

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

April 24, 2005

TO: Honorable Joe Driver, Chair, House Committee on Law Enforcement

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.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1068, Committee Report 1st House, Substituted: an impact of \$0 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	\$0
2007	\$0
2008	\$0
2009	\$0
2010	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>STATE HIGHWAY FUND</i> 6	Probable Revenue Gain/(Loss) from <i>STATE HIGHWAY FUND</i> 6
2006	(\$3,494,950)	\$2,329,267
2007	(\$2,081,650)	\$7,127,556
2008	(\$2,140,900)	\$7,270,107
2009	(\$2,200,150)	\$7,415,509
2010	(\$2,263,350)	\$7,563,819

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, and DNA testing, and the creation and maintenance of DNA records, and provides penalties.

Section 1 of the bill would allow certain persons or groups to request a forensic analysis by a crime laboratory of physical evidence, if the evidence was obtained in connection with the requesting entity's investigation or disposition of a criminal action. 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 of the Department of Public Safety (director) before the time of testimony about the examination or test.

This section of the bill would also allow a law enforcement agency, prosecutor, or crime laboratory to petition a court or the Board of Pardons and Paroles to require, as a condition of community supervision or release on parole, a person to reimburse the agency for the reasonable cost of analysis, in connection with the underlying offense.

Section 2 of the bill would allow the director to modify or remove a crime laboratory exemption, if the director determines that the underlying reason for exemption no longer applies. Accordingly, the director may also exempt from the accreditation process, a crime laboratory conducting an analysis. The director would also be able to, at any reasonable time, enter and inspect the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited or seeking accreditation. The director could collect the cost for accrediting, inspecting, or auditing a crime lab. Funds collected would be deposited in the state treasury to the credit of the State Highway Fund and used only to defray the cost of administration of accreditations and maintaining a DNA database system.

Section 4 of the bill would allow the director to maintain a separate database containing a name or other personally identifying information cross-referenced and searchable by name, code, or other identifier. The bill would require a non-CODIS DNA database to be compatible, to the extent possible, with the national DNA index system to permit the useful exchange and storage of DNA records or information derived from those records.

Section 5 of 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.

Section 7 of 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.

Section 8 of 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.

Section 10 of the bill would require 1) individuals placed on community supervision or deferred adjudication following conviction for a felony, 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) or placed on deferred adjudication for conduct constituting a felony, to provide DNA samples. TDCJ and TYC would be required to collect a DNA sample during the initial examination or diagnostic process or at any other reasonable time.

Section 12 of the bill would allow a magistrate or court to order a suspect or a defendant (an individual who is the target of an evidentiary search warrant, or an individual released on any form of bail or bond after the arrest for a felony) to provide one or more DNA samples to a criminal justice agency for the purposes of creating a DNA record. A court would be required to order a defendant to submit a DNA sample for a felony offense if the individual is indicted, waives indictment, is placed on community supervision, or deferred adjudication. The bill would also require a magistrate or court to order an employee representing a law enforcement agency or a community supervision and corrections department to collect or cause to be collected one or more DNA samples as required or permitted. The magistrate or court would be required to forward collected DNA samples to the director. Unqualified persons would not be allowed to collect a blood sample. DNA samples would not be required of individuals who have already submitted acceptable samples.

Section 13 of 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.

Section 17 of the bill would make it a third degree felony to knowingly fail or refuse to provide a DNA sample as required.

Section 20 of the bill would reduce the court cost to \$140 from \$250 for offenses requiring DNA testing. The bill would expand the group required to pay the court cost to 1) individuals placed on community supervision or deferred adjudication following conviction for a felony, ordered by a magistrate or court, or confined in a penal institution operated by the Texas Department of Criminal Justice and 2) juveniles after an adjudication for conduct constituting a felony, confined in a facility operated by Texas Youth Commission, or placed on community supervision or deferred adjudication. Payment of the court costs would be required as a condition of community supervision. The Comptroller of Public Accounts would be required to deposit fees collected in the state treasury to the credit of the State Highway Fund. Under current law, 35 percent of the proceeds are deposited to the State Highway Fund and 65 percent to the General Revenue Fund Account No. 0421 - Criminal Justice Planning.

Section 21 of the bill repeals Article 102.056(e), Code of Criminal Procedure, which requires the legislature to determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the Governor's office for reimbursement in the form of grants to local law enforcement agencies for expenses incurred in performing duties; and Sections 411.0206, 411.143(f), 411.1471, 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.

Methodology

Section 10 of the bill would require TDCJ to collect DNA samples from individuals confined in a penal institution operated by or under contract with TDCJ or under the supervision of TDCJ (parole or community supervision) following the conviction of a felony. 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 or under the parole supervision of 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 and 54,905 offenders placed on community supervision (including deferred adjudication) would need to submit DNA samples. 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. In fiscal year 2004, there were 11,681 youth placed on probation (including deferred adjudication). The total amount of DNA samples that would be collected and analyzed by DPS in fiscal year 2006 would be 114,484 (44,744 offenders incarcerated at TDCJ + 54,905 adults placed on community supervision + 11,681 juveniles placed on community supervision + 3,154 juveniles incarcerated in TYC) to cover all those currently under the authority of criminal justice agencies (confined and on probation). It is estimated that 68,467 DNA samples in fiscal year 2007, 70,402 in fiscal year 2008, 72,392 in fiscal year 2009, and 74,440 in fiscal year 2010 would need to be collected and analyzed. This estimates assumes a 3 percent growth annually for adults placed on community supervision and a 2 percent growth annually for juveniles placed on community supervision.

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 \$2,643,000 (881

DNA kits X \$3,000) in fiscal year 2006, \$1,581,000 (527 DNA kits X \$3,000) in fiscal year 2007, \$1,626,000 (542 DNA kits X \$3,000) in fiscal year 2008, \$1,671,000 (557 DNA kits X \$3,000) in fiscal year 2009, and \$1,719,000 (573 DNA kits X \$3,000) in fiscal year 2010. It is also estimated that \$836,950 (881 X \$950) in fiscal year 2006, \$500,650 (527 X \$950) in fiscal year 2007, \$514,900 (542 X \$950) in fiscal year 2008, \$529,150 (557 X \$950) in fiscal year 2009, and \$544,350 (573 X \$950) in fiscal year 2010 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 \$3,494,950 in fiscal year 2006, \$2,081,650 in fiscal year 2007, \$2,140,900 in fiscal year 2008, \$2,200,150 in fiscal year 2009, and \$2,263,350 in fiscal year 2010.

Section 2 of the bill would allow the director to collect costs incurred for accrediting, auditing, or inspecting a crime laboratory. The director may also 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 accreditations, audits, or inspections conducted by the director and would be used to defray the cost of accreditations, audits, inspections, or maintenance of the DNA database.

Section 20 of the bill would reduce the court cost to \$140 from \$250, but would broaden the offenses for which the court cost would be applicable. The bill would revise the allocation of the revenue from court costs such that all fees collected would be deposited in the state treasury to the credit of the State Highway Fund. Under current law, 35 percent of the proceeds are deposited to the State Highway Fund and 65 percent to the General Revenue Fund Account No. 0421 - Criminal Justice Planning. However, the current revenue from these fees is limited to specific offenses and the impact from reallocating these fees is not estimated to be significant.

The analysis of revenue under the provisions of the bill is based on the number of felony convictions in fiscal year 2004. In fiscal year 2004, there were 143,293 felony convictions. The fiscal year 2004 felony convictions were adjusted for those offenders sentenced directly to TDCJ during that fiscal year and by a 2 percent caseload growth each fiscal year, through fiscal year 2010. A 60 percent collection rate was assumed and the state would receive 90 percent of the court costs actually paid. The total amount of fees collected for fiscal year 2006 were adjusted further for consistency with Government Code Section 51.607, which requires new fees to be enacted January 1, 2006.

The total revenue gain is estimated to be \$2,329,267 in fiscal year 2006, \$7,127,556 in fiscal year 2007, \$7,270,107 in fiscal year 2008, \$7,415,509 in fiscal year 2009, and \$7,563,819 in fiscal year 2010.

Local Government Impact

Under the provisions of the bill, a law enforcement agency, prosecutor, or crime lab may petition a court to require those placed on community supervision or parole 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 and 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: 304 Comptroller of Public Accounts, 405 Department of Public Safety, 696 Department of Criminal Justice

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