

1-1 By: McCall (Senate Sponsor - Seliger) H.B. No. 1681
1-2 (In the Senate - Received from the House April 18, 2005;
1-3 April 19, 2005, read first time and referred to Committee on
1-4 Criminal Justice; May 20, 2005, reported favorably by the
1-5 following vote: Yeas 4, Nays 0; May 20, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the imposition of sanctions on an inmate who refuses to
1-9 cooperate in the taking of a sample or specimen to create a DNA
1-10 record.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 411.148, Government Code, as amended by
1-13 Chapters 211 and 1509, Acts of the 77th Legislature, 2001, is
1-14 reenacted and amended to read as follows:

1-15 Sec. 411.148. DNA RECORDS OF CERTAIN INMATES. (a) An
1-16 inmate serving a sentence for a felony in the institutional
1-17 division shall provide one or more blood samples or other specimens
1-18 for the purpose of creating a DNA record.

1-19 (b) The institutional division shall obtain the sample or
1-20 specimen from an inmate of the division during the diagnostic
1-21 process. The institutional division shall obtain the sample or
1-22 specimen from an inmate confined in another penal institution as
1-23 soon as practicable if the Board of Pardons and Paroles informs the
1-24 division that the inmate is likely to be paroled before being
1-25 admitted to the division. The administrator of the other penal
1-26 institution shall cooperate with the institutional division as
1-27 necessary to allow the institutional division to perform its duties
1-28 under this section.

1-29 (c) The institutional division shall:

1-30 (1) preserve each blood sample or other specimen
1-31 collected;

1-32 (2) maintain a record of the collection of the sample
1-33 or specimen; and

1-34 (3) send the sample or specimen to the director for
1-35 scientific analysis under this subchapter.

1-36 (d) An inmate may not be held past the inmate's [a]
1-37 statutory release date if the inmate fails or refuses to provide a
1-38 blood sample or other specimen under this section. A penal
1-39 institution may take ~~[other]~~ lawful administrative action,
1-40 including disciplinary action resulting in the loss of good conduct
1-41 time, against an [the] inmate who refuses to provide a blood sample
1-42 or other specimen under this section.

1-43 (e) The institutional division shall notify the director
1-44 that an inmate described by Subsection (a) is to be released from
1-45 the institutional division not earlier than the 120th day before
1-46 the inmate's statutory release date and not later than the 90th day
1-47 before the inmate's statutory release date. In Subsection (d) and
1-48 this subsection, "statutory release date" means the date on which
1-49 an inmate is discharged from the inmate's controlling sentence.

1-50 (f) A medical staff employee of the institutional division
1-51 may obtain a voluntary sample or specimen from any inmate.

1-52 (g) An employee of the institutional division may use force
1-53 against an inmate required to provide a sample under this section
1-54 when and to the degree the employee reasonably believes the force is
1-55 immediately necessary to obtain the sample or specimen.

1-56 (h) The Texas Department of Criminal Justice may contract
1-57 with an individual or entity for the provision of phlebotomy
1-58 services under this section.

1-59 (i) Notwithstanding Subsection (a), if at the beginning of a
1-60 fiscal year the executive director of the Texas Department of
1-61 Criminal Justice determines that sufficient funds have not been
1-62 appropriated to the department to obtain a sample from each inmate
1-63 otherwise required to provide a sample under Subsection (a), the
1-64 executive director shall direct the institutional division to give

2-1 priority to obtaining samples from inmates ordered by a court to
2-2 give the sample or specimen or serving sentences for:

2-3 (1) an offense:

2-4 (A) under Section 19.02, Penal Code (murder), or
2-5 Section 22.02, Penal Code (aggravated assault);

2-6 (B) under Section 30.02, Penal Code (burglary),
2-7 if the offense is punishable under Subsection (c)(2) or (d) of that
2-8 section; or

2-9 (C) for which the inmate is required to register
2-10 as a sex offender under Chapter 62, Code of Criminal Procedure; or

2-11 (2) any offense if the inmate has previously been
2-12 convicted of or adjudicated as having engaged in:

2-13 (A) an offense described in Subdivision (1); or

2-14 (B) an offense under federal law or laws of
2-15 another state that involves the same conduct as an offense
2-16 described by Subdivision (1).

2-17 SECTION 2. This Act takes effect September 1, 2005.

2-18 * * * * *