AN ACT

relating to the collection and analysis of evidence and testimony based on forensic analysis, crime laboratory accreditation, DNA testing, and the creation and maintenance of DNA records; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.01 to read as follows:

Art. 38.01. TEXAS FORENSIC SCIENCE COMMISSION

Sec. 1. CREATION. The Texas Forensic Science Commission is created.

Sec. 2. DEFINITION. In this article, "forensic analysis" has the meaning assigned by Article 38.35(a).

Sec. 3. COMPOSITION. (a) The commission is composed of the following nine members:

(1) four members appointed by the governor:

(A) two of whom must have expertise in the field of forensic science;

(B) one of whom must be a prosecuting attorney that the governor selects from a list of 10 names submitted by the Texas District and County Attorneys Association; and

(C) one of whom must be a defense attorney that the governor selects from a list of 10 names submitted by the Texas Criminal Defense Lawyers Association;
three members appointed by the lieutenant governor:

(A) one of whom must be a faculty member or staff member of The University of Texas who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The University of Texas System;

(B) one of whom must be a faculty member or staff member of Texas A&M University who specializes in clinical laboratory medicine selected from a list of 10 names submitted to the lieutenant governor by the chancellor of The Texas A&M University System;

(C) one of whom must be a faculty member or staff member of Texas Southern University who has expertise in pharmaceutical laboratory research selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas Southern University; and

two members appointed by the attorney general:

(A) one of whom must be a director or division head of the University of North Texas Health Science Center at Fort Worth Missing Persons DNA Database; and

(B) one of whom must be a faculty or staff member of the Sam Houston State University College of Criminal Justice and have expertise in the field of forensic science or statistical analyses selected from a list of 10 names submitted to the lieutenant governor by the chancellor of Texas State University System.
(b) Each member of the commission serves a two-year term. The term of the members appointed under Subsections (a)(1) and (2) expires on September 1 of each odd-numbered year. The term of the members appointed under Subsection (a)(3) expires on September 1 of each even-numbered year.

(c) The governor shall designate a member of the commission to serve as the presiding officer.

Sec. 4. DUTIES. (a) The commission shall:

(1) develop and implement a reporting system through which accredited laboratories, facilities, or entities report professional negligence or misconduct;

(2) require all laboratories, facilities, or entities that conduct forensic analyses to report professional negligence or misconduct to the commission; and

(3) investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility, or entity.

(b) An investigation under Subsection (a)(3):

(1) must include the preparation of a written report that identifies and also describes the methods and procedures used to identify:

(A) the alleged negligence or misconduct;

(B) whether negligence or misconduct occurred; and

(C) any corrective action required of the laboratory, facility, or entity; and
(2) may include one or more:
   (A) retrospective reexaminations of other forensic analyses conducted by the laboratory, facility, or entity that may involve the same kind of negligence or misconduct; and
   (B) follow-up evaluations of the laboratory, facility, or entity to review:
       (i) the implementation of any corrective action required under Subdivision (1)(C); or
       (ii) the conclusion of any retrospective reexamination under Paragraph (A).
(c) The commission by contract may delegate the duties described by Subsections (a)(1) and (3) to any person the commission determines to be qualified to assume those duties.
(d) The commission may require that a laboratory, facility, or entity investigated under this section pay any costs incurred to ensure compliance with Subsection (b)(1).
(e) The commission shall make all investigation reports completed under Subsection (b)(1) available to the public. A report completed under Subsection (b)(1), in a subsequent civil or criminal proceeding, is not prima facie evidence of the information or findings contained in the report.

Sec. 5. REIMBURSEMENT. A member of the commission may not receive compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 6. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin
shall assist the commission in performing the commission's duties.

Sec. 7. SUBMISSION. The commission shall submit any report received under Section 4(a)(2) and any report prepared under Section 4(b)(1) to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

SECTION 2. Article 38.35, Code of Criminal Procedure, is amended to read as follows:

Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY. (a) In this article:

(1) "Crime laboratory" includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.

(2) "Criminal action" includes an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.

(3) "Director" means the public safety director of the Department of Public Safety.

(4) "Forensic analysis" means a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action. The term includes an examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court. The term does not include:

(A) latent print examination;

(B) a test of a specimen of breath under Chapter
724, Transportation Code; [6]

(C) digital evidence;

(D) an examination or test excluded by rule under Section 411.0205(c), Government Code;

(E) a presumptive test performed for the purpose of determining compliance with a term or condition of community supervision or parole and conducted by or under contract with a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, or the Board of Pardons and Paroles; or

(F) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action.

(5) "Physical evidence" means any tangible object, thing, or substance relating to a criminal action.

(b) A law enforcement agency, prosecutor, or court may request a forensic analysis by a crime laboratory of physical evidence if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action and the requesting entity:

(1) controls the evidence;

(2) submits the evidence to the laboratory; or

(3) consents to the analysis.

(c) A law enforcement agency, other governmental agency, or
private entity performing a forensic analysis of physical evidence may require the requesting law enforcement agency to pay a fee for such analysis.

(d)(1) Except as provided by Subsection (e), a forensic analysis of physical evidence under this article [subjected to a forensic analysis,] and expert testimony relating to the evidence are not admissible in a criminal action if, at the time of the analysis [or the time the evidence is submitted to the court], the crime laboratory [or other entity] conducting the analysis was not accredited by the director [Department of Public Safety] under Section 411.0205, Government Code.

(2) 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) 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:

(A) except for making proper application, was eligible for accreditation by the director at the time of the examination or test; and

(B) obtains accreditation from the director before the time of testimony about the examination or test.
(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician. [Notwithstanding Subsection (d), physical evidence subjected to a forensic analysis under this article is not inadmissible in a criminal case based solely on the accreditation status of the crime laboratory or other entity conducting the analysis if the laboratory or entity:

(1) has preserved one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and

(2) has agreed to preserve those samples until all appeals in the case are final. This subsection expires September 1, 2005.]

SECTION 3. Section 411.0205, Government Code, is amended to read as follows:

Sec. 411.0205. CRIME LABORATORY ACCREDITATION PROCESS. (a) In this section, "crime laboratory," "forensic analysis," and "physical evidence" have the meanings assigned by Article 38.35, Code of Criminal Procedure[, and "DNA laboratory" has the meaning assigned by Section 411.141].

(b) The director by rule:

(1) shall establish an accreditation process for crime laboratories[, including DNA laboratories], and other entities conducting forensic analyses of physical evidence for use in criminal proceedings; and

(2) may modify or remove a crime laboratory exemption under this section if the director determines that the underlying
reason for exemption no longer applies.

(b-1) As part of the accreditation process established and implemented under Subsection (b), the director may:

(1) establish minimum standards that relate to the timely production of a forensic analysis to the agency requesting the analysis and that are consistent with this article and code;

(2) validate or approve specific forensic methods or methodologies; and

(3) establish procedures, policies, and practices to improve the quality of forensic analyses conducted in this state.

(b-2) The director may require that a laboratory, facility, or entity required to be accredited under this section pay any costs incurred to ensure compliance with the accreditation process.

(c) The director by rule may exempt from the accreditation process established under Subsection (b) a crime laboratory or other entity conducting a forensic analysis or a type of analysis, examination, or test of physical evidence for use in criminal proceedings if the director determines that:

(1) independent accreditation is unavailable or inappropriate for the laboratory or entity or the type of analysis, examination, or test performed by the laboratory or entity;

(2) the type of analysis, examination, or test performed by the laboratory or entity is admissible under a well-established rule of evidence or a statute other than Article 38.35, Code of Criminal Procedure; and

(3) the type of analysis, examination, or test
performed by the laboratory or entity] is routinely conducted outside of a crime laboratory [or other applicable entity] by a person other than an employee of the crime laboratory; or

(4) the laboratory:

(A) is located outside this state or, if located in this state, is operated by a governmental entity other than the state or a political subdivision of the state; and

(B) was accredited at the time of the analysis under an accreditation process with standards that meet or exceed the relevant standards of the process established by the director under Subsection (b) [or other applicable entity].

(d) The director may at any reasonable time 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) The director may collect costs incurred under this section for accrediting, inspecting, or auditing a crime laboratory.

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

(g) Funds collected under this section shall 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 may be used only to defray the cost of administering this section or Subchapter G.
SECTION 4. Section 411.141, Government Code, is amended to read as follows:

Sec. 411.141. DEFINITIONS. In this subchapter:

(1) "CODIS" means the FBI's Combined DNA Index System. The term includes the national DNA index system sponsored by the FBI.

(2) "Conviction" includes conviction by a jury or a court, a guilty plea, a plea of nolo contendere, or a finding of not guilty by reason of insanity.

(3) "Criminal justice agency" has the meaning assigned by Article 60.01, Code of Criminal Procedure.

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA database" means one or more databases that contain forensic DNA records maintained by the director.

(6) "DNA laboratory" means a laboratory that performs forensic DNA analysis on samples or specimens derived from a human body, physical evidence, or a crime scene. The term includes a department crime laboratory facility that conducts forensic DNA analysis.

(7) "DNA record" means the results of a forensic DNA analysis performed by a DNA laboratory. The term includes a DNA profile and related records, which may include a code or other identifying number referenced to a separate database to locate:

(A) the originating entity; and

(B) if known, the name and other personally identifying information concerning the individual.
who is the subject of the analysis.

(8) "DNA sample" means a blood sample or other biological sample or specimen provided by an individual under this subchapter or submitted to the director under this subchapter for DNA analysis or storage.

(9) "FBI" means the Federal Bureau of Investigation.

(10) "Forensic analysis" has the meaning assigned by Article 38.35, Code of Criminal Procedure.

(11) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(12) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.

(13) "Penal institution" has the meaning assigned by Section 1.07, Penal Code.

SECTION 5. Sections 411.142(c), (d), (g), and (h), Government Code, are amended to read as follows:

(c) The director may receive, analyze, store, and destroy a record or DNA sample [, blood sample, or other specimen] for the purposes described by Section 411.143.

(d) The DNA database must be capable of classifying, matching, and storing the results of analyses of DNA [and other biological molecules].

(g) The DNA database may contain DNA records for the following:

(1) an individual [a person] described by this subchapter, including Section 411.1471, 411.148, or 411.150;
(2) a biological specimen of a deceased victim of a crime;

(3) a biological specimen that is legally obtained in the investigation of a crime, regardless of origin;

(4) results of testing ordered by a court under this subchapter, Article 64.03, Code of Criminal Procedure, or other law permitting or requiring the creation of a DNA record;

(5) an unidentified missing person, or unidentified skeletal remains or body parts;

(6) a close biological relative of a person who has been reported missing to a law enforcement agency;

(7) a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or

(8) an unidentified person, if the record does not contain personal identifying information.

(h) The director [department] shall establish standards for DNA analysis by the DNA laboratory that meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses performed according to the standards adopted by the director [department].

SECTION 6. Section 411.143, Government Code, is amended by
amending Subsections (a), (b), and (c) and adding Subsection (g) to read as follows:

(a) The principal purpose of the DNA database is to assist a
federal, state, or local criminal justice agency [or law enforcement agencies] in the investigation or prosecution of sex-related offenses or other offenses in which biological evidence is recovered.

(b) 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) Other purposes of the database include:

(1) assisting in the recovery or identification of human remains from a disaster or for humanitarian purposes;

(2) assisting in the identification of living or deceased missing persons; [and]

(3) if personal identifying information is removed:

(A) establishing a population statistics database; and

(B) assisting in identification research, forensic validation studies, or forensic [and] protocol development; and

(4) retesting to validate or update the original analysis or [and] assisting in database or DNA laboratory quality control.

(g) A party contracting to carry out a function of another entity under this subchapter shall comply with:

(1) 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.

SECTION 7. Section 411.144, Government Code, is amended to read as follows:

Sec. 411.144. REGULATION OF DNA LABORATORIES; PENALTIES.

(a) The director by rule shall establish procedures for a DNA laboratory or criminal justice [or law enforcement] agency in the collection, preservation, shipment, analysis, and use of a DNA sample [blood sample or other specimen] for forensic DNA analysis in a manner that permits the exchange of DNA evidence between DNA laboratories and the use of the evidence in a criminal case.

(b) A DNA laboratory or criminal justice [or law enforcement] agency shall follow the procedures:

(1) established by the director under this section; and

(2) specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies, and computer software.

(c) The director may at any reasonable time enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of any DNA laboratory that:

(1) provides DNA records [or DNA forensic analyses] to the director [department] under this subchapter; or

(2) conducts forensic analysis.

(d) A DNA laboratory conducting a forensic DNA analysis under this subchapter shall:

(1) forward the DNA record of the analysis to the
director at the department's crime laboratory or another location as required by the director; and

(2) comply with this subchapter and rules adopted under this subchapter.

(e) If a DNA laboratory violates this subchapter or a rule adopted under this subchapter, the director may prohibit the laboratory from exchanging DNA records with another DNA laboratory or criminal justice or law enforcement agency. A DNA laboratory prohibited from exchanging DNA records under this subsection may petition the director for a hearing to show cause why the laboratory's authority to exchange DNA records should be reinstated.

(f) The director is the Texas liaison for DNA data, records, evidence, and other related matters between:

(1) the FBI; and

(2) a DNA laboratory or a criminal justice [or law enforcement] agency.

(g) The director may:

(1) conduct DNA analyses; or

(2) contract with a laboratory, state agency, private entity, or institution of higher education for services to perform DNA analyses for the director.

(h) The institutional division may:

(1) collect a blood sample or other specimen for forensic DNA analysis; or

(2) contract with a laboratory, state agency, private entity, or institution of higher education for services to collect
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SECTION 8. Section 411.145, Government Code, is amended to read as follows:

Sec. 411.145. FEES. (a) The director may collect a reasonable fee under this subchapter for:

(1) the DNA analysis of a DNA sample submitted voluntarily to the director; or

(2) providing population statistics data or other appropriate research data.

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

(c) A fee collected under this section shall 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 and under Articles 42.12 and 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter and Section 411.0205.

SECTION 9. Section 411.146, Government Code, is amended to read as follows:

Sec. 411.146. DNA SAMPLES. (a) The director may not accept a DNA record or DNA sample collected from an individual who at the time of collection is alive, unless the director reasonably believes the sample was not deceased.
that is submitted voluntarily or as required by this subchapter and is:

(1) a blood sample [Section 411.148 or 411.150 unless the sample or specimen is] collected in a medically approved manner by:

(A) a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or

(B) an individual another person who is trained to properly collect blood samples under this subchapter; or

(2) a specimen other than a blood sample collected:

(A) in a manner other than a blood sample collected:

(B) by an individual who is trained to properly collect the specimen under this subchapter [or other specimens and supervised by a licensed physician].

(b) A person collecting a blood sample or other specimen under this section may not be held liable in any civil or criminal action if the person collects the sample or specimen in a reasonable manner according to generally accepted medical or other professional practices.

(c) The director shall provide at no cost to a person collecting a DNA sample as described by Subsection (a) the collection kits, specimen vials, mailing tubes and labels, report forms, and instructions, and training for collection of DNA [blood] samples [or other specimens] under this section.

(c)(1) The director shall 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) A criminal justice agency permitted or required to
collect a DNA sample for forensic DNA analysis under this
subchapter:

(A) may 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

(B) shall:

(i) preserve each sample collected until it
is forwarded to the director under Subsection (d); and

(ii) maintain a record of the collection of
the sample.

(d) A criminal justice agency that [person who] collects a
DNA [blood] sample [or other specimen] under this section shall
send the sample [or specimen] to:

(1) the director at the department's crime laboratory;

or

(2) another location as required by the director by
rule.

(e) A DNA laboratory may analyze a DNA [blood] sample
collected under this section [or other DNA specimen] only:

(1) to type the genetic markers contained in the
sample [or specimen];

(2) for criminal justice or [and] law enforcement
purposes; or

(3) for other purposes described by this subchapter.

(f) If possible, a second DNA sample [specimen] must be collected [obtained] from an individual [a suspect] in a criminal investigation if forensic DNA evidence is necessary for use as substantive evidence in the investigation, prosecution, or defense of a case.

SECTION 10. Section 411.147, Government Code, is amended to read as follows:

Sec. 411.147. ACCESS TO DNA DATABASE INFORMATION. (a) The director by rule shall establish procedures:

(1) to prevent unauthorized access to the DNA database; and

(2) to release from the DNA database a DNA sample, analysis, record, or other information maintained under this subchapter [DNA records, specimens, or analyses from the DNA database].

(b) The director may adopt rules relating to the internal disclosure, access, or use of a sample [specimen] or DNA record in [the department or] a DNA laboratory.

(c) The director [department] may release a DNA sample, analysis, or record only:

(1) to a criminal justice agency for criminal justice or law enforcement identification purposes;

(2) for a judicial proceeding, if otherwise admissible under law;

(3) for criminal defense purposes to a defendant, if
related to the case in which the defendant is charged or released
from custody under Article 17.47, Code of Criminal Procedure, or
other court order; or

(4) for another purpose:
   (A) described in Section 411.143; or
   (B) required under federal law as a condition for
obtaining federal funding [if personally identifiable information
is removed, for:
   [(A) a population statistics database;
   (B) identification research and protocol
development; or
   (C) quality control].

(d) The director may release a record of the number of
requests made for a defendant's individual DNA record and the name
of the requesting person.

(e) A criminal justice [law enforcement] agency may have
access to a DNA sample for a law enforcement purpose [specimens]
through:
   (1) the agency's laboratory; or
   (2) a laboratory used by the agency [for law
enforcement purposes].

(f) The director shall maintain a record of requests made
under this section.

SECTION 11. Section 411.148, Government Code, as amended by
Chapters 211 and 1509, Acts of the 77th Legislature, Regular
Session, 2001, is reenacted and amended to read as follows:

Sec. 411.148. MANDATORY DNA RECORD [RECORDS OF CERTAIN

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INMATES]. (a) This section applies to:

(1) an individual who is:

(A) ordered by a magistrate or court to provide a sample under Section 411.150 or 411.154 or other law; or

(B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or

(2) a juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with the Texas Youth Commission.

(b) An individual described by Subsection (a) [inmate serving a sentence for a felony in the institutional division] shall provide one or more DNA [blood] samples [or other specimens] for the purpose of creating a DNA record.

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

(d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that department [4b. The institutional division] shall collect [obtain] the sample [or specimen] from the individual [an inmate of the division] during the diagnostic process or at another time determined by the Texas Department of Criminal Justice.

(e) If an individual described by Subsection (a)(2) is received into custody by the Texas Youth Commission, the youth commission shall collect the sample from the individual during the initial examination or at another time determined by the youth commission.

(f) [The institutional division shall obtain the sample or
specimen from an inmate confined in another penal institution as 
soon as practicable if the Board of Pardons and Paroles informs the 
division that the inmate is likely to be paroled before being 
admitted to the division. The administrator of the other penal 
institution shall cooperate with the institutional division as 
necessary to allow the institutional division to perform its duties 
under this section.

[(c) The institutional division shall:

(1) preserve each blood sample or other specimen 
collected; 
(2) maintain a record of the collection of the sample 
or specimen; and 
(3) send the sample or specimen to the director for 
scientific analysis under this subchapter.

[(d) An inmate may not be held past a statutory release date 
if the inmate fails or refuses to provide a blood sample or other 
specimen under this section. A penal institution may take other 
lawful administrative action against the inmate.

[(e) The Texas Department of Criminal Justice 
[institutional division] shall notify the director that an 
individual [inmate] described by Subsection (a) is to be released 
from custody [the institutional division] not earlier than the 
120th day before the individual's [inmate's] release date and not 
later than the 90th day before the individual's [inmate's] release 
date. The Texas Youth Commission shall notify the director that an 
individual described by Subsection (a) is to be released from 
custody not earlier than the 10th day before the individual's
release date. The Texas Department of Criminal Justice and the Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

(g) A medical staff employee of a criminal justice agency [the institutional division] may collect [obtain] a voluntary sample [or specimen] from an individual at any time [inmate].

(h) An employee of a criminal justice agency [the institutional division] may use force against an individual [inmate] required to provide a DNA sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to collect [obtain] the sample [or specimen].

(i)(1) The Texas Department of Criminal Justice as soon as practicable shall cause a sample to be collected from an individual described by Subsection (a)(1)(B) if:

(A) the individual is confined in another penal institution after sentencing and before admission to the department; and

(B) the department determines that the individual is likely to be released before being admitted to the department.

(2) The administrator of the other penal institution shall cooperate with the Texas Department of Criminal Justice as necessary to allow the Texas Department of Criminal Justice to perform its duties under this subsection.

(j)(1) The Texas Youth Commission as soon as practicable
shall cause a sample to be collected from an individual described by Subsection (a)(2) if:

(A) the individual is detained in another juvenile detention facility after adjudication and before admission to the youth commission; and

(B) the youth commission determines the individual is likely to be released before being admitted to the youth commission.

(2) The administrator of the other juvenile detention facility shall cooperate with the Texas Youth Commission as necessary to allow the youth commission to perform its duties under this subsection [may contract with an individual or entity for the provision of phlebotomy services under this section].

(k) When a criminal justice agency of this state agrees to accept custody of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of a felony.

(l) If, 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.

[(i) Notwithstanding Subsection (a), if at the beginning of a fiscal year the executive director of the Texas Department of Criminal Justice determines that sufficient funds have not been appropriated to the department to obtain a sample from each inmate]
otherwise required to provide a sample under Subsection (a), the executive director shall direct the institutional division to give priority to obtaining samples from inmates ordered by a court to give the sample or specimen or serving sentences for:

[(1) an offense:

[(A) under Section 19.02, Penal Code (murder), or Section 22.02, Penal Code (aggravated assault);]

[(B) under Section 30.02, Penal Code (burglary), if the offense is punishable under Subsection (c)(2) or (d) of that section; or

[(C) for which the inmate is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or

[(2) any offense if the inmate has previously been convicted of or adjudicated as having engaged in:

[(A) an offense described in Subdivision (1); or

[(B) an offense under federal law or laws of another state that involves the same conduct as an offense described by Subdivision (1).]

SECTION 12. Section 411.149, Government Code, is amended to read as follows:

Sec. 411.149. VOLUNTARY DNA RECORD [SUBMISSION OF BLOOD SAMPLES]. An individual, including an individual required to provide a DNA sample under this subchapter, [a person] may at any time voluntarily provide or cause to be provided to a criminal justice agency a sample to be forwarded [submit a blood sample or other specimen] to the director [department] for the purpose of creating a DNA record under this subchapter.
SECTION 13. Section 411.151, Government Code, is amended to read as follows:

Sec. 411.151. EXPUNCTION OR REMOVAL OF DNA RECORDS. (a) The director shall expunge a DNA record of an individual from a DNA database if the person:

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, and provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with a certified copy of a court order issued under Section 58.003, Family Code, that seals the juvenile record of the adjudication that resulted in the DNA record.

(b) A person may petition for the expunction of a DNA record under the procedures established under Article 55.02, Code of Criminal Procedure, if the person is entitled to the expunction of records relating to the offense to which the DNA record is related under Article 55.01, Code of Criminal Procedure.

(c) 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) The director by rule may permit administrative removal of a record, sample, or other information erroneously included in a database.

SECTION 14. Section 411.152, Government Code, is amended to read as follows:
Sec. 411.152. RULES. (a) The director may adopt rules permitted by this subchapter that are necessary to administer or enforce this subchapter but shall adopt a rule expressly required by this subchapter.

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

(c) The director by rule may exempt:

(1) a laboratory conducting non-human forensic DNA analysis from a rule adopted under this subchapter; and

(2) certain categories of individuals from a requirement to provide an additional sample after an acceptable DNA record exists for the individual.

(d) The director by rule may determine whether a DNA sample complies with a collection provision of this subchapter.

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

Sec. 411.153. CONFIDENTIALITY OF [POSTCONFINEMENT] DNA RECORDS. (a) A DNA record stored in the DNA database is confidential and is not subject to disclosure under the public information [open records] law, Chapter 552.

(b) A person commits an offense if the person knowingly discloses information in a DNA record or information related to a
DNA analysis of a sample collected [blood specimen taken] under this subchapter [Section 411.148 or 411.150 except as authorized by this chapter].

(c) An offense under this section [subsection] is a state jail felony.

(d) A violation under this section constitutes official misconduct.

SECTION 16. Section 411.154(b), Government Code, is amended to read as follows:

(b) The court may issue an order requiring a person:

(1) to act in compliance with this subchapter or a rule adopted under this subchapter;

(2) to refrain from acting in violation of this subchapter or a rule adopted under this subchapter;

(3) to provide a DNA sample [give a blood sample or other specimen]; or

(4) if the person has already provided a DNA sample [given a blood sample or other specimen], to provide [give] another sample if good cause is shown.

SECTION 17. Article 17.47, Code of Criminal Procedure, is amended to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

(a) A magistrate may [shall] require as a condition of release on bail or bond of a defendant [described by Section 411.1471(a), Government Code] 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
(b) A magistrate shall require as a condition of release on bail or bond of a defendant described by Section 411.1471(a), Government Code, 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 18. Sections 11(a) and (e), Article 42.12, Code of Criminal Procedure, are amended to read as follows:

(a) The judge of the court having jurisdiction of the case shall determine the conditions of community supervision and may, at any time, during the period of community supervision alter or modify the conditions. The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions of community supervision may include, but shall not be limited to, the conditions that the defendant shall:

(1) Commit no offense against the laws of this State or of any other State or of the United States;
(2) Avoid injurious or vicious habits;
(3) Avoid persons or places of disreputable or harmful character;
(4) Report to the supervision officer as directed by the judge or supervision officer and obey all rules and regulations of the community supervision and corrections department;
(5) Permit the supervision officer to visit him at his
[72x730]home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums;

(9) Support his dependents;

(10) Participate, for a time specified by the judge in any community-based program, including a community-service work program under Section 16 of this article;

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community corrections facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial supervision in a community corrections facility;

(14) Submit to testing for alcohol or controlled substances;

(15) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program
or facility approved or licensed by the Texas Commission on Alcohol
and Drug Abuse;

(16) With the consent of the victim of a misdemeanor
offense or of any offense under Title 7, Penal Code, participate in
victim-defendant mediation;

(17) Submit to electronic monitoring;

(18) Reimburse the general revenue fund for any
amounts paid from that fund to a victim, as defined by Article 56.01
of this code, of the defendant's offense or if no reimbursement is
required, make one payment to the fund in an amount not to exceed
$50 if the offense is a misdemeanor or not to exceed $100 if the
offense is a felony;

(19) Reimburse a law enforcement agency for the
analysis, storage, or disposal of raw materials, controlled
substances, chemical precursors, drug paraphernalia, or other
materials seized in connection with the offense;

(20) Pay all or part of the reasonable and necessary
costs incurred by the victim for psychological counseling made
necessary by the offense or for counseling and education relating
to acquired immune deficiency syndrome or human immunodeficiency
virus made necessary by the offense;

(21) Make one payment in an amount not to exceed $50 to
a crime stoppers organization as defined by Section 414.001,
Government Code, and as certified by the Crime Stoppers Advisory
Council;

(22) Submit a DNA [blood] sample [or other specimen]
to the Department of Public Safety under Subchapter G, Chapter 411,
Government Code, for the purpose of creating a DNA record of the
defendant; and

(23) In any manner required by the judge, provide
public notice of the offense for which the defendant was placed on
community supervision in the county in which the offense was
committed.

(e) A judge granting community supervision to a defendant
required to register as a sex offender under Chapter 62 shall
require that the defendant, as a condition of community
supervision:

(1) register under that chapter; and

(2) submit a DNA [blood] sample [or other specimen] to
the Department of Public Safety under Subchapter G, Chapter 411,
Government Code, for the purpose of creating a DNA record of the
defendant, unless the defendant has already submitted the required
sample [specimen] under other state law.

SECTION 19. The following are repealed:

(1) Sections 411.0206, 411.1472, 411.1481, 411.1531,
and 411.1532, Government Code; and

(2) Section 481.160(f), Health and Safety Code.

SECTION 20. (a) Initial appointments to the Texas Forensic
Science Commission must be made not later than the 60th day after
the effective date of this Act.

(b) Of the initial members of the Texas Forensic Science
Commission:

(1) the members appointed under Subdivision (1) and

(2), Subsection (a), Section 3, Article 38.01, Code of Criminal
Procedure, as added by this Act, serve terms expiring September 1, 2007; and

(2) the other members serve terms expiring September 1, 2006.

(c) A member whose term expires on September 1, 2006, is eligible to be reappointed for a two-year term as provided by Subsection (b), Section 3, Article 38.01, Code of Criminal Procedure, as added by this Act.

SECTION 21. Article 38.35, Code of Criminal Procedure, as amended by this Act, applies only to the admissibility of physical evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of physical evidence in a criminal proceeding that commenced before the effective date of this Act is governed by the law in effect at the time the proceeding commenced, and that law is continued in effect for that purpose.

SECTION 22. (a) The change in law made by this Act applies to:

(1) evidence tested or offered into evidence on or after the effective date of this Act; and

(2) an individual who, on or after the effective date of this Act:

   (A) is confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice as described in Section 411.148(a)(1)(B), Government Code, as amended by this Act;

   (B) is confined in a facility operated by or
under contract with the Texas Youth Commission after adjudication
for conduct constituting a felony as described in Section
411.148(a)(2), Government Code, as amended by this Act;

(C) voluntarily submits or causes to be submitted
a DNA sample as described in Section 411.149, Government Code, as
amended by this Act; or

(D) is ordered by a magistrate or court to
provide a DNA sample under Subsection G, Chapter 411, Government
Code.

(b) As required by Section 411.148, Government Code, as
amended by this Act, the Texas Department of Criminal Justice shall
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. The department shall collect the sample during the
diagnostic process or at any other reasonable time determined by
the department.

(c) As required by Section 411.148, Government Code, as
amended by this Act, the Texas Youth Commission shall collect a DNA
sample from a juvenile committed to the Texas Youth Commission 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 the
Texas Youth Commission for a felony. The commission shall collect
the sample during the initial examination or at any other
reasonable time determined by the commission.

SECTION 23. This Act takes effect September 1, 2005.
I certify that H.B. No. 1068 was passed by the House on May 10, 2005, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1068 on May 27, 2005, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1068 on May 29, 2005, by a non-record vote; and that the House adopted H.C.R. No. 241 authorizing certain corrections in H.B. No. 1068 on May 30, 2005, by a non-record vote.

Chief Clerk of the House
H.B. No. 1068

I certify that H.B. No. 1068 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1068 on May 29, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate adopted H.C.R. No. 241 authorizing certain corrections in H.B. No. 1068 on May 30, 2005, by a viva-voce vote.

______________________________
Secretary of the Senate

APPROVED: ____________________

Date

______________________________
Governor