

By: Driver (Senate Sponsor - Hinojosa) H.B. No. 1068  
(In the Senate - Received from the House May 11, 2005;  
May 13, 2005, read first time and referred to Committee on Criminal  
Justice; May 20, 2005, reported favorably by the following vote:  
Yeas 4, Nays 0; May 20, 2005, sent to printer.)

A BILL TO BE ENTITLED  
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. 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; ~~or~~

(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) ~~(2)~~ "Physical evidence" means any tangible  
object, thing, or substance relating to a criminal action  
~~offense~~.

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

(A) controls the evidence;

(B) submits the evidence to the laboratory; or

(C) consents to the analysis ~~offense~~.

(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 ~~[Physical]~~ evidence under this article ~~[subjected to a forensic analysis,]~~ and expert testimony relating to ~~[regarding]~~ the evidence are~~[, under this article is]~~ not admissible in a criminal action ~~[case]~~ 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) A law enforcement agency, prosecutor, or crime laboratory may petition a court to require, as a condition of community supervision under Article 42.12, or petition the Board of Pardons and Paroles to require, as a condition of release on parole under Chapter 508, Government Code, a person to reimburse the agency, prosecutor, or laboratory for the reasonable cost of the confiscation, analysis, storage, or disposal of evidence, including physical evidence, raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the underlying offense.

~~[(c) 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 2. 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.

(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 3. 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. The term includes a penal institution, a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, the Board of Pardons and Paroles, a law enforcement agency, or any other criminal justice agency permitted or required to collect a DNA sample for forensic DNA analysis under this subchapter. The term does not include a public defender agency or a public servant engaged in a criminal defense law practice.

(4) "DNA" means deoxyribonucleic acid.

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

(6) ~~[(3)]~~ "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) ~~[(4)]~~ "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) ~~[(7)]~~ if known, the name and other personally identifying information concerning the individual [of the person] 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

4-1 DNA analysis or storage.

4-2 (9) ~~[(5)]~~ "FBI" means the Federal Bureau of  
 4-3 Investigation.

4-4 (10) "Forensic analysis" has the meaning assigned by  
 4-5 Article 38.35, Code of Criminal Procedure.

4-6 (11) ~~[(6)]~~ "Institution of higher education" has the  
 4-7 meaning assigned by Section 61.003, Education Code.

4-8 (12) ~~[(7)]~~ "Institutional division" means the  
 4-9 institutional division of the Texas Department of Criminal Justice.

4-10 ~~[(8)]~~ "Penal institution" has the meaning assigned by  
 4-11 Section 1.07, Penal Code.

4-12 SECTION 4. Sections 411.142(b), (c), (d), (f), (g), and  
 4-13 (h), Government Code, are amended to read as follows:

4-14 (b)(1) The director may maintain a ~~the~~ DNA database in the  
 4-15 department's crime laboratory in Austin or another suitable  
 4-16 location.

4-17 (2) The director may maintain a separate database  
 4-18 containing a name or other personally identifying information  
 4-19 cross-referenced and searchable by name, code, or other identifier.

4-20 (3) A CODIS DNA database:

4-21 (A) may not store a name or other personally  
 4-22 identifying information;

4-23 (B) must be compatible with the national DNA  
 4-24 index system to the extent required by the FBI to permit the useful  
 4-25 exchange and storage of DNA records or information derived from  
 4-26 those records; and

4-27 (C) may store a code, file, or reference number  
 4-28 to another information system only if the director determines the  
 4-29 information is necessary to:

4-30 (i) generate an investigative lead or  
 4-31 exclusion;

4-32 (ii) support the statistical  
 4-33 interpretation of a test result; or

4-34 (iii) allow for the successful  
 4-35 implementation of a DNA database.

4-36 (4) A non-CODIS DNA database:

4-37 (A) may store a name or other personally  
 4-38 identifying information; and

4-39 (B) must be compatible with the national DNA  
 4-40 index system to the extent possible to permit the useful exchange  
 4-41 and storage of DNA records or information derived from those  
 4-42 records.

4-43 (c) The director may receive, analyze, store, and destroy a  
 4-44 record or DNA sample ~~[, blood sample, or other specimen]~~ for the  
 4-45 purposes described by Section 411.143.

4-46 (d) The DNA database must be capable of classifying,  
 4-47 matching, and storing the results of analyses of DNA ~~[and other~~  
 4-48 biological molecules].

4-49 (f) A ~~[The DNA database must be compatible with the national~~  
 4-50 ~~DNA identification index system (CODIS) used by the FBI to the~~  
 4-51 ~~extent required by the FBI to permit the useful exchange and storage~~  
 4-52 ~~of DNA records or information derived from those records.~~

4-53 ~~[(g) The]~~ DNA database may contain DNA records for the  
 4-54 following:

4-55 (1) an individual ~~[a person]~~ described by this  
 4-56 subchapter, including Section 411.148, 411.149, or 411.150;

4-57 (2) a biological specimen of a deceased victim of a  
 4-58 crime;

4-59 (3) a biological specimen that is reasonably believed  
 4-60 to have been legally obtained in the investigation of a crime,  
 4-61 regardless of origin;

4-62 (4) results of testing ordered by a court under this  
 4-63 subchapter, Article 64.03, Code of Criminal Procedure, or other law  
 4-64 permitting or requiring the creation of a DNA record;

4-65 (5) an unidentified missing person, or unidentified  
 4-66 skeletal remains or body parts;

4-67 (6) a close biological relative of a person who has  
 4-68 been reported missing to a law enforcement agency;

4-69 (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.

(g) The director ~~[(h) The 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 5. Sections 411.143(a), (b), (c), and (e), Government Code, are amended 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 a criminal offense ~~[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 ~~[(C)]~~ assisting in database or DNA laboratory quality control.

(e) 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

(2) any additional requirement imposed by the director on the party. ~~[The director may not store a name or other personal identifying information in the CODIS database. A file or reference number to another information system may be included in the CODIS database only if the director determines the information is necessary to.]~~

~~[(1) generate an investigative lead or exclusion,~~

~~[(2) support the statistical interpretation of a test result, or~~

~~[(3) allow for the successful implementation of the DNA database.]~~

SECTION 6. 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 [~~department~~]; 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 [~~department~~].

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

~~[(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 a sample or other specimen under this subchapter.]~~

SECTION 7. 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) [~~for~~] the DNA analysis of a DNA sample [~~blood sample or other specimen~~] submitted voluntarily to the director [~~department~~]; or

(2) [~~for~~] 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 [Article] 102.020(h), Code of Criminal Procedure, may be used only to defray the cost of administering this subchapter and Section 411.0205.

SECTION 8. Section 411.146, Government Code, is amended to read as follows:

Sec. 411.146. DNA SAMPLES [~~BLOOD SAMPLES OR OTHER SPECIMENS~~]. (a) The director may not accept a DNA record or DNA sample collected [~~blood sample or other specimen taken~~] from an individual [~~a person~~] who at the time of collection is alive, unless the director reasonably believes the sample was [~~is 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) ~~[(1)]~~ a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or

(B) an individual ~~[(2) 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 approved by the director by rule adopted under this section; and

(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 9. 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 a ~~[the]~~ DNA database; and

(2) to release from a 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 10. 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 INMATES~~]. (a) This section applies to:

(1) an individual who is:  
 (A) placed on community supervision or deferred adjudication following conviction for a felony;

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

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

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

(B) placed on community supervision or deferred adjudication after adjudication for conduct constituting a felony.

(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)(C) is received into custody by the Texas Department of Criminal Justice, that department [~~(b) 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 and the Texas Youth Commission, as appropriate, [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 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) [(f)] 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) [(g)] 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) [(h)] 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)(C) 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)(1) When a criminal justice agency of this state agrees to accept custody or supervision of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, whether the individual is confined or released, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of:~~

~~(A) an offense in the other jurisdiction that~~

involves the same conduct as an offense described by Subsection (a)(1)(A) or (2); or (B) an equivalent offense in any other jurisdiction.

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

(1) 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.

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

~~[(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 11. 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 12. Section 411.150, Government Code, is amended to read as follows:

Sec. 411.150. COURT-ORDERED DNA RECORDS ~~[OF CERTAIN JUVENILES]~~. (a) A magistrate or court may order a suspect or defendant to provide one or more DNA samples to a criminal justice agency for the purpose of creating a DNA record if the individual:

(1) is the target of an evidentiary search warrant seeking the sample under Article 18.02(10), Code of Criminal Procedure, for any offense;

(2) is released on any form of bail or bond after arrest for a felony offense; or

(3) is indicted or waives indictment for a felony offense.

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

(c) A magistrate or court:

(1) shall order a sheriff, deputy sheriff, or other peace officer or employee representing a local law enforcement agency or a community supervision and corrections department to collect or cause to be collected one or more samples from an individual as required or permitted under this section unless a DNA

sample has already been obtained under this subchapter; and  
 (2) shall order the sample to be forwarded to the director.

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

(e) 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. ~~[(a) A juvenile who is committed to the Texas Youth Commission shall provide one or more blood samples or other specimens taken by or at the request of the commission for the purpose of creating a DNA record if the juvenile has not already provided the required specimen under other state law and if the juvenile is ordered by a juvenile court to give the sample or specimen or is committed to the commission for an adjudication as having engaged in delinquent conduct that violates:~~

~~[(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 juvenile is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; or~~

~~[(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~

~~[(A) a violation of a penal law described in Subsection (a)(1); or~~

~~[(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described by Subsection (a)(1).~~

~~[(b) The department, in conjunction with the Texas Youth Commission, shall adopt rules regarding the collection, preservation, and shipment of a blood sample or other specimen of a juvenile described by this section.~~

~~[(c) The Texas Youth Commission shall:~~

~~[(1) obtain blood samples or other specimens from juveniles under this section;~~

~~[(2) preserve each sample or other specimen collected;~~

~~[(3) maintain a record of the collection of the sample or specimen; and~~

~~[(4) send the sample or specimen to the director for scientific analysis under this subchapter.~~

~~[(d) A medical staff employee of the Texas Youth Commission may obtain a voluntary sample or specimen from any juvenile.~~

~~[(e) An employee of the Texas Youth Commission may use force against a juvenile required to provide a sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to obtain the sample or specimen.~~

~~[(f) The Texas Youth Commission may contract with an individual or entity for the provision of phlebotomy services under this section.]~~

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 ~~[person from the]~~ 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) This section does not require the director to destroy an item of physical evidence obtained during the investigation of a criminal action.

(e) 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 non-CODIS laboratory, procedure, or other matter from a CODIS requirement;

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

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

(e) 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) ~~[(c)]~~ A violation under this section constitutes official misconduct.

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

SECTION 16. 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. Subchapter G, Chapter 411, Government Code, is amended by adding Sections 411.155 and 411.156 to read as follows:

Sec. 411.155. OFFENSE: REFUSAL TO PROVIDE SAMPLE. (a) A person commits an offense if the person knowingly fails or refuses to provide a DNA sample and the person:

(1) is required to provide a sample under this subchapter; and

(2) receives notification of the requirement to provide the sample.

(b) An offense under this section is a felony of the third degree.

Sec. 411.156. LIABILITY. (a) This section applies to a person:

(1) ordering, collecting with or without force, preserving, possessing, transmitting, receiving, analyzing, releasing, disclosing, using, or maintaining a DNA sample or record under this subchapter; or

(2) administering this subchapter.

(b) A person described in Subsection (a) is immune from civil liability for any act or omission resulting in death, damage, or injury if the person:

(1) acts in the course of duties under this subchapter or a rule adopted under this subchapter;

(2) reasonably believes the person's act or omission was in substantial compliance with this subchapter or a rule adopted under this subchapter; and

(3) collects the sample in a reasonable manner according to generally accepted medical or other professional practices.

SECTION 18. Article 17.47, Code of Criminal Procedure, is amended to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN. 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 Code.

SECTION 19. 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 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 or crime laboratory for the costs of confiscation, analysis, storage, or disposal of evidence, including physical evidence, raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense and any other costs incurred in the administration of services for the defendant's case under Subchapter G, Chapter 411, Government Code;

(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 20. Articles 102.020(a) and (h), Code of Criminal

Procedure, are amended to read as follows:

(a) A person shall pay \$160 [~~\$250~~] as a court cost on conviction of or adjudication for an offense described in Section 411.148 [~~listed in Section 411.1471(a)(1)~~], Government Code, to reimburse the department for services provided under Subchapter G, Chapter 411, Government Code. Payment of a court cost under this article shall be required as a condition of community supervision under Article 42.12[, and \$50 as a court cost on conviction of an offense listed in Section 411.1471(a)(3) of that code].

(h) The comptroller shall deposit 90 [~~35~~] percent of the funds received under this article in the state treasury to the credit of the state highway fund and 10 [~~65~~] percent of the funds received under this article to the credit of an institution administering the functions of the Missing Persons DNA Database as described by Section 105.451, Education Code [~~the criminal justice planning account in the general revenue fund~~].

SECTION 21. The following are repealed:

- (1) Article 102.056(e), Code of Criminal Procedure;
- (2) Sections 411.0206, 411.143(f), 411.1471, 411.1472, 411.1481, 411.1531, and 411.1532, Government Code; and
- (3) Section 481.160(f), Health and Safety Code.

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 placed on community supervision or deferred adjudication following conviction for a felony as described in Section 411.148(a)(1)(A), Government Code, as amended by this Act;

(B) 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)(C), Government Code, as amended by this Act;

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

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

(E) is ordered by a magistrate or court to provide a DNA sample under Section 411.150 or 411.154 or other law, including an order issued under circumstances described in Section 411.150(a)(1), Government Code, as amended by this Act;

(F) is ordered by a magistrate or court to provide a DNA sample if the individual is released on any form of bail or bond after arrest for a felony offense as described in Section 411.150(a)(2), Government Code, as amended by this Act;

(G) is ordered by a court to provide a specimen if the individual is indicted or waives indictment for a felony as described in Section 411.150(a)(3), Government Code, as amended by this Act; or

(H) is ordered by a court to provide a DNA sample if the individual is placed on community supervision or deferred adjudication for a felony offense as described in Section 411.150(b), Government Code, as amended by this Act.

(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.

\* \* \* \* \*