

Suspending limitations on conference committee
jurisdiction, H.B. No. 1068 (Driver/Hinojosa)

By: Driver

H.R. No. 2239

R E S O L U T I O N

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, 79th Legislature, Regular Session, 2005, That House Rule 13,
3 Section 9(a), be suspended in part as provided by House Rule 13,
4 Section 9(f), to enable the conference committee appointed to
5 resolve the differences on House Bill 1068 (collection and analysis
6 of evidence and testimony based on forensic analysis, crime
7 laboratory accreditation, DNA testing, and the creation and
8 maintenance of DNA records; providing a penalty) to consider and
9 take action on the following matters:

10 (1) House Rule 13, Section 9(a)(2), is suspended to permit
11 the committee to omit amended Section 411.142(b), Government Code.
12 The omitted language reads as follows:

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

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

19 (3) A CODIS DNA database:

20 (A) may not store a name or other personally
21 identifying information;

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

1 those records; and

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

5 (i) generate an investigative lead or
6 exclusion;

7 (ii) support the statistical
8 interpretation of a test result; or

9 (iii) allow for the successful
10 implementation of a DNA database.

11 (4) A non-CODIS DNA database:

12 (A) may store a name or other personally
13 identifying information; and

14 (B) must be compatible with the national DNA
15 index system to the extent possible to permit the useful exchange
16 and storage of DNA records or information derived from those
17 records.

18 Explanation: The change is necessary to permit the
19 continuation of current law.

20 (2) House Rule 13, Section 9(a)(1), is suspended to permit
21 the committee to add text to amended Section 411.142(g)(1),
22 Government Code, to read as follows:

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

25 Explanation: The change is necessary to clarify that the DNA
26 records of an individual described by Section 411.1471, Government
27 Code, may be contained in the DNA database.

1 (3) House Rule 13, Section 9(a)(1), is suspended to permit
2 the committee to add text to amended Section 411.148(f), Government
3 Code, to read as follows:

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

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

13 ~~[(1) preserve each blood sample or other specimen~~
14 ~~collected;~~

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

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

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

23 ~~[(e)]~~ The Texas Department of Criminal Justice and the Texas
24 Youth Commission, as appropriate, ~~[institutional division]~~ shall
25 notify the director that an individual ~~[inmate]~~ described by
26 Subsection (a) is to be released from custody ~~[the institutional~~
27 ~~division]~~ not earlier than the 120th day before the individual's

1 ~~[inmate's]~~ release date and not later than the 90th day before the
 2 individual's ~~[inmate's]~~ release date. The Texas Youth Commission
 3 shall notify the director that an individual described by
 4 Subsection (a) is to be released from custody not earlier than the
 5 10th day before the individual's release date. The Texas
 6 Department of Criminal Justice and the Texas Youth Commission, in
 7 consultation with the director, shall determine the form of the
 8 notification described by this subsection.

9 Explanation: The change is necessary to require the Texas
 10 Youth Commission to notify the director of the Department of Public
 11 Safety of the release from custody of certain individuals not
 12 earlier than the 10th day before the date each individual is to be
 13 released.

14 (4) House Rule 13, Section 9(a)(2), is suspended to permit
 15 the committee to omit amended Section 411.150, Government Code.
 16 The omitted text reads as follows:

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

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

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

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

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

5 (c) A magistrate or court:

6 (1) shall order a sheriff, deputy sheriff, or other
7 peace officer or employee representing a local law enforcement
8 agency or a community supervision and corrections department to
9 collect or cause to be collected one or more samples from an
10 individual as required or permitted under this section unless a DNA
11 sample has already been obtained under this subchapter; and

12 (2) shall order the sample to be forwarded to the
13 director.

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

21 (e) If in consultation with the director it is determined
22 that an acceptable sample has already been received from an
23 individual, additional samples are not required unless requested by
24 the director. ~~[(a) A juvenile who is committed to the Texas Youth~~
25 ~~Commission shall provide one or more blood samples or other~~
26 ~~specimens taken by or at the request of the commission for the~~
27 ~~purpose of creating a DNA record if the juvenile has not already~~

1 ~~provided the required specimen under other state law and if the~~
2 ~~juvenile is ordered by a juvenile court to give the sample or~~
3 ~~specimen or is committed to the commission for an adjudication as~~
4 ~~having engaged in delinquent conduct that violates:~~

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

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

16 ~~[(A) a violation of a penal law described in~~
17 ~~Subsection (a)(1), or~~

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

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

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

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

1 ~~[(2) preserve each sample or other specimen collected,~~
2 ~~[(3) maintain a record of the collection of the sample~~
3 ~~or specimen; and~~

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

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

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

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

15 Explanation: The change is necessary to permit the
16 continuation of current law.

17 (5) House Rule 13, Section 9(a)(2), is suspended to permit
18 the committee to omit Sections 411.155 and 411.156, Government
19 Code. The omitted language reads as follows:

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

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

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

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

1 degree.

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

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

8 (2) administering this subchapter.

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

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

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

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

20 Explanation: The change is necessary to prevent the creation
21 of an offense based on the refusal to provide a DNA sample and the
22 imposition of liability on certain individuals.

23 (6) House Rule 13, Section 9(a)(3), is suspended to permit
24 the committee to add text to amended Article 17.47, Code of Criminal
25 Procedure, to read as follows:

26 Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

27 (a) A magistrate may [~~shall~~] require as a condition of release on

1 bail or bond of a defendant [~~described by Section 411.1471(a),~~
2 ~~Government Code,~~] that the defendant provide to a local law
3 enforcement agency one or more specimens for the purpose of
4 creating a DNA record under Subchapter G, Chapter 411, Government
5 Code.

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

12 Explanation: The change is necessary to require the
13 provision of a DNA sample by certain defendants.

14 (7) House Rule 13, Section 9(a)(1), is suspended to permit
15 the committee to change the text of amended Subdivision (19),
16 Subsection (a), Section 11, Article 42.12, Code of Criminal
17 Procedure, to read as follows:

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

22 Explanation: The change is necessary to permit the
23 continuation of current law.

24 (8) House Rule 13, Section 9(a)(2), is suspended to permit
25 the committee to omit amended Subsections (a) and (h), Article
26 102.020, Code of Criminal Procedure. The omitted language reads as
27 follows:

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

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

16 Explanation: The change is necessary to prevent the
17 imposition of additional costs on conviction that are related to
18 the regulation of DNA samples and forensic labs.

19 (9) House Rule 13, Section 9(a)(2), is suspended to permit
20 the committee to omit Section 411.1471, Government Code, from the
21 list of sections to be repealed.

22 Explanation: The change is necessary to permit the
23 continuation of current law.

24 (10) House Rule 13, Section 9(a)(1), is suspended to permit
25 the committee to change the text of Subsections (a) and (c) of
26 SECTION 22 to read as follows:

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

1 to:

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

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

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

10 (B) is confined in a facility operated by or
11 under contract with the Texas Youth Commission after adjudication
12 for conduct constituting a felony as described in Section
13 411.148(a)(2), Government Code, as amended by this Act;

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

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

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

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1 Explanation: The change is necessary to conform the
2 transition language to the substantive provisions of the bill.