

SUBJECT: DNA samples from those on community supervision or juvenile probation

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

3 absent — Christian, Hodge, Riddle

WITNESSES: For — Carol Bart, Sexual Assault Cold Case Program (SEACAP); Steve Jett, Houston Police Department; Bertha “Lavinia” Masters; Kevin Petroff, Harris County District Attorney’s Office; Patrick Welsh, Dallas Police Department; Angela Whitlow, SEACAP, Dallas Police Department; (*Registered, but did not testify*: Laura Anderson, San Antonio Police Department; Gary Chandler, Texas Department of Public Safety Officers Association; Mark Clark, Houston Police Officers’ Union; Tom Gaylor, Texas Municipal Police Association; James Jones and Gary Tittle, Texas Police Chiefs Association; Sean Mannix, Austin Police Association and National Latino Police Officer’s Association)

Against — None

On — Dennis Loockerman, Department of Public Safety

BACKGROUND: The Department of Public Safety (DPS) maintains a computerized DNA database to classify, match, and store results of DNA analysis and allow DNA evidence to be admissible as evidence of identity.

Prison inmates serving for specified violent offenses are required to provide DNA samples for the database at the request Texas Department of Criminal Justice (TDJC) if ordered by a court to do so. In 2001, the 77th Legislature required DNA samples be collected from those arrested, indicted or who had been previously placed on deferred adjudication for sexual assault, sexual offenses against children, or other sex related felonies. DNA samples also must be obtained from those convicted of the misdemeanor offenses of public lewdness or indecent exposure.

Juvenile offenders committed to the Texas Youth Commission (TYC) must provide DNA samples if ordered to do so by a judge or if the juvenile was committed for one of the offenses that require adult offenders to give samples.

The Federal Bureau of Investigation (FBI) is responsible for collecting and maintaining the Combined DNA Index System (CODIS), which works with crime laboratories to foster exchange and comparison of forensic DNA evidence from violent crime investigations.

DIGEST:

HB 4386 would amend Government Code, sec. 411.148 (a) and Code of Criminal Procedure, art. 42.12 to require a DNA sample as a condition of community supervision for adults convicted for a felony unless they already had submitted a DNA sample.

HB 4386 also would amend Government Code, sec. 411.148 (a) and Family Code ch. 54 to require that a DNA sample from a juvenile convicted of a felony but sentenced to probation rather than confinement by TYC, unless they already had submitted a DNA sample.

The bill would require TYC to develop procedures for collecting DNA samples from those in the custody of other criminal justice agencies. The bill also would extend the requirement to collect DNA samples for out-of-state juvenile offenders convicted of or adjudicated as having engaged in conduct constituting a felony should TYC accept supervision.

HB 4386 also would repeal Government Code, sec. 411.148(e), which requires TYC to collect the DNA sample from the individual during the initial examination or at another time determined by the commission and would amend Government Code, sec. 411.148 (f) to specify that the notification of the impending release of a juvenile in TYC would occur no later than 90 days before that release date.

The collection of DNA samples would apply only to those granted community supervision or juvenile probation on or after the bill would take effect on September 1, 2009.

**SUPPORTERS
SAY:**

HB 4386 would provide for an expanded and more comprehensive DNA database so that more violent crimes could be solved. Use of DNA testing has proved to be an invaluable investigative tool for law enforcement. According to a study by the National Institute of Justice, availability of

biological evidence from DNA samples results in a potential suspect matching in 40 percent of the cases. Texas has 14 DNA crime laboratories — eight maintained by the DPS and six operated by cities — which routinely compare evidence from crime scenes against the CODIS database. Each month, crime lab crosschecks are yielding 100 “cold hits” or comparisons with CODIS profiles that provide leads on suspects not already known to investigators. Expanding the numbers of profiles in the data base could lead to additional matches and subsequent arrests.

HB 4386 also would serve the needs of justice by ensuring that only the guilty are punished for crimes. DNA evidence has led to the conviction of thousands of criminals, including numerous cases in which it was the only evidence available. Also, more than 200 wrongly convicted persons, including 38 in Texas, have been exonerated because of DNA evidence.

HB 4386 would follow well-established legal precedents and should be able to withstand legal challenge. Courts generally have upheld laws in other states requiring compulsory collection of DNA samples from those convicted of crimes on the grounds that criminal acts diminish privacy rights. Adults placed on community supervision or juveniles placed on probation would have had their cases decided in courts, where they were afforded all of their constitutional due process rights.

Current law regulates collection, analysis, storage, and exchange of information related to DNA samples and provides strict penalties for unauthorized use or release. Also, DNA information is recorded as a series of bar codes and would not include information that would compromise the privacy of a close relative of the person named in the record.

Collection of DNA is not as invasive as it once was. Samples can be obtained by rubbing a cotton-like swab against the inside of a person’s cheek rather than drawing blood.

HB 4386 would allow for a greater protection of Fourth Amendment rights by excluding the required DNA testing from all those who are arrested. In *Heitman v. State*, 815 S.W.2d 681, 690 (Tex. Cr. App. 1991), Texas courts asserted the state’s ability to extend additional protections beyond that provided in the U.S. Constitution. Texas should not be bound by the decisions of the federal government or other states. Some exemptions requiring DNA testing upon arrest are allowed in state law,

and the Legislature should review requiring DNA samples from those arrested for white-color or non-violent offenses in other legislation.

Both the Senate and House versions of SB 1, the general appropriations bill, would provide funding for updates to the DPS information technology system. Any changes that would be required by HB 4386 could be incorporated in this update.

OPPONENTS
SAY:

HB 4386 would be another example of the continuing erosion of Fourth Amendment rights and the creation of a genetic surveillance society. While DNA evidence has been a valuable tool for law enforcement, it is no panacea. The state of forensic science has not reached the level portrayed in television crime programs and other media. Improper collection or storage could compromise the quality of that evidence. Close relatives share similar DNA profiles and could be falsely accused through misidentifications from CODIS. DNA samples are more personal than fingerprints, and collection even with a cotton swab could be both physically invasive and an invasion of privacy.

Texas should address the backlogs in regional and city crime labs that leave crime scene DNA on the shelf for months. Delays in processing this evidence mean that suspects are not identified or arrested. Adoption of HB 4386 could mean collection of as many as 60,000 additional samples per year. Clearing up the backlog of crime-scene DNA should be the first priority.

HB 4386 could compromise the independence of the judiciary and would raise concerns about separation of powers. Current law gives judges the discretion to order that defendant provide a DNA sample upon a conviction that results in community service for an adult or probation for a juvenile. The Legislature should not substitute its judgment for a judge who has decided that an offender would not pose a threat to society and would be subject to community supervision or to juvenile probation.

OTHER
OPPONENTS
SAY:

HB 4386 also should provide for collection of DNA samples for all suspects arrested for violent offenses. An amendment to the 2005 reauthorization of the federal Violence Against Women Act authorizes DNA collections from those arrested by federal authorities. Fifteen states also require collection of DNA, much like providing fingerprints, from those arrested for felonies.

HB 4386 would be another example of the Legislature changing statutes without making corresponding appropriations to implement the programs. Eventually, what advocates characterized as “minor changes” to forms and other records would add up to large expenditures for data collection and reporting systems.

NOTES:

Rep. Vaught is expected to offer a floor amendment that would require collection of DNA samples from juveniles adjudicated as committing a felony included in Code of Criminal Procedure, art. 42.12, sec. 3g (murder; capital murder; indecency with a child; aggravated kidnapping; aggravated sexual assault; aggravated robbery; sexual assault; injury to a child, elderly individual, or disabled individual; sexual performance of a child; certain drug offenses; and certain felonies involving use of a deadly weapon.)

The companion bill, SB 727 by Patrick, passed the Senate by 30-0 on April 14 and was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on May 7. SB 727 was amended by the Senate to provide that the bill would not make an appropriation and would not require any governmental entity to implement the program during any fiscal year for which the Legislature has not made a specific appropriation to implement the program.

The Legislative Budget Board estimates that HB 4386 would cost \$2.2 million in fiscal 2010 from State Highway Fund 6 to establish the program and hire six state employees and would require \$1.85 million for salaries and other ongoing expenses in fiscal 2011. The increase would be due to an estimated 60,000 new DNA profiles that would be processed should HB 4386 be enacted.