

By: McCall

H.B. No. 1681

Substitute the following for H.B. No. 1681:

By: Noriega

C.S.H.B. No. 1681

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the imposition of sanctions on an inmate who refuses to
3 cooperate in the taking of a sample or specimen to create a DNA
4 record.

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

6 SECTION 1. Section 411.148, Government Code, as amended by
7 Chapters 211 and 1509, Acts of the 77th Legislature, 2001, is
8 reenacted and amended to read as follows:

9 Sec. 411.148. DNA RECORDS OF CERTAIN INMATES. (a) An
10 inmate serving a sentence for a felony in the institutional
11 division shall provide one or more blood samples or other specimens
12 for the purpose of creating a DNA record.

13 (b) The institutional division shall obtain the sample or
14 specimen from an inmate of the division during the diagnostic
15 process. The institutional division shall obtain the sample or
16 specimen from an inmate confined in another penal institution as
17 soon as practicable if the Board of Pardons and Paroles informs the
18 division that the inmate is likely to be paroled before being
19 admitted to the division. The administrator of the other penal
20 institution shall cooperate with the institutional division as
21 necessary to allow the institutional division to perform its duties
22 under this section.

23 (c) The institutional division shall:

24 (1) preserve each blood sample or other specimen

1 collected;

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

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

6 (d) An inmate may not be held past the inmate's [~~a~~]
7 statutory release date if the inmate fails or refuses to provide a
8 blood sample or other specimen under this section. A penal
9 institution may take [~~other~~] lawful administrative action,
10 including disciplinary action resulting in the loss of good conduct
11 time, against an [~~the~~] inmate who refuses to provide a blood sample
12 or other specimen under this section.

13 (e) The institutional division shall notify the director
14 that an inmate described by Subsection (a) is to be released from
15 the institutional division not earlier than the 120th day before
16 the inmate's statutory release date and not later than the 90th day
17 before the inmate's statutory release date. In Subsection (d) and
18 this subsection, "statutory release date" means the date on which
19 an inmate is discharged from the inmate's controlling sentence.

20 (f) A medical staff employee of the institutional division
21 may obtain a voluntary sample or specimen from any inmate.

22 (g) An employee of the institutional division may use force
23 against an inmate required to provide a sample under this section
24 when and to the degree the employee reasonably believes the force is
25 immediately necessary to obtain the sample or specimen.

26 (h) The Texas Department of Criminal Justice may contract
27 with an individual or entity for the provision of phlebotomy

1 services under this section.

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

10 (1) an offense:

11 (A) under Section 19.02, Penal Code (murder), or
12 Section 22.02, Penal Code (aggravated assault);

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

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

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

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

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

24 SECTION 2. This Act takes effect September 1, 2005.