An Act

ENROLLED HOUSE
BILL NO. 2275

By: Denney of the House

and

Jolley and Pittman of the Senate

An Act relating to DNA testing; requiring submission of DNA samples from persons arrested for felony crimes; providing procedures for testing DNA samples; stating persons responsible for taking DNA samples; providing collectors of DNA samples immunity from civil liability; stating time limitation for mailing DNA samples; requiring destruction of DNA samples unless certain conditions met; providing for the automatic expungement of DNA samples under certain circumstances; directing the Oklahoma State Bureau of Investigation to promulgate certain rules; amending 20 O.S. 2011, Section 1313.2, which relates to court fund fees; adding definition; directing certain persons to pay DNA fee; amending 74 O.S. 2011, Section 150.27a, which relates to the OSBI Combined DNA Index System (CODIS) Database; modifying purpose of database to include DNA samples from certain persons; providing for codification; and providing an effective date.

SUBJECT: DNA testing

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 210 of Title 22, unless there is created a duplication in numbering, reads as follows:

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) testing for law enforcement identification purposes in accordance with Section 150.27a of Title 74 of the Oklahoma Statutes and the rules promulgated by the Oklahoma State Bureau of Investigation (OSBI) for the OSBI Combined DNA Index System (CODIS) Database. DNA samples shall be collected by the arresting authority as qualified pursuant to subsection B of this section. Convicted or arrested individuals who have previously submitted to DNA testing pursuant to this section or Section 991a of Title 22 of the Oklahoma Statutes and for whom a valid sample is on file in the OSBI CODIS Database shall not be required to submit to additional testing.

B. Samples of blood or saliva for DNA testing required by subsection A of this section shall be taken by peace officers, the county sheriff or employees or contractors of the county sheriff's office. The individuals shall be properly trained to collect blood or saliva samples. Persons collecting blood or saliva for DNA testing pursuant to this section shall be immune from civil liabilities arising from this activity. All collectors of DNA samples shall ensure the collected samples are mailed to the OSBI within ten (10) days after the DNA sample is collected from the person. All collectors of DNA samples shall use sample kits provided by the OSBI and procedures promulgated by the OSBI.

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

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

2. The person has appeared before a judge or magistrate judge who made a finding that there was probable cause for the arrest; or

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

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

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

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

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

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

SECTION 2. AMENDATORY 20 O.S. 2011, 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;

~~2.~~ 3. "Court" means any state or municipal court having jurisdiction to impose a criminal fine or penalty; and

~~3.~~ 4. "DNA" means Deoxyribonucleic acid.

B. Any person convicted of an offense, including traffic offenses but excluding parking and standing violations, punishable by a fine of Ten Dollars ($10.00) or more or by incarceration or any person forfeiting bond when charged with such an offense, shall be ordered by the court to pay Nine Dollars ($9.00) as a separate fee, which fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense.

C. 1. Any person convicted of any misdemeanor or felony offense shall pay a Laboratory Analysis Fee in the amount of One Hundred Fifty Dollars ($150.00) for each offense if forensic science or laboratory services are rendered or administered by the Oklahoma

State Bureau of Investigation, by the Toxicology Laboratory of the Office of the Chief Medical Examiner or by any municipality or county in connection with the case. This fee shall be in addition to and not a substitution for any and all fines and penalties otherwise provided for by law for this offense.

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

a. the Oklahoma State Bureau of Investigation who shall deposit the monies into the OSBI Revolving Fund provided for in Section 150.19a of Title 74 of the Oklahoma Statutes for services rendered or administered by the Oklahoma State Bureau of Investigation,

b. the Office of the Chief Medical Examiner who shall deposit the monies into the Office of the Chief Medical Examiner Toxicology Laboratory Revolving Fund provided for in Section 954 of Title 63 of the Oklahoma Statutes for services rendered or administered by the Toxicology Laboratory of the Office of the Chief Medical Examiner, or

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

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

a. providing criminalistic laboratory services,

b. the purchase and maintenance of equipment for use by the laboratory in performing analysis,

c. education, training, and scientific development of Oklahoma State Bureau of Investigation personnel, and

d. the destruction of seized property and chemicals as prescribed in Sections 2-505 and 2-508 of Title 63 of the Oklahoma Statutes.

D. Upon conviction or bond forfeiture, the court shall collect the fee provided for in subsection B of this section and deposit it in an account created for that purpose. Except as otherwise provided in subsection E of this section, monies shall be forwarded monthly by the court clerk to the Council on Law Enforcement Education and Training. Beginning July 1, 2003, deposits shall be due on the fifteenth day of each month for the preceding calendar month. There shall be a late fee imposed for failure to make timely deposits; provided, the Council on Law Enforcement Education and Training, in its discretion, may waive 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 the Council on Law Enforcement Education and Training 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 the Council on Law Enforcement Education and Training 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 the Council on Law Enforcement Education and Training pursuant to the criteria developed by the Council for training law enforcement officers shall retain from monies collected pursuant to subsections A through D of this section, Two Dollars ($2.00) from each fee. These monies shall be deposited into an account for the sole use of the municipality or county in implementing its law enforcement training functions. Not more than seven percent (7%) of the monies shall be used for court and prosecution training. The court clerk of any such municipality or county shall furnish to the Council on Law Enforcement Education and Training the report required by subsection D of this section.

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

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

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

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

2. The court clerk shall cause to be deposited the amount of One Hundred Fifty Dollars ($150.00) as collected~~,~~ for every felony arrest, felony conviction or every conviction for a misdemeanor offense of assault and battery, domestic abuse, stalking, possession of a controlled substance prohibited under Schedule IV of the Uniform Controlled Dangerous Substances Act, outraging public

decency, resisting arrest, escaping or attempting to escape, eluding a police officer, Peeping Tom, pointing a firearm, unlawful carry of a firearm, illegal transport of a firearm, discharging of a firearm, threatening an act of violence, breaking and entering a dwelling place, destruction of property, negligent homicide or causing a personal injury accident while driving under the influence of any intoxicating substance as described in this subsection. The court clerk shall remit the monies in said fund on a monthly basis directly to the Oklahoma State Bureau of Investigation who shall deposit the monies into the OSBI Revolving Fund provided for in Section 150.19a of Title 74 of the Oklahoma Statutes for services rendered or administered by the Oklahoma State Bureau of Investigation.

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

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

SECTION 3. AMENDATORY 74 O.S. 2011, 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 ~~convicted~~:

1. Convicted of any felony offense~~, of individuals required~~;

2. Required to register pursuant to the Sex Offenders Registration Act~~, and subject~~;

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 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

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

4. Subject to the availability of funds, ~~of individuals~~ convicted of a misdemeanor offense of assault and battery, domestic abuse, stalking, possession of a controlled substance prohibited under Schedule IV of the Uniform Controlled Dangerous Substances Act, outraging public decency, resisting arrest, ~~escape~~ escaping or attempting to escape, eluding a police officer, ~~peeping tom~~ Peeping Tom, pointing a firearm, unlawful carry of a firearm, illegal transport of a firearm, discharging of a firearm, threatening an act of violence, breaking and entering a dwelling place, destruction of property, negligent homicide, or causing a personal injury accident while driving under the influence of any intoxicating substance, or, upon arrest, any alien unlawfully present under federal immigration law.

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

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

C. Upon the request to OSBI by the federal or state authority having custody of the person, any individual who was convicted of

violating laws of another state or the federal government, but is currently incarcerated or residing in Oklahoma, shall submit to DNA profiling for entry of the data into the OSBI DNA Offender Database. This provision shall only apply when such federal or state conviction carries a requirement of sex offender registration ~~and/or~~ or DNA profiling. The person to be profiled shall pay a fee of One Hundred Fifty Dollars ($150.00) to the OSBI.

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

E. The OSBI shall promulgate rules concerning the collection, storing, expungement and dissemination of information and samples for the OSBI ~~Combined DNA Index System (~~CODIS~~)~~ Database. The OSBI shall determine the type of equipment, collection procedures, and reporting documentation to be used by the Department of Corrections ~~or~~, a county sheriff's office or a law enforcement agency in submitting DNA samples to the OSBI in accordance with Section 991a of Title 22 of the Oklahoma Statutes. The OSBI shall provide training to designated employees of the Department of Corrections ~~and~~, a county sheriff's office and a law enforcement agency in the proper methods of performing the duties required by this section.

F. The OSBI ~~Combined DNA Index System (~~CODIS~~)~~ Database may include secondary databases and indexes including, but not limited to:

1. Forensic index database consisting of unknown evidence samples;

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

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

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

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

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

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

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

5. Subject to the availability of funds, any 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 DNA testing for law enforcement identification purposes. 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 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

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

SECTION 4. This act shall become effective November 1, 2016.

Passed the House of Representatives the 9th day of March, 2016.

Presiding Officer of the House of Representatives

Passed the Senate the 19th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 20th day of April, 2016, at 1:08 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 26th day of April, 2016, at 2:01 o'clock P M.

Mary Fallin

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 26th day of April, 2016, at 3:24 o'clock P. M.

By: Chris Benge