

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;

1 (2) three members appointed by the lieutenant
2 governor:

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

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

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

18 (3) two members appointed by the attorney general:

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

22 (B) one of whom must be a faculty or staff member
23 of the Sam Houston State University College of Criminal Justice and
24 have expertise in the field of forensic science or statistical
25 analyses selected from a list of 10 names submitted to the
26 lieutenant governor by the chancellor of Texas State University
27 System.

1 (b) Each member of the commission serves a two-year term.
2 The term of the members appointed under Subsections (a)(1) and (2)
3 expires on September 1 of each odd-numbered year. The term of the
4 members appointed under Subsection (a)(3) expires on September 1 of
5 each even-numbered year.

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

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

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

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

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

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

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

23 (A) the alleged negligence or misconduct;

24 (B) whether negligence or misconduct occurred;

25 and

26 (C) any corrective action required of the
27 laboratory, facility, or entity; and

1 (2) may include one or more:

2 (A) retrospective reexaminations of other
3 forensic analyses conducted by the laboratory, facility, or entity
4 that may involve the same kind of negligence or misconduct; and

5 (B) follow-up evaluations of the laboratory,
6 facility, or entity to review:

7 (i) the implementation of any corrective
8 action required under Subdivision (1)(C); or

9 (ii) the conclusion of any retrospective
10 reexamination under Paragraph (A).

11 (c) The commission by contract may delegate the duties
12 described by Subsections (a)(1) and (3) to any person the
13 commission determines to be qualified to assume those duties.

14 (d) The commission may require that a laboratory, facility,
15 or entity investigated under this section pay any costs incurred to
16 ensure compliance with Subsection (b)(1).

17 (e) The commission shall make all investigation reports
18 completed under Subsection (b)(1) available to the public. A
19 report completed under Subsection (b)(1), in a subsequent civil or
20 criminal proceeding, is not prima facie evidence of the information
21 or findings contained in the report.

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

26 Sec. 6. ASSISTANCE. The Texas Legislative Council, the
27 Legislative Budget Board, and The University of Texas at Austin

1 shall assist the commission in performing the commission's duties.

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

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

9 Art. 38.35. FORENSIC ANALYSIS OF EVIDENCE; ADMISSIBILITY.

10 (a) In this article:

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

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

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

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

26 (A) latent print examination;

27 (B) a test of a specimen of breath under Chapter

1 724, Transportation Code; ~~or~~

2 (C) digital evidence;

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

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

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

16 (5) ~~(2)~~ "Physical evidence" means any tangible
17 object, thing, or substance relating to a criminal action
18 ~~[offense]~~.

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

24 (1) controls the evidence;

25 (2) submits the evidence to the laboratory; or

26 (3) consents to the analysis ~~[offense]~~.

27 (c) A law enforcement agency, other governmental agency, or

1 private entity performing a forensic analysis of physical evidence
2 may require the requesting law enforcement agency to pay a fee for
3 such analysis.

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

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

18 (e) A forensic analysis of physical evidence under this
19 article and expert testimony relating to the evidence are not
20 inadmissible in a criminal action based solely on the accreditation
21 status of the crime laboratory conducting the analysis if the
22 laboratory:

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

26 (B) obtains accreditation from the director
27 before the time of testimony about the examination or test.

1 (f) This article does not apply to the portion of an autopsy
2 conducted by a medical examiner or other forensic pathologist who
3 is a licensed physician. [~~Notwithstanding Subsection (d), physical~~
4 ~~evidence subjected to a forensic analysis under this article is not~~
5 ~~inadmissible in a criminal case based solely on the accreditation~~
6 ~~status of the crime laboratory or other entity conducting the~~
7 ~~analysis if the laboratory or entity:~~

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

11 [~~(2) has agreed to preserve those samples until all~~
12 ~~appeals in the case are final. This subsection expires September 1,~~
13 ~~2005.~~]

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

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

21 (b) The director by rule:

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

26 (2) may modify or remove a crime laboratory exemption
27 under this section if the director determines that the underlying

1 reason for exemption no longer applies.

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

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

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

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

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

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

19 (1) independent accreditation is unavailable or
20 inappropriate for the laboratory [~~or entity~~] or the type of
21 analysis, examination, or test performed by the laboratory [~~or~~
22 ~~entity~~];

23 (2) the type of analysis, examination, or test
24 performed by the laboratory [~~or entity~~] is admissible under a
25 well-established rule of evidence or a statute other than Article
26 38.35, Code of Criminal Procedure; [~~and~~]

27 (3) the type of analysis, examination, or test

1 performed by the laboratory [~~or entity~~] is routinely conducted
2 outside of a crime laboratory [~~or other applicable entity~~] by a
3 person other than an employee of the crime laboratory; or

4 (4) the laboratory:

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

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

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

16 (e) The director may collect costs incurred under this
17 section for accrediting, inspecting, or auditing a crime
18 laboratory.

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

23 (g) Funds collected under this section shall be deposited in
24 the state treasury to the credit of the state highway fund, and
25 money deposited to the state highway fund under this section may be
26 used only to defray the cost of administering this section or
27 Subchapter G.

1 SECTION 4. Section 411.141, Government Code, is amended to
2 read as follows:

3 Sec. 411.141. DEFINITIONS. In this subchapter:

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

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

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

12 (4) "DNA" means deoxyribonucleic acid.

13 (5) [~~(2)~~] "DNA database" means one or more databases
14 that contain [the database that contains] forensic DNA records
15 maintained by the director.

16 (6) [~~(3)~~] "DNA laboratory" means a laboratory that
17 performs forensic DNA analysis on samples or specimens derived from
18 a human body, physical evidence, or a crime scene. The term
19 includes a department crime laboratory facility that conducts
20 forensic DNA analysis.

21 (7) [~~(4)~~] "DNA record" means the results of a forensic
22 DNA analysis performed by a DNA laboratory. The term includes a DNA
23 profile and related records, which may include a code or other
24 identifying number referenced to a separate database to locate:

25 (A) the originating entity; and

26 (B) [~~(7)~~] if known, the name and other personally
27 identifying information concerning the individual [of the person]

1 who is the subject of the analysis.

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

6 (9) [(5)] "FBI" means the Federal Bureau of
7 Investigation.

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

10 (11) [(6)] "Institution of higher education" has the
11 meaning assigned by Section 61.003, Education Code.

12 (12) [(7)] "Institutional division" means the
13 institutional division of the Texas Department of Criminal Justice.

14 [(8)] "Penal institution" has the meaning assigned by
15 Section 1.07, Penal Code.

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

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

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

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

26 (1) an individual [~~a person~~] described by this
27 subchapter, including Section 411.1471, 411.148, or 411.150;

1 (2) a biological specimen of a deceased victim of a
2 crime;

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

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

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

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

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

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

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

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

27 (a) The principal purpose of the DNA database is to assist a

1 federal, state, or local criminal justice agency [~~or law~~
2 ~~enforcement agencies~~] in the investigation or prosecution of
3 sex-related offenses or other offenses in which biological evidence
4 is recovered.

5 (b) In criminal cases, the purposes of the DNA database are
6 only for use in the investigation of an offense, the exclusion or
7 identification of suspects or offenders, and the prosecution or
8 defense of the case.

9 (c) Other purposes of the database include:

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

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

14 (3) if personal identifying information is removed:

15 (A) establishing a population statistics
16 database; and

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

20 (4) retesting to validate or update the original
21 analysis or [~~(C)~~] assisting in database or DNA laboratory quality
22 control.

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

25 (1) a requirement imposed by this subchapter on the
26 other entity, unless the party or other entity is exempted by the
27 director; and

1 (2) any additional requirement imposed by the director
2 on the party.

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

5 Sec. 411.144. REGULATION OF DNA LABORATORIES; PENALTIES.

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

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

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

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

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

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

24 (2) conducts forensic analysis.

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

27 (1) forward the DNA record of the analysis to the

1 director at the department's crime laboratory or another location
2 as required by the director [~~department~~]; and

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

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

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

15 (1) the FBI; and

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

18 (f) [~~(g)~~] The director may:

19 (1) conduct DNA analyses; or

20 (2) contract with a laboratory, state agency, private
21 entity, or institution of higher education for services to perform
22 DNA analyses for the director [~~department~~].

23 [~~(h) The institutional division may:~~

24 [~~(1) collect a blood sample or other specimen for~~
25 ~~forensic DNA analysis; or~~

26 [~~(2) contract with a laboratory, state agency, private~~
27 ~~entity, or institution of higher education for services to collect~~

1 ~~a sample or other specimen under this subchapter.]~~

2 SECTION 8. Section 411.145, Government Code, is amended to
3 read as follows:

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

6 (1) ~~[for]~~ the DNA analysis of a DNA sample ~~[blood~~
7 ~~sample or other specimen]~~ submitted voluntarily to the director
8 ~~[department]~~; or

9 (2) ~~[for]~~ providing population statistics data or
10 other appropriate research data.

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

15 (c) A fee collected under this section shall be deposited in
16 the state treasury to the credit of the state highway fund, and
17 money deposited to the state highway fund under this section and
18 under Articles 42.12 and [Article] 102.020(h), Code of Criminal
19 Procedure, may be used only to defray the cost of administering this
20 subchapter and Section 411.0205.

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

23 Sec. 411.146. DNA SAMPLES ~~[BLOOD SAMPLES OR OTHER~~
24 ~~SPECIMENS]~~. (a) The director may not accept a DNA record or DNA
25 sample collected ~~[blood sample or other specimen taken]~~ from an
26 individual ~~[a person]~~ who at the time of collection is alive, unless
27 the director reasonably believes the sample was ~~[is not deceased]~~

1 ~~that is~~] submitted voluntarily or as required by this subchapter
2 and is:

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

6 (A) [~~(1)~~] a physician, registered nurse,
7 licensed vocational nurse, licensed clinical laboratory
8 technologist; or

9 (B) an individual [~~(2) another person~~] who is
10 trained to properly collect blood samples under this subchapter; or

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

12 (A) in a manner approved by the director by rule
13 adopted under this section; and

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

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

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

27 (c)(1) The director shall adopt rules regarding the

1 collection, preservation, shipment, and analysis of a DNA database
2 sample under this subchapter, including the type of sample or
3 specimen taken.

4 (2) A criminal justice agency permitted or required to
5 collect a DNA sample for forensic DNA analysis under this
6 subchapter:

7 (A) may collect the sample or contract with a
8 phlebotomist, laboratory, state agency, private entity, or
9 institution of higher education for services to collect the sample
10 at the time determined by the agency; and

11 (B) shall:

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

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

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

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

20 or

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

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

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

27 (2) for criminal justice or [~~and~~] law enforcement

1 purposes; or

2 (3) for other purposes described by this subchapter.

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

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

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

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

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

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

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

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

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

27 (3) for criminal defense purposes to a defendant, if

1 related to the case in which the defendant is charged or released
2 from custody under Article 17.47, Code of Criminal Procedure, or
3 other court order; or

4 (4) for another purpose:

5 (A) described in Section 411.143; or

6 (B) required under federal law as a condition for
7 obtaining federal funding [~~if personally identifiable information~~
8 ~~is removed, for:~~

9 [~~(A) a population statistics database;~~

10 [~~(B) identification research and protocol~~
11 ~~development; or~~

12 [~~(C) quality control~~].

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

16 (e) A criminal justice [~~law enforcement~~] agency may have
17 access to a DNA sample for a law enforcement purpose [~~specimens~~]
18 through:

19 (1) the agency's laboratory; or

20 (2) a laboratory used by the agency [~~for law~~
21 ~~enforcement purposes~~].

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

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

27 Sec. 411.148. MANDATORY DNA RECORD [~~RECORDS OF CERTAIN~~

1 ~~INMATES~~]. (a) This section applies to:

2 (1) an individual who is:

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

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

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

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

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

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

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

27 (f) [~~The institutional division shall obtain the sample or~~

1 ~~specimen from an inmate confined in another penal institution as~~
2 ~~soon as practicable if the Board of Pardons and Paroles informs the~~
3 ~~division that the inmate is likely to be paroled before being~~
4 ~~admitted to the division. The administrator of the other penal~~
5 ~~institution shall cooperate with the institutional division as~~
6 ~~necessary to allow the institutional division to perform its duties~~
7 ~~under this section.~~

8 ~~[(c) The institutional division shall:~~

9 ~~[(1) preserve each blood sample or other specimen~~
10 ~~collected;~~

11 ~~[(2) maintain a record of the collection of the sample~~
12 ~~or specimen; and~~

13 ~~[(3) send the sample or specimen to the director for~~
14 ~~scientific analysis under this subchapter.~~

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

19 ~~[(e)]~~ The Texas Department of Criminal Justice
20 ~~[institutional division]~~ shall notify the director that an
21 individual [inmate] described by Subsection (a) is to be released
22 from custody ~~[the institutional division]~~ not earlier than the
23 120th day before the individual's [inmate's] release date and not
24 later than the 90th day before the individual's [inmate's] release
25 date. The Texas Youth Commission shall notify the director that an
26 individual described by Subsection (a) is to be released from
27 custody not earlier than the 10th day before the individual's

1 release date. The Texas Department of Criminal Justice and the
2 Texas Youth Commission, in consultation with the director, shall
3 determine the form of the notification described by this
4 subsection.

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

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

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

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

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

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

27 (j)(1) The Texas Youth Commission as soon as practicable

1 shall cause a sample to be collected from an individual described by
2 Subsection (a)(2) if:

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

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

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

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

20 (l) If, in consultation with the director, it is determined
21 that an acceptable sample has already been received from an
22 individual, additional samples are not required unless requested by
23 the director.

24 [~~(i) Notwithstanding Subsection (a), if at the beginning of~~
25 ~~a fiscal year the executive director of the Texas Department of~~
26 ~~Criminal Justice determines that sufficient funds have not been~~
27 ~~appropriated to the department to obtain a sample from each inmate~~

1 ~~otherwise required to provide a sample under Subsection (a), the~~
2 ~~executive director shall direct the institutional division to give~~
3 ~~priority to obtaining samples from inmates ordered by a court to~~
4 ~~give the sample or specimen or serving sentences for:~~

5 ~~[(1) an offense:~~

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

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

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

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

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

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

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

21 Sec. 411.149. VOLUNTARY DNA RECORD [~~SUBMISSION OF BLOOD~~
22 ~~SAMPLES~~]. An individual, including an individual required to
23 provide a DNA sample under this subchapter, [A person] may at any
24 time voluntarily provide or cause to be provided to a criminal
25 justice agency a sample to be forwarded [~~submit a blood sample or~~
26 ~~other specimen~~] to the director [~~department~~] for the purpose of
27 creating a DNA record under this subchapter.

1 SECTION 13. Section 411.151, Government Code, is amended to
2 read as follows:

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

6 (1) notifies the director in writing that the DNA
7 record has been ordered to be expunged under this section or Chapter
8 55, Code of Criminal Procedure, and provides the director with a
9 certified copy of the court order that expunges the DNA record; or

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

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

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

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

26 SECTION 14. Section 411.152, Government Code, is amended to
27 read as follows:

1 Sec. 411.152. RULES. (a) The director may adopt rules
2 permitted by this subchapter that are necessary to administer or
3 enforce this subchapter but shall adopt a rule expressly required
4 by this subchapter.

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

11 (c) The director by rule may exempt:

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

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

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

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

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

26 (b) A person commits an offense if the person knowingly
27 discloses information in a DNA record or information related to a

1 DNA analysis of a sample collected [~~blood specimen taken~~] under
2 this subchapter [~~Section 411.148 or 411.150 except as authorized by~~
3 ~~this chapter~~].

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

6 (d) [~~(c)~~] A violation under this section constitutes
7 official misconduct.

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

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

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

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

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

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

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

22 Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

23 (a) A magistrate may [~~shall~~] require as a condition of release on
24 bail or bond of a defendant [~~described by Section 411.1471(a),~~
25 ~~Government Code~~], that the defendant provide to a local law
26 enforcement agency one or more specimens for the purpose of
27 creating a DNA record under Subchapter G, Chapter 411, Government

1 Code.

2 (b) A magistrate shall require as a condition of release on
3 bail or bond of a defendant described by Section 411.1471(a),
4 Government Code, that the defendant provide to a local law
5 enforcement agency one or more specimens for the purpose of
6 creating a DNA record under Subchapter G, Chapter 411, Government
7 Code.

8 SECTION 18. Sections 11(a) and (e), Article 42.12, Code of
9 Criminal Procedure, are amended to read as follows:

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

19 (1) Commit no offense against the laws of this State or
20 of any other State or of the United States;

21 (2) Avoid injurious or vicious habits;

22 (3) Avoid persons or places of disreputable or harmful
23 character;

24 (4) Report to the supervision officer as directed by
25 the judge or supervision officer and obey all rules and regulations
26 of the community supervision and corrections department;

27 (5) Permit the supervision officer to visit him at his

1 home or elsewhere;

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

4 (7) Remain within a specified place;

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

7 (9) Support his dependents;

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

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

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

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

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

26 (15) Attend counseling sessions for substance abusers
27 or participate in substance abuse treatment services in a program

1 or facility approved or licensed by the Texas Commission on Alcohol
2 and Drug Abuse;

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

6 (17) Submit to electronic monitoring;

7 (18) Reimburse the general revenue fund for any
8 amounts paid from that fund to a victim, as defined by Article 56.01
9 of this code, of the defendant's offense or if no reimbursement is
10 required, make one payment to the fund in an amount not to exceed
11 \$50 if the offense is a misdemeanor or not to exceed \$100 if the
12 offense is a felony;

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

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

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

26 (22) Submit a DNA [~~blood~~] sample [~~or other specimen~~]
27 to the Department of Public Safety under Subchapter G, Chapter 411,

1 Government Code, for the purpose of creating a DNA record of the
2 defendant; and

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

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

11 (1) register under that chapter; and

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

17 SECTION 19. The following are repealed:

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

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

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

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

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

27 (2), Subsection (a), Section 3, Article 38.01, Code of Criminal

1 Procedure, as added by this Act, serve terms expiring September 1,
2 2007; and

3 (2) the other members serve terms expiring September
4 1, 2006.

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

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

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

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

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

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

27 (B) is confined in a facility operated by or

1 under contract with the Texas Youth Commission after adjudication
2 for conduct constituting a felony as described in Section
3 411.148(a)(2), Government Code, as amended by this Act;

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

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

10 (b) As required by Section 411.148, Government Code, as
11 amended by this Act, the Texas Department of Criminal Justice shall
12 collect a DNA sample from an inmate serving a sentence for a felony
13 from whom a DNA sample was not required before the effective date of
14 this Act. The department shall collect the sample during the
15 diagnostic process or at any other reasonable time determined by
16 the department.

17 (c) As required by Section 411.148, Government Code, as
18 amended by this Act, the Texas Youth Commission shall collect a DNA
19 sample from a juvenile committed to the Texas Youth Commission for a
20 felony from whom a DNA sample was not required before the effective
21 date of this Act or from a juvenile previously committed to the
22 Texas Youth Commission for a felony. The commission shall collect
23 the sample during the initial examination or at any other
24 reasonable time determined by the commission.

25 SECTION 23. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

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