

BILL ANALYSIS

Senate Research Center

H.B. 1068
By: Driver (Hinojosa)
Criminal Justice
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, the Department of Public Safety (DPS) has the ability to audit and inspect crime labs that are authorized to use the national DNA database operated by the Federal Bureau of Investigation. However, if a crime lab loses its ability to access or is ineligible to operate in the national DNA database, DPS cannot inspect this lab. This statutory situation prevents oversight of all private labs and those governmental labs not taking part in the national DNA database. H.B. 1068 authorizes DPS to make rules and audit and inspect all crime laboratories operating in Texas.

Additionally, since the establishment of a state DNA database (CODIS) in Texas in January of 1996, there have been a number of bills affecting the database. The varying bills required DNA collection on certain offenses with differing obligations as to whether the sampling was taken upon arrest or upon conviction, whether sampling was done on juveniles, and whether the changes in law applied retroactively. H.B. 1068 attempts to harmonize the requirements established in each of these Acts.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the public safety director of the Department of Public Safety is modified in SECTION 2 (Section 411.0205, Government Code), SECTION 9 (Section 411.147, Government Code), and SECTION 14 (Section 411.152, Government Code) of this bill.

Rulemaking authority is expressly grant to the public safety director of the Department of Public Safety in SECTION 8 (Section 411.146, Government Code) and SECTION 13 (Section 411.151, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.35, Code of Criminal Procedure, as follows:

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY. (a) Defines "crime laboratory," "criminal action," and "director." Redefines "forensic analysis" and "physical evidence."

(b) Authorizes a law enforcement agency, prosecutor, or court to request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's, rather than agency's, investigation or disposition of a criminal action and the requesting entity meets certain requirements.

(c) Makes no changes to this subsection.

(d) (1) Provides that, except as provided by Subsection (e), a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the public safety director of the Department of Public Safety (director) under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code.

(2) Provides that, if before the date of the analysis the director issues a certificate of accreditation under Section 411.0205, Government Code, to a crime laboratory conducting the analysis, the certificate is prima facie evidence that the laboratory was accredited by the director at the time of the analysis.

(e) Provides that a forensic analysis of physical evidence under this article and expert testimony relating to the evidence are not inadmissible in a criminal action based solely on the accreditation status of the crime laboratory conducting the analysis if the laboratory meets certain requirements.

(f) Authorizes a law enforcement agency, prosecutor, or crime laboratory to petition a court to require, as a condition of community supervision under Article 42.12 (Community Supervision), or to petition the Board of Pardons and Paroles to require, as a condition of release on parole under Chapter 508 (Parole and Mandatory Supervision), Government Code, a person to reimburse the agency, prosecutor, or laboratory for the reasonable cost of the confiscation, analysis, storage, or disposal of evidence, including physical evidence, raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the underlying offense. Deletes existing text relating to the admissibility of certain forensic evidence.

SECTION 2. Amends Section 411.0205, Government Code, as follows:

Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS. (a) Defines "crime laboratory."

(b) Authorizes the director, by rule, to modify or remove a crime laboratory exemption under this section if the director determines that the underlying reason for exemption no longer applies. Deletes existing text relating to DNA laboratories.

(c) Authorizes the director, by rule, to exempt from the accreditation process establish under Subsection (b) a crime laboratory conducting a forensic analysis or a type of analysis, examination, or test if the director makes certain modified determinations. Deletes existing text relating to physical evidence used in criminal proceedings.

(d) Authorizes the director, at any reasonable time, to enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation under this section.

(e) Authorizes the director to collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

(f) Authorizes the director, if the director provides a copy of an audit or other report made under this section, to charge \$6 for the copy, in addition to any other cost permitted under Chapter 552 (Public Information) or a rule adopted under that chapter.

(g) Requires funds collected under this section to be deposited in the state treasury to the credit of the state highway fund, and money deposited to the state highway fund under this section is authorized to be used only to defray the cost of administering this section or Subchapter G (DNA Database System).

SECTION 3. Amends Section 411.141, Government Code, as follows:

Sec. 411.141. DEFINITIONS. Defines "CODIS," "conviction," "criminal justice agency," "DNA sample," and "forensic analysis." Redefines "DNA database," "DNA

laboratory," and "DNA record." Deletes existing definition of "institutional division."
Makes nonsubstantive changes.

SECTION 4. Amends Sections 411.142(b), (c), (d), (f), (g), and (h), Government Code, as follows:

- (b) (1) Creates the subdivision from existing text. Makes a nonsubstantive change.
 - (2) Authorizes the director to maintain a separate database containing a name or other personally identifying information cross-referenced and searchable by name, code, or other identifier.
 - (3) Sets forth requirements and prohibitions for a CODIS DNA database.
 - (4) Sets forth requirements for a non-CODIS DNA database.
- (c) Makes a conforming change.
- (d) Makes a conforming change.
- (f) Deletes existing text of Subsection (f) relating to compatibility between the DNA database and CODIS. Redesignates text of Subsection (g). Authorizes a DNA database to contain certain modified DNA records.
- (g) Redesignates text of Subsection (h). Makes conforming changes.

SECTION 5. Amends Sections 411.143(a), (b), (c), and (e), Government Code, as follows:

- (a) Provides that the principal purpose of the DNA database is to assist a federal, state, or local criminal justice agency, rather than law enforcement agencies, in the investigation or prosecution of a criminal offense, rather than sex-related offenses or other offenses, in which biological evidence is recovered.
- (b) Provides that, in criminal cases, the purposes of the DNA database are only for use in the investigation of an offense, the exclusion or identification of suspects or offenders, and the prosecution or defense of the case.
- (c) Sets forth modified purposes of the DNA database.
- (e) Requires a party contracting to carry out a function of another entity under this subchapter to comply with a requirement imposed by this subchapter on the other entity, unless the party or other entity is exempted by the director and any additional requirement imposed by the director on the party. Deletes exiting text relating to information authorized to be included in the CODIS database.

SECTION 6. Amends Section 411.144, Government Code, as follows:

Sec. 411.144. REGULATION OF DNA LABORATORIES; PENALTIES. (a) Makes conforming changes.

- (b) Makes a conforming change.
- (c) Authorizes the director, at any reasonable time, to enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of any DNA laboratory that provides DNA records to the director or conducts forensic analysis.
- (d) Makes conforming changes.
- (e) Deletes existing text of Subsection (e) relating to penalties associated with violations of this chapter. Redesignates text of existing Subsection (f). Provides

that the director is the Texas liaison for DNA data, records, evidence, and other related matters between the FBI and a DNA laboratory or a criminal justice agency. Makes nonsubstantive changes.

(f) Redesignates text of existing Subsection (g). Makes a conforming change.

(g) Provides that this subchapter does not apply to crime scene collection of evidence, including DNA evidence, by a law enforcement agency.

Deletes existing text of Subsection (h) relating to the institutional division.

SECTION 7. Amends Section 411.145, Government Code, as follows:

Sec. 411.145. FEES. (a) Makes conforming changes.

(b) Authorizes the director, if the director provides a copy of an audit or other report made under this subchapter, to charge \$6 for the copy, in addition to any other cost permitted under Chapter 552 (Public Information) or a rule adopted under that chapter.

(c) Creates this subsection from existing text. Requires a fee collected under this section to be deposited in the state treasury to the credit of the state highway fund, and authorizes money deposited to the state highway fund under this section and under Articles 42.12 and 102.020(h), Code of Criminal Procedure, to be used only to defray the cost of administering this subchapter and Section 411.0205.

SECTION 8. Amends Section 311.146, Government Code, as follows:

Sec. 411.146. New heading: DNA SAMPLES. (a) Modifies the list of DNA records and samples that the director is authorized to accept from a individual that is alive. Makes conforming changes.

(b) Deletes existing text of Subsection (b) relating to liability for the collection of a blood sample or other specimen. Redesignates text of existing Subsection (c). Makes conforming changes.

(c) (1) Requires the director to adopt rules regarding the collection, preservation, shipment, and analysis of a DNA database sample under this subchapter, including the type of sample or specimen taken.

(2) Authorizes a criminal justice agency permitted or required to collect a DNA sample for forensic DNA analysis under this subchapter to collect the sample or contract with a phlebotomist, laboratory, state agency, private entity, or institution of higher education for services to collect the sample at the time determined by the agency and requires the agency to preserve each sample collected until it is forwarded to the director under Subsection (d) and maintain a record of the collection of the sample.

(d), (e), and (f) Make conforming changes.

SECTION 9. Amends Section 411.147, Government Code, as follows:

Sec. 411.147. ACCESS TO DNA DATABASE INFORMATION. (a) Makes conforming changes.

(b) Makes conforming changes.

(c) Authorizes the director to release a DNA sample, analysis, or record only for certain modified purposes.

(d) and (e) Makes conforming changes.

(f) Makes no changes to this subsection.

SECTION 10. Reenacts and amends Section 411.148, Government Code, as amended by Chapters 211 and 1509, Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 411.148. New heading: MANDATORY DNA RECORD. (a) Provides that this section applies to certain individuals and juveniles involved in the criminal justice system.

(b) Creates this subsection from existing text. Makes conforming changes.

(c) Requires a criminal justice agency to collect a sample ordered by a magistrate or court in compliance with the order.

(d) Makes conforming changes.

(e) Requires the Texas Youth Commission (TYC), if an individual described by Subsection (a)(2) is received into custody by TYC, to collect the sample from the individual during the initial examination or at another time determined by TYC.

(f) Deletes existing text of Subsections (b), (c), and (d) relating to obtaining a sample or specimen from an inmate. Redesignates text of existing Subsection (e). Requires the Texas Department of Criminal Justice (TDCJ) and TYC, in consultation with the director, to determine the form of the notification described by this subsection. Makes conforming changes.

(g) Redesignates text from existing Subsection (f). Makes conforming changes.

(h) Redesignates text from existing Subsection (g). Makes conforming changes.

(i) (1) Redesignates text from existing Subsection (h). Requires TDCJ, as soon as practicable, to cause a sample to be collected from an individual described by Subsection (a)(1)(C) if the individual is confined in another penal institution after sentencing and before admission to the department and the department determines that the individual is likely to be released before being admitted to the department.

(2) Requires the administrator of the other penal institution to cooperate with TDCJ as necessary to allow the TDCJ to perform its duties under this subsection.

(j) (1) Requires TYC, as soon as practicable, to cause a sample to be collected from an individual described by Subsection (a)(2) if the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission and TYC determines the individual is likely to be released before being admitted to the youth commission.

(2) Requires the administrator of the other juvenile detention facility to cooperate with TYC as necessary to allow TYC to perform its duties under this subsection. Deletes existing text relating to contracting with a phlebotomist.

(k) (1) Provides that, when a criminal justice agency of this state agrees to accept custody or supervision of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, whether the individual is confined or released, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of certain offenses.

(2) Requires the individual to provide the DNA sample as determined by the custodial or supervising entity.

(l) Provides that, ~~f~~, in consultation with the director, it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director.

(m) Provides that ~~the~~ detention, arrest, or conviction of a person based on a database match or database information is not invalid, unlawful, or inadmissible based solely on mistaken or other erroneous collection, storage, or retention of the sample or record unless the error was an intentional or knowing act.

Deletes existing text of Subsection (i) relating to sufficient financial appropriations for the collection of inmate DNA samples.

SECTION 11. Amends Section 411.149, Government Code, as follows:

Sec. 411.149. New heading: VOLUNTARY DNA RECORD. Makes conforming changes.

SECTION 12. Amends Section 411.150, Government Code, as follows:

Sec. 411.150. New heading: COURT-ORDERED DNA RECORDS. (a) Authorizes a magistrate or court to order a suspect or defendant to provide one or more DNA samples to a criminal justice agency for the purpose of creating a DNA record if the individual fulfills certain criteria.

(b) Requires a court to order a defendant to provide one or more samples to a criminal justice agency for the purpose of creating a DNA record if the individual is placed on community supervision or deferred adjudication for a felony offense.

(c) Requires a magistrate or court to order a sheriff, deputy sheriff, or other peace officer or employee representing a local law enforcement agency or a community supervision and corrections department to collect or cause to be collected one or more samples from an individual as required or permitted under this section unless a DNA sample has already been obtained under this subchapter Requires the magistrate or court to order the sample to be forwarded to the director.

(d) Authorizes an employee of a criminal justice agency to collect a sample from an individual under this section if the employee complies with each rule adopted by the director under this subchapter, including collecting, preserving, maintaining a record of the collection of, and forwarding the sample to the director. Provides that this subsection does not authorize an otherwise unqualified person to collect a blood sample.

(e) Provides that, ~~f~~ in consultation with the director it is determined that an acceptable sample has already been received from an individual, additional samples are not required unless requested by the director.

Deletes text of existing Subsections (a)-(f) relating to collecting DNA samples from a juvenile committed to TYC.

SECTION 13. Amends Section 411.151, Government Code, as follows:

Sec. 411.151. New heading: EXPUNCTION OR REMOVAL OF DNA RECORDS. (a) Makes a conforming change.

(b) Makes no changes to this subsection.

(c) Provides that this section does not require the director to expunge a record or destroy a sample if the director determines that the individual is otherwise required to submit a DNA sample under this subchapter.

(d) Provides that this section does not require the director to destroy an item of physical evidence obtained during the investigation of a criminal action.

(e) Authorizes the director, by rule, to permit administrative removal of a record, sample, or other information erroneously included in a database.

SECTION 14. Amends Section 411.152, Government Code, as follows:

Sec. 411.152. RULES. (a) Creates this subsection from existing text. Authorizes the director to adopt rules permitted by this subchapter that are necessary to administer or enforce this subchapter but is required to adopt a rule expressly required by this subchapter.

(b) Authorizes the director, by rule, to release or permit access to information to confirm or deny whether an individual has a preexisting record under this subchapter. Requires the director, after receiving a request regarding an individual whose DNA record has been expunged or removed under Section 411.151, to deny the preexisting record.

(c) Authorizes the director, by rule, to make certain exemptions.

(d) Authorizes the director, by rule, to permit an attorney representing the state in the prosecution of felony offenses to establish to the satisfaction of the director that the interests of justice or public safety require that an individual provide an additional sample.

(e) Authorizes the director, by rule, to determine whether a DNA sample complies with a collection provision of this subchapter.

SECTION 15. Reenacts and amends Section 411.153, Government Code, as amended by Chapters 1490 and 1509, Acts of the 77th Legislature, Regular Session, 2001, as follows:

Sec. 411.153. New heading: CONFIDENTIALITY OF DNA RECORDS. (a) Makes a nonsubstantive change.

(b) Makes conforming changes.

(c) Creates this subsection from existing text. Makes a nonsubstantive change.

(d) Creates this subsection from text of existing Subsection (c).

(e) Provides that it is an affirmative defense to prosecution under this section that the actor reasonably believed the actor's conduct was authorized by this subchapter or a rule adopted under this subchapter.

SECTION 16. Amends Section 411.154(b), Government Code, to make conforming changes.

SECTION 17. Amends Subchapter G, Chapter 411, Government Code, by adding Section 411.155 and 411.156, as follows:

Sec. 411.155. OFFENSE: REFUSAL TO PROVIDE SAMPLE. (a) Provides that a person commits an offense if the person knowingly fails or refuses to provide a DNA sample and the person is required to provide a sample under this subchapter and receives notification of the requirement to provide the sample.

(b) Provides that an offense under this section is a felony of the third degree.

Sec. 411.156. LIABILITY. (a) Provides that this section applies to certain persons.

(b) Provides that a person described in Subsection (a) is immune from civil liability for any act or omission resulting in death, damage, or injury if the person fulfills certain criteria.

SECTION 18. Amends Article 17.47, Code of Criminal Procedure, to authorize, rather than require, a magistrate to require as a condition of release on bail or bond of a defendant that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record under Subchapter G, Chapter 411, Government Code.

SECTION 19. Amends Sections 11(a) and (e), Article 42.12, Code of Criminal Procedure, as follows:

- (a) Sets forth a modified list of recommended conditions of community supervision.
- (e) Makes conforming changes.

SECTION 20. Amends Articles 102.020(a) and (h), Code of Criminal Procedure, as follows:

- (a) Requires a person to pay \$160, rather than \$250, as a court cost on conviction of or adjudication for an offense described in Section 411.148 (DNA Records of Certain Inmates), Government Code, to reimburse the department for services provided under Subchapter G (DNA Database System), Chapter 411, Government Code. Payment of a court cost under this article shall be required as a condition of community supervision under Article 42.12. Deletes existing text relating to paying certain fees and costs.
- (h) Requires the comptroller of public accounts to deposit 90, rather than 35, percent of the funds received under this article in the state treasury to the credit of the state highway fund and 10, rather than 65, percent of the funds received under this article to the credit of an institution administering the functions of the Missing Persons DNA Database as described by Section 105.451 (Definitions), Education Code, rather than the criminal justice planning account in the general revenue fund.

SECTION 21. Repealer: (1) Article 102.056(e) (Distribution of Funds), Code of Criminal Procedure;

- (2) Sections Article 411.0206 (Regulation of DNA Testing), 411.143(f) (prohibiting DNA database from including criminal history record information), 411.1471 (DNA Records of Persons Charged With or Convicted of Certain Felonies), 411.1472 (DNA Records of Persons Placed on Community Supervision for Certain Offenses), 411.1481 (DNA Records: Capital Murder), 411.1531 (Segregation of Records), and 411.1532 (Confidentiality of Preconfinement DNA Records), Government Code; and
- (3) Section 481.160(f) (relating to the destruction of excess quantities of a controlled substance), Health and Safety Code.

SECTION 22. (a) Sets forth the applicability of the change in law made by this Act.

- (b) Requires TDCJ as required by Section 411.148, Government Code, as amended by this Act, to collect a DNA sample from an inmate serving a sentence for a felony from whom a DNA sample was not required before the effective date of this Act. Requires TDCJ to collect the sample during the diagnostic process or at any other reasonable time determined by TDCJ.
- (c) Requires TYC, as required by Section 411.148, Government Code, as amended by this Act, to collect a DNA sample from a juvenile committed to TYC for a felony from whom a DNA sample was not required before the effective date of this Act or from a juvenile previously committed to TYC for a felony. Requires TYC to collect the sample during the initial examination or at any other reasonable time determined by TYC.

SECTION 23. Effective date: September 1, 2005.