

**SUBJECT:** Creating and storing DNA records upon arrest for certain felony offenses

**COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended

**VOTE:** 9 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Goodwin, Israel, Lang, Tinderholt

0 nays

**WITNESSES:** For — Cheryl Lieck, Chambers County District Attorney; Eric Carcerano, Chambers County District Attorney's Office; Brian Hawthorne, Sheriffs' Association of Texas; Stacy Suits, Travis County Constable Precinct 3; Theresa Bastian; Carol Brown; Jayann Sepich; Ashley Spence; *(Registered, but did not testify:* Justin Berry, Austin Police Association; Richard Jankovsky III, Department of Public Safety Officers Association; Jessica Anderson, Houston Police Department; Jennifer Zoghby, Moms Demand Action; Walter West II (RET), Republican Party of Texas, Texas Senate District 4, and Veterans; Gary Tittle, Richardson Police Department; Jimmy Rodriguez, San Antonio Police Officers Association; Micah Harmon, Sheriffs' Association of Texas; James McLaughlin, Texas Police Chiefs Association; Noel Johnson, Texas Municipal Police Association; Lawrence Baitland; Priscilla Camacho; Janis Carter; Dana Harris; Alison Steele)

Against — *(Registered, but did not testify:* Chas Moore, Austin Justice Coalition; Emily Gerrick, Texas Fair Defense Project)

On — *(Registered, but did not testify:* Brady Mills, Texas Department of Public Safety Crime Lab)

**BACKGROUND:** Government Code sec. 411.1471 requires a defendant who is indicted or waives indictment for certain felonies to provide to a law enforcement agency a specimen to create a DNA record. If a defendant is acquitted or the case is dismissed, the court has to order the law enforcement agency taking the specimen to immediately destroy the record of the collection

and require the Department of Public Safety to destroy the specimen and record of its receipt.

DIGEST:

CSHB 1399 would establish the Krystal Jean Baker Act and would require a defendant to provide to a law enforcement agency one or more specimens for creating a DNA record upon arrest for the following felonies:

- murder;
- capital murder;
- kidnapping
- aggravated kidnapping;
- human smuggling;
- continuous human smuggling;
- human trafficking;
- continuous human trafficking;
- continuous sexual abuse of young child or children;
- indecency with a child;
- assault;
- sexual assault;
- aggravated assault;
- aggravated sexual assault;
- prohibited sexual conduct;
- robbery;
- aggravated robbery;
- burglary;
- theft;
- promotion of prostitution;
- aggravated promotion of prostitution;
- compelling prostitution;
- sexual performance by a child; or
- possession or promotion of child pornography

A defendant convicted of a felony would not have to provide a DNA sample as a condition of probation if it was already submitted on arrest or

conviction under Government Code sec. 411.1471.

The director of the Department of Public Safety would be required to apply for any available federal grants applicable to the creation and storage of DNA records of persons arrested for certain offenses.

The bill would take effect September 1, 2019, and would apply only to an offense committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1399 would expand the state's DNA database to more easily link offenders to crimes, helping law enforcement solve more cases and bringing justice to more victims and their families.

In 2001, Texas enacted SB 638 by Barrientos, which was the first DNA collection law in the country, requiring DNA samples from those indicted for certain felony offenses. However, some have raised concerns that current law has allowed offenders to slip through the cracks, including when they plead guilty to lesser charges. Currently, 18 states have enacted broader DNA collection laws that require DNA to be taken at the time of arrest from all felony offenders. Where enacted, these broader laws have increased the rate of solved cases.

The collection of DNA provides no more personal information than other items collected by a law enforcement agency upon arrest. Agencies can take fingerprints and photos of arrestees without running afoul of constitutional protections. DNA profiles created from samples do not provide genetic information, containing only non-coding markers selected for their uniqueness. The bill also would not affect current requirements that law enforcement dispose of DNA samples and remove them from the database if a person was found not guilty, ensuring that privacy of innocent people was protected.

**OPPONENTS  
SAY:**

By requiring the collection of DNA samples upon arrest as opposed to waiting until conviction, CSHB 1399 could violate the due process rights of defendants who should be presumed innocent until proven guilty.

The number of samples in the DNA database, even if they are from felony offenders, should be kept to a minimum to protect privacy interests. DNA samples contain personal information that could be subject to misuse and abuse, and expanding the database increases the risk that such information could be used for purposes other than law enforcement.

CSHB 1399 would create a burden on taxpayers related to the increase in collection and storage of DNA samples. According to the Legislative Budget Board fiscal note, the Department of Public Safety estimates it would sample about 40,000 more defendants a year, requiring additional full-time equivalent employees and lab equipment and increasing operating costs and capital expenditures. Due to concerns over privacy and due process rights, this would be an unnecessary use of state money.

**NOTES:**

According to the Legislative Budget Board, the bill would have a negative impact of \$2.8 million on general revenue related funds through fiscal 2020-21.

The Legislative Budget Board also estimates that making current DNA court cost assessments apply to additional felony convictions would generate additional revenue. Of the amount collected, the state would receive 90 percent, with 65 percent going to the Criminal Justice Planning Fund and 35 percent to the State Highway Fund. The remaining 10 percent of generated revenue would go to counties.