

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 638
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Jurisprudence
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Committee Report (Substituted)

DIGEST AND PURPOSE

Recent advances in forensic science have achieved a high success rate in identifying perpetrators and eliminating suspects using DNA, the fundamental building block of an individual's genetic makeup. C.S.S.B. 638 requires the collection of a DNA specimen from a person charged with, arrested for, or convicted of certain felonies, including kidnapping and sexual assault, in order to help fight and prevent crime.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the director of the Department of Public Safety in SECTIONS 2 and 4 (Sections 411.1471, 411.1472, and 411.1531, Government Code) and SECTION 8 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.145(b), Government Code, to provide that money deposited under this section and under Article 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter.

SECTION 2. Amends Chapter 411G, Government Code, by adding Sections 411.1471 and 411.1472, as follows:

Sec. 411.1471. DNA RECORDS OF PERSONS CHARGED WITH OR CONVICTED OF CERTAIN FELONIES. (a) Provides that this section is applicable to a defendant who is: (1) indicted or waives indictment for a felony prohibited or punishable under certain Penal Code sections; (2) arrested for a certain felony after having been previously convicted of or placed on deferred adjudication for a certain offense; or (3) convicted of a certain offense.

(b) Requires the court in which a case is pending, after a defendant described by Subsection (a)(1) is indicted or waives indictment, to require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record. Requires a law enforcement agency arresting a defendant for an offense described by Subsection (a)(2), immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs, to require the defendant to provide one or more specimens for the purpose of creating a DNA record. Requires the court, after a defendant described by Subsection (a) is convicted or placed on deferred adjudication, to require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

(c) Authorizes a defendant described by Subsection (a)(1) or (3) to at any time voluntarily provide a specimen for the purposes described by Subsection (b).

(d) Requires the director of the Department of Public Safety (director), by rule, to require law enforcement agencies taking a specimen under this section to preserve the

specimen and maintain a record of the collection of the specimen. Authorizes a law enforcement agency taking a specimen under this section to use any method to take the specimen approved by the director in the rule adopted under this subsection. Requires the rule adopted by the director to prohibit a law enforcement agency from taking a blood sample for the purpose of creating a DNA record under this section. Authorizes the agency to either send the specimen to the director or send to the director an analysis of the sample performed at a laboratory chosen by the agency and approved by the director.

(e) Requires the court, on acquittal of a defendant or dismissal of the case against a defendant, to order the law enforcement agency taking the specimen to immediately destroy the record of the collection of the specimen and require the department to destroy the specimen and the record of its receipt.

(f) Provides that a defendant who provides a sample or specimen under this section is not required to provide a specimen under Section 411.1472, or provide a sample or specimen under Section 411.148 or 411.150 unless an attorney representing the state in the prosecution of felony offenses establishes to the satisfaction of the director that the interests of justice or public safety require that the defendant provide additional samples or specimens.

Sec. 411.1472. DNA RECORDS OF PERSONS PLACED ON COMMUNITY SUPERVISION FOR CERTAIN OFFENSES. (a) Provides that this section is applicable to a defendant placed on community supervision, including deferred adjudication community supervision, for an offense listed in Section 411.1471(a).

(b) Requires a court that grants deferred adjudication or places a defendant on community supervision, at the time of entering the order or making the placement, to require the defendant to report to a law enforcement agency to provide one or more specimens for the purpose of creating a DNA record.

(c) Makes conforming changes.

(d) Provides that a defendant who provides a sample or specimen under this section is not required to provide a sample or specimen under Section 411.148 or 411.150 unless an attorney representing the state in the prosecution of felony offenses establishes to the satisfaction of the director that the interests of justice or public safety require that the defendant provide additional samples or specimens.

SECTION 3. Amends Section 411.153, Government Code, as follows:

Sec. 411.153. New heading: CONFIDENTIALITY OF POST-CONFINEMENT DNA RECORDS. Provides that a person commits an offense if the person knowingly discloses information in a DNA record or information related to a DNA analysis of a blood specimen taken under Section 411.148 or 411.150 except as authorized by this chapter.

SECTION 4. Amends Chapter 411G, Government Code, by adding Sections 411.1531 and 411.1532, as follows:

Sec. 411.1531. SEGREGATION OF RECORDS. Requires the director by rule to segregate DNA records created under Sections 411.1471 and 411.1472 from records created under other provisions of this chapter, except that if a DNA record of an individual would otherwise be required to be created under Section 411.148 or 411.150, a record previously created for the individual under Section 411.1471 or 411.1472 fulfills that requirement, and may be stored with records for other individuals created under Section 411.148 or 411.150.

Sec. 411.1532. CONFIDENTIALITY OF PRE-CONFINEMENT DNA RECORDS. Provides that a DNA record created under Section 411.1471 or 411.1472 is confidential and is not subject to disclosure under the open records law, Chapter 552. Provides that a person commits an offense if the person knowingly discloses information in a DNA record or information related to a DNA analysis of a specimen taken under Section 411.1471 or 411.1472 except as authorized by this chapter. Provides that an offense under this subsection is a felony of the third degree. Provides that a violation under this section constitutes official misconduct.

SECTION 5. Amends Chapter 17, Code of Criminal Procedure, by adding Article 17.47, as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. Requires a magistrate to require as a condition of release of a defendant described by Section 411.1471(a), Government Code, that the defendant provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

SECTION 6. Amends Chapter 102A, Code of Criminal Procedure, by adding Article 102.020, as follows:

Art. 102.020. COSTS ON CONVICTION FOR OFFENSES REQUIRING DNA TESTING. (a) Requires a person to pay \$250 as a court cost on conviction of an offense listed in Section 411.1471(a)(1), Government Code, and \$50 as a court cost on conviction of an offense listed in Section 411.1471(a)(3) of that code.

- (b) Requires the court to assess and make a reasonable effort to collect the cost due under this article whether or not any other court cost is assessed or collected.
- (c) Provides conditions for a person to be considered to have been convicted for the purposes of this article.
- (d) Provides that court costs under this article are collected in the same manner as other fines or costs. Requires an officer collecting the costs to keep separate records of the funds collected as costs under this article and to deposit the funds in the county treasury.
- (e) Requires the custodian of a county treasury to keep certain records and send funds collected under this article to the comptroller by a certain date.
- (f) Authorizes a county to retain 10 percent of the funds collected under this article by an officer of the county as a collection fee if the custodian of the county treasury complies with Subsection (e).
- (g) Requires the custodian of a county treasury, if no funds due as costs under this article are deposited in the treasury in a calendar quarter, to file the report required for the quarter in the regular manner and to state that no funds were collected.
- (h) Requires the comptroller to deposit 35 percent of the funds received under this article in the state treasury to the credit of the state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the general revenue fund.
- (i) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 7. Amends Article 102.056, Code of Criminal Procedure, to require the legislature to

determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the governor's office for grants to local law enforcement agencies performing duties imposed on those agencies under Sections 411.1471 and 411.1472, Government Code.

SECTION 8. Requires the director, not later than January 1, 2002, to adopt rules relating to duties imposed on law enforcement agencies under Sections 411.1471 and 411.1472, Government Code, as added by this Act.

SECTION 9. Makes application of Sections 411.1471 and 411.1472, Government Code, and Article 17.47, Code of Criminal Procedure, as added by this Act, prospective to February 1, 2002.

SECTION 10. Makes Article 102.020, Code of Criminal Procedure, and Section 411.1532, Government Code, as added by this Act, prospective.

SECTION 11. Effective date: September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

Differs from the original as follows:

- Amends the caption.
- Adds the proposed amendments contained in SECTIONS 1, 3, 4, and 5, and redesignates SECTION 1 as SECTION 2 and SECTIONS 2-7 as SECTIONS 6-11.
- In SECTION 2, modifies the previously proposed Sections 411.1471 and 411.1472, Government Code, by including indictment and conviction of certain offenses, rather than just arrest for certain offenses, in the DNA specimen collection requirements. The requirement to require the defendant to provide a specimen is specifically made of the court in which the case is pending. Adds the defendant's authority to voluntarily provide a specimen. Adds the authorization to use any approved method to collect a specimen. Adds the prohibition against taking a blood sample for the creation of a DNA record. Adds the authority for the agency to choose the laboratory with the director's approval. Adds the provision addressing the acquittal of a defendant or the dismissal of a case against a defendant.
- Refers throughout the bill to the collection of specimens, rather than blood samples.
- In SECTION 6, proposes a new court cost and modifies the proposed distribution of the funds received under this article.
- Modifies the prospective clauses in SECTIONS 9 and 10 to include new proposed amendments.