

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

By: Hinojosa

S.R. No. 1078

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 79th Legislature, Regular Session, 2005, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 1068 (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) to consider and take action on the following matters:

(1) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Subsection (b), Section 411.142, Government Code. The omitted language reads as follows:

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

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

(3) A CODIS DNA database:

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

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

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

(i) generate an investigative lead or exclusion;

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

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

(4) A non-CODIS DNA database:

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

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

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

(2) Senate Rule 12.03(1) is suspended to permit the committee to add text to amended Subdivision (1), Subsection (g), Section 411.142, Government Code, to read as follows:

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

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

(3) Senate Rule 12.03(1) is suspended to permit the committee to add text to amended Subsection (f), Section 411.148, Government Code, to read as follows:

~~(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 Youth Commission shall notify the director that an individual described by Subsection (a) is to be released from custody not earlier than the 10th day before the individual'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.

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

(4) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Section 411.150, Government Code. The omitted text reads 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.]~~

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

(5) Senate Rule 12.03(2) is suspended to permit the committee to omit Sections 411.155 and 411.156, Government Code. The omitted language reads 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.

Explanation: The change is necessary to prevent the

creation of an offense based on the refusal to provide a DNA sample and the imposition of liability on certain individuals.

(6) Senate Rule 12.03(3) is suspended to permit the committee to add text to amended Article 17.47, Code of Criminal Procedure, to read as follows:

Art. 17.47. CONDITIONS REQUIRING SUBMISSION OF SPECIMEN.

(a) 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.

(b) A magistrate 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.

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

(7) Senate Rule 12.03(1) is suspended to permit the committee to change the text of amended Subdivision (19), Subsection (a), Section 11, Article 42.12, Code of Criminal Procedure, to read as follows:

(19) Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other

materials seized in connection with the offense;

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

(8) Senate Rule 12.03(2) is suspended to permit the committee to omit amended Subsections (a) and (h), Article 102.020, Code of Criminal Procedure. The omitted language reads 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~~].

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

(9) Senate Rule 12.03(2) is suspended to permit the

committee to omit Section 411.1471, Government Code, from the list of sections to be repealed.

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

(10) Senate Rule 12.03(1) is suspended to permit the committee to change the text of Subsections (a) and (c) of SECTION 22 to read as follows:

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

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

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

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

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(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.

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

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 29, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate