

SUBJECT: Revising procedures for University of North Texas DNA database

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Escobar, Raymond, Reyna
0 nays
3 absent — Hodge, P. Moreno, Pena

SENATE VOTE: On final passage, April 7 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: SB 1304 by Harris, enacted by the 77th Legislature in 2001, created a DNA database at the University of North Texas Health Science Center at Fort Worth to identify high-risk missing persons and unidentified remains. The database is separate from the DPS DNA database. The bill was codified in Education Code, ch. 105, subch. I.

Under the authority of subch. I, the center compares DNA samples taken from unidentified human remains with DNA samples taken from personal articles belonging to high-risk missing persons or from parents of high-risk missing persons or other appropriate people. A high-risk person is defined as a person missing as a result of an abduction by a stranger, a person missing under suspicious or unknown circumstances, or a person missing more than 30 days, or less than 30 days at the discretion of the investigating agency, if there was reason to believe that the missing person was in danger or deceased.

Entities charged under state law with collecting DNA samples from unidentified human remains must submit the samples to the center for analysis and inclusion in the database. The results of DNA analysis must be compatible with the Federal Bureau of Investigation's Combined DNA Index System (CODIS) and must be made available for inclusion in CODIS.

Within 30 days of the filing of a report that a high-risk person is missing, law enforcement agencies must inform the person's parents or other appropriate people that they may provide a DNA sample or a personal article belonging to the missing person for analysis. Agencies may not use any form of incentive or coercion to compel someone to provide a sample.

The center may disclose the results of a DNA analysis only to personnel of the center, law enforcement agencies, medical examiners, prosecuting attorneys, and parents or other people who voluntarily provide a DNA sample. DNA samples extracted from living people must be destroyed after a positive identification is made and a report issued.

It is a class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to violate the destruction or confidentiality provisions. A person who intentionally violates the destruction or confidentiality provisions also is liable for civil damages to the DNA donor for \$5,000 for each violation, plus reasonable attorney's fees and court costs.

DIGEST:

SB 651 would transfer provisions creating the DNA data base at the University of North Texas Health Science Center from the Education Code, ch. 105, subch. I, to the Code of Criminal Procedure, ch. 63.

The bill would specify entities that would have to submit DNA samples for inclusion in the database. A physician acting on the request of a justice of the peace, a county coroner, a county medical examiner, and other appropriate law enforcement entities would be required to collect DNA samples from unidentified human remains and submit the samples to the database.

The bill also would add justices of the peace, coroners, and other law enforcement entities that submit DNA samples to the list of people to whom the results of a DNA analysis could be revealed.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The FBI allows entities, including the University of North Texas Health Science Center at Fort Worth, to upload DNA information relating to unidentified remains and missing person into CODIS. It allows only law

enforcement entities to enter DNA information relating to criminal investigations into its system, however. Because the University of North Texas Health Science Center at Fort Worth is not a law enforcement entity and because the enabling legislation for the DNA database is codified under the Education Code, the university may not enter certain information into CODIS. Transferring the enabling legislation into the Code of Criminal Procedure would enable the university to enter that information into CODIS, increasing the effectiveness of the database.

Currently, the university may not enter into CODIS DNA information that is the subject of a criminal investigation. Thus, if an unidentified body of a person who appeared to have been murdered is discovered, the university may not enter DNA information from the body into CODIS. In order to investigate crimes in the most expeditious manner, the university should be authorized to enter into CODIS DNA information from the body. This would be consistent with the duties and authority the university exercises in identifying missing persons and unidentified remains.

**OPPONENTS
SAY:**

The University of North Texas Health Science Center at Fort Worth is not authorized to participate in criminal investigations, only to identify missing persons and unidentified remains. Uploading into CODIS information relating to criminal investigations should be limited to law enforcement entities, and the university – regardless of whether the enabling legislation for the database is in the Education Code or the Code of Criminal Procedure – is not a law enforcement entity.

One of the major reasons given in support of SB 1304 in 2001 was that a database separate from DPS was needed to address the privacy concerns some family members of victims have in submitting samples to DPS. Family members may believe that their sample could be used to link them to crimes. A separate, voluntary database housed in a higher education institution instead of a law enforcement agency was meant to reassure family members that their samples would be used only to help find and identify their loved ones. Enabling the university to act as a law enforcement entity to enter criminal investigation information into CODIS would contradict a reason that the database was created.