon a valid felony arrest or warrant,

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

- 1 c. the person posted bond or was released prior to
2 appearing before a judge or magistrate judge and then
3 failed to appear for a scheduled hearing, or
4 d. the DNA sample is provided as a condition of a plea
5 agreement; and

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

17 The purpose of this database is the detection or exclusion of
18 individuals who are subjects of the investigation or prosecution of
19 sex-related crimes, violent crimes, or other crimes in which
20 biological evidence is recovered, and such information shall be used
21 for no other purpose.

22 B. Any DNA specimen taken in good faith by the Department of
23 Corrections, its employees or contractors, the county sheriff, its
24 employees or contractors or a peace officer, and submitted to the

1 OSBI may be included, maintained, and kept by the OSBI in a database
2 for criminal investigative purposes despite the specimen having not
3 been taken in strict compliance with the provisions of this section
4 or Section 991a of Title 22 of the Oklahoma Statutes.

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

14 D. The OSBI CODIS Database is specifically exempt from any
15 statute requiring disclosure of information to the public. The
16 information contained in the database is privileged from discovery
17 and inadmissible as evidence in any civil court proceeding. The
18 information in the database is confidential and shall not be
19 released to the public. Any person charged with the custody and
20 dissemination of information from the database shall not divulge or
21 disclose any such information except to federal, state, county or
22 municipal law enforcement or criminal justice agencies. Any person
23 violating the provisions of this section upon conviction shall be
24

1 deemed guilty of a misdemeanor punishable by imprisonment in the
2 county jail for not more than one (1) year.

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

14 F. The OSBI CODIS Database may include secondary databases and
15 indexes including, but not limited to:

16 1. Forensic index database consisting of unknown evidence
17 samples;

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

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

22 4. Missing persons and unidentified remains index or database
23 consisting of DNA profiles from unidentified remains and relatives
24 of missing persons.

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

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

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

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

1 homicide, or causing a personal injury accident while driving under
2 the influence of any intoxicating substance whose sentence does not
3 include a term of incarceration shall provide a blood or saliva
4 sample as a condition of sentence.

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

- 12 a. the arrest was made upon a valid felony arrest or
13 warrant,
- 14 b. the person has appeared before a judge or magistrate
15 judge who made a finding that there was probable cause
16 for the arrest, ~~or~~
- 17 c. the person posted bond or was released prior to
18 appearing before a judge or magistrate judge and then
19 failed to appear for a scheduled hearing, or
- 20 d. the DNA sample is provided as a condition of a plea
21 agreement.

22 SECTION 3. This act shall become effective November 1, 2019.
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24 57-1-1967 TEK 2/25/2019 2:09:25 PM