

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 30, 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 evidence and testimony based on forensic analysis, crime laboratory accreditation, and DNA testing and records.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1068, As Introduced: 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 STATE HIGHWAY FUND 6	Probable Revenue Gain/ (Loss) from STATE HIGHWAY FUND 6	Change in Number of State Employees from FY 2005
2006	(\$4,597,843)	\$1,663,756	3.0
2007	(\$1,061,443)	\$5,091,092	3.0
2008	(\$1,061,443)	\$5,192,914	3.0
2009	(\$1,061,443)	\$5,296,772	3.0
2010	(\$1,061,443)	\$5,402,707	3.0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure as it relates to evidence and testimony based on forensic analysis, crime laboratory accreditation, and DNA testing and records.

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, disposition of a criminal action, or if it is related to the action in which the person is suspected or charged. The evidence subjected to a forensic analysis and testimony would not be admissible in a criminal case if, at the time of the analysis, the crime laboratory conducting the analysis was not accredited by the director of the Department of Public Safety (director). 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 parole 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 3 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 director would have the option of collecting a reasonable fee for DNA analysis of a DNA sample submitted voluntarily or for providing population statistics data or other appropriate research data. The director may not accept 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 may provide the collection kits, labels, report forms, instructions, and training for collection of DNA samples at no cost to the person.

The bill would also require a criminal justice agency permitted or required to collect a DNA sample for forensic DNA analysis to collect the DNA sample or contract for services to collect the sample. Each sample collected shall be preserved until it is forwarded to the director.

The Texas Department of Criminal Justice (TDCJ) and the Texas Youth Commission (TYC) would be required to collect DNA samples from certain persons. Persons may be held past a statutory release date if the person fails or refuses to provide a DNA sample. The TDCJ and TYC Executive Director would be able to exempt categories from DNA samples.

The director would be required to expunge all DNA records and identifiable information in the database related to the individual and destroy the DNA sample from the individual if the director receives from the individual a written request for expunction; a certified copy of the final court order reversing and dismissing the conviction or delinquency adjudication or a certified copy of a pardon expressly based on subsequent proof of innocence; and any other information necessary to ascertain the validity of the request.

Section 4 of the bill would require, as a condition of release of a defendant, that the defendant provide to a local law enforcement agency one or more specimens for the purpose of creating a DNA record.

Section 5 of the bill would allow law enforcement agencies or crime laboratories to destroy evidence in its possession if the entity reasonably believes the evidence does not contain biological material likely to establish or exclude identity, is not relevant to a pending criminal or civil action, including a direct appeal; or is not subject to a court order prohibiting destruction.

Section 7 of the bill would reduce the court cost to \$100 from \$250 for offenses requiring DNA testing. The bill would expand the group required to pay the court cost to all felons convicted of or adjudicated for an offense. The fees collected would be deposited in the state treasury to the credit of the State Highway Fund.

Section 9 of the bill repeals Section 411.0206, Government Code, which allows the Department of Public Safety to regulate DNA testing. 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. Subsection (e), Article 102.056, 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, would also be repealed.

The bill would take effect September 1, 2005.

Methodology

Section 3 of the bill would require the Texas Department of Criminal Justice (TDCJ) to collect DNA samples from suspects, defendants, or convicts confined in a penal institution operated by or under contract with TDCJ or under the parole supervision of TDCJ. The Texas Youth Commission (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. The executive director of TDCJ and TYC by rule may exempt one or more categories of felony offenses if sufficient funds, under grant or appropriation, to collect a sample are not received. Thus, the fiscal impact to TDCJ and TYC would not be significant.

Under current law, persons convicted of felony offenses are required to provide DNA samples upon entering TDCJ or TYC, effective April 2004. The Department of Public Safety (DPS) reports that adding all felony arrestees would result in an additional 30,000 samples per fiscal year and that 56,000 inmates at TDCJ and 47,708 parolees would need to submit samples. TYC reports that 4,386 DNA samples would need to be collected from youth already committed to the agency. The total amount of DNA samples that would be collected by DPS in fiscal year 2006 would be 138,094 (56,000 + 30,000 + 4,386 + 47,708) to cover arrestees and all those currently under the authority of TDCJ and TYC (confined and on parole). In fiscal year 2007 through fiscal year 2010, it is estimated 30,000 samples would be collected each fiscal year.

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 \$3,189,000 (1063 DNA kits X \$3,000) in fiscal year 2006, and \$693,000 (231 DNA kits X \$3,000) in subsequent fiscal years. It is also estimated that \$1,009,850 (1063 X \$950) in fiscal year 2006 and \$219,450 (231 X \$950) in subsequent fiscal years would be needed for acrylamide and DNA sizing standards. In order to process the additional DNA samples, two thermal cyclers would be needed at a cost of \$15,000 (2 thermal cyclers X \$7,500), one DNA extraction robot at a cost of \$80,000, one automated punch instrument at a cost of \$15,000, and one genetic analyzer capillary electrophoresis instrument at a cost of \$140,000. The total equipment costs would be \$250,000 (\$15,000 + \$80,000 + \$15,000 + \$140,000) in fiscal year 2006. DPS estimates that 3 additional full-time-equivalent positions would be needed to perform the additional testing at a cost of \$148,993 per fiscal year. Thus, the total costs for collection of DNA samples would be \$4,597,843 in fiscal year 2006 and \$1,061,443 in subsequent fiscal years.

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 7 of the bill would reduce the court cost to \$100 from \$250, but would broaden the offenses for which the court cost would be applicable. The fees collected would be deposited in the state treasury to the credit of the State Highway Fund. 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 would be \$1,663,756 in fiscal year 2006, \$5,091,092 in fiscal year 2007, \$5,192,914 in fiscal year 2008, \$5,296,772 in fiscal year 2009, and \$5,402,707 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. A defendant may also petition to have a law enforcement agency reimburse the defendant's evidence costs if the defendant is found not guilty of charges, is barred from further prosecution, if the charges are dismissed, or if it is proven that the charges were filed maliciously or in error.

Costs to local law enforcement to create a mandatory DNA record for those arrested for a felony could be substantial. For example, to Harris County, the impact of the bill would be substantially felt in six areas: the Sheriff's Department (acquiring, recording, and shipping DNA samples on a substantially larger number of suspects/offenders); the District Attorney's Office (subject to reimbursing forensic test costs in specified situations); the Criminal Courts (court orders for forensic testing at request of defendants, subject to reimbursing forensic test costs in specified situations); PreTrial Services (retesting all positives and perhaps all negative urine drug tests); 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: 405 Department of Public Safety, 601 Department of Transportation, 694 Youth Commission, 696 Department of Criminal Justice, 301 Office of the Governor

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