

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 29, 2005

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Tom Craddick, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB1068 by Driver (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.), **Conference Committee Report**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1068, Conference Committee Report: a negative impact of (\$156,052) through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	(\$81,301)
2007	(\$74,751)
2008	(\$74,751)
2009	(\$74,751)
2010	(\$74,751)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from STATE HIGHWAY FUND 6	Probable Savings/(Cost) from GENERAL REVENUE FUND 1	Change in Number of State Employees from FY 2005
2006	(\$1,468,600)	(\$81,301)	1.0
2007	\$0	(\$74,751)	1.0
2008	\$0	(\$74,751)	1.0
2009	\$0	(\$74,751)	1.0
2010	\$0	(\$74,751)	1.0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure as it relates 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, and would provide penalties.

The bill would create the Texas Forensic Science Commission (Commission) to develop and implement a professional misconduct reporting system for all laboratories, facilities, or entities that conduct forensic analyses and would require the Commission to investigate reports of professional negligence and misconduct in a timely manner. The bill would authorize the Commission to contract with any person the Commission

determines to be qualified to assume the duties of developing and implementing a reporting system and investigating professional negligence and misconduct.

The Commission is further authorized to require an entity to pay any costs arising from compliance with the requirement that an investigation of professional negligence or misconduct include preparation of a written report identifying the alleged negligence or misconduct, whether any negligence or misconduct occurred, and any corrective action that resulted.

Members of the Commission would not be authorized to receive compensation but would be eligible to receive reimbursement for travel expenses. The bill would require the Texas Legislative Council, the Legislative Budget Board, and the University of Texas at Austin to assist the Commission in performing its duties.

The bill would also amend the Code of Criminal Procedure by requiring any physical evidence in a criminal action be subjected to a forensic analysis conducted by an entity that is accredited by the director of the Department of Public Safety (director). The evidence subjected to a forensic analysis and expert testimony relating to the evidence would not be inadmissible in a criminal case based solely on the accreditation of the crime laboratory conducting the analysis if the laboratory would have been eligible except for making proper application or if the laboratory obtains accreditation from the director before the time of testimony about the examination or test.

The bill would allow a DNA database to also be used in the defense of a criminal case, in forensic validation studies, or to retest to validate or update the original analysis.

The bill would allow the director to collect a reasonable fee for DNA analysis of a DNA sample submitted voluntarily or for providing population statistics data or other appropriate research data. The fees collected would be deposited in the state treasury to the credit of the State Highway Fund and could be used only to defray the cost of administering accreditations.

The bill would restrict the director from accepting a DNA record or DNA sample collected from an individual who at the time of collection is alive, unless the director reasonably believes the sample was submitted voluntarily and the blood sample was collected in a medically approved manner. The director would be required to provide the collection kits, labels, report forms, instructions, and training for collection of DNA samples at no cost to the person.

The bill would require (1) individuals ordered by a magistrate or court, or confined in a penal institution operated by the Texas Department of Criminal Justice (TDCJ) or (2) juveniles adjudicated for conduct constituting a felony, confined in a facility operated by the Texas Youth Commission (TYC), to provide DNA samples. TDCJ and TYC would be required to collect a DNA sample during the initial examination or at any other reasonable time.

The bill would provide certain exceptions to the allowable expunctions of a DNA record and would allow the director by rule to permit the administrative removal of erroneous records, samples or other information.

The bill repeals Sections 411.0206, 411.1472, 411.1481, 411.1531, and 411.1532, Government Code, which relate to the regulation of DNA testing, laboratories, and records. The bill also repeals Subsection (f), Section 481.160, Health and Safety Code, which allows law enforcement agencies to be reimbursed for costs associated with an offense.

The bill would take effect September 1, 2005.

For the State of Texas to continue to qualify for federal dollars under the Paul Coverdell Forensic Sciences Improvement Grant Program, an independent external entity within state government must have a process in place to conduct investigations into allegations of serious negligence or misconduct affecting the integrity of laboratories, facilities and other entities in the state that conduct forensic analyses used in criminal proceedings. The state was awarded \$448,887 through the Coverdell Grant Program in March 2005.

Methodology

Although the legislation does not specify staff for the Texas Forensic Science Commission (Commission), one full-time staff has been included in the cost estimate for the development and implementation of a reporting system for professional negligence or misconduct allegations and coordination of investigations into allegations of negligence or misconduct. Salary costs are estimated at \$42,216 for each fiscal year. Benefits at 29.74 percent of salary costs are estimated at \$12,555 for each fiscal year. In addition to the technology costs outlined below, \$1,175 is allocated for office furnishings in fiscal year 2006. It is assumed that the three

agencies directed to assist the Commission would provide office space and cover other operational costs. Estimated costs for additional staff, excluding technology costs, total \$55,946 in fiscal year 2006 and \$54,771 for each fiscal year between 2007 and 2010.

Travel costs for the Commission have been estimated based on current costs for similar commissions at \$185 per member per meeting. Assuming one meeting per month, the estimated travel costs for the Commission are \$19,980 for each fiscal year.

It is assumed that the Commission would delegate the duty of investigating allegations of professional negligence or misconduct by contracting with an independent entity. As proposed by the bill, a laboratory or facility under investigation would pay all reasonable costs incurred in conducting the investigation and any follow-up investigations.

The bill would require TDCJ to collect DNA samples from individuals confined in a penal institution operated by or under contract with TDCJ. TYC would also be required to collect DNA samples from a juvenile who is confined in a facility operated by or under contract with TYC after adjudication for conduct constituting a felony. TYC and TDCJ report that there would be an operational fiscal impact; however, this fiscal analysis assumes these costs can be absorbed within existing resources.

Under current law, persons convicted of felony offenses are required to provide DNA samples upon entering TDCJ or TYC, effective April 2004. This analysis assumes 44,744 inmates at TDCJ not currently required to submit a DNA sample would have to submit a sample under the provisions of the bill. TYC reports that 4,386 DNA samples would need to be collected from youth already committed to the agency. This number was adjusted to exclude those currently required to submit DNA samples leaving 3,154 juvenile from which samples would need to be collected.

DPS estimates that one DNA typing kit is sufficient for the analysis of 130 samples. The cost per DNA typing kit is \$3,000. The total costs associated with DNA typing kits would be \$1,104,000 (368 DNA kits X \$3,000) in fiscal year 2006. It is also estimated that \$349,600 (368 X \$950) in fiscal year 2006 would be needed for acrylamide and DNA sizing standards. In order to process the additional DNA samples, one automated punch instrument at a cost of \$15,000 would be needed. The total cost would be \$1,468,600 in fiscal year 2006.

The bill would allow the director to collect a reasonable fee for the analysis of a DNA sample submitted voluntarily or the provision of population statistics data or other appropriate research data. The bill would also allow the director to charge \$6 for providing a copy of an audit report or other reports. The amount of revenue generated would be dependant upon the number of audits or other reports provided by the director and would be used to defray the cost of the DNA database.

Technology

Estimated costs are \$5,375 in fiscal year 2006 for computer equipment, printers, LAN connections and programming to support additional staff.

Local Government Impact

Under the provisions of the bill, a law enforcement agency, prosecutor, or crime lab may petition a court to require those from whom a DNA sample is taken to reimburse an agency for evidence analysis and storage. Revenues to these agencies would depend on the offenders' ability to pay.

Costs to local law enforcement to create mandatory DNA records could be substantial. For Harris County, the cost impacts of the bill would be substantially felt in six areas: Sheriff's Department (acquiring, recording, and shipping DNA samples on a substantially larger number of suspects/offenders); District Attorney's Office; Criminal Courts; PreTrial Services; Community Supervision (acquiring and shipping substantially larger numbers of DNA samples); and the Medical Examiners Office (conducting considerably larger numbers of forensic and DNA analyses at the order of a court). Harris County costs could be increased by \$2 million a year overall.

Source Agencies:

LBB Staff: JOB, KJG, DLBa, VDS, SJ, LM