

By: Driver

H.B. No. 3295

A BILL TO BE ENTITLED

AN ACT

relating to the DNA samples taken from certain offenders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.142(g), Government Code, is amended to read as follows:

(g) The DNA database may contain DNA records for the following:

(1) an individual described by this subchapter, including Section 411.1471, 411.148, or 411.154 [~~411.150~~];

(2) a biological specimen of a deceased victim of a crime;

(3) a biological specimen that is legally obtained in the investigation of a crime, regardless of origin;

(4) results of testing ordered by a court under this subchapter, Article 64.03, Code of Criminal Procedure, or other law permitting or requiring the creation of a DNA record;

(5) an unidentified missing person, or unidentified skeletal remains or body parts;

(6) a close biological relative of a person who has been reported missing to a law enforcement agency;

(7) a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or

1           (8) an unidentified person, if the record does not  
2 contain personal identifying information.

3           SECTION 2. Section 411.1471(f), Government Code, is amended  
4 to read as follows:

5           (f) A defendant who provides a DNA sample [~~specimen~~] under  
6 this section is not required to provide a DNA sample [~~specimen~~]  
7 under Section [~~411.1472 or provide a sample or specimen under~~  
8 ~~Section~~] 411.148 [~~or 411.150~~] unless an attorney representing the  
9 state in the prosecution of felony offenses establishes to the  
10 satisfaction of the director that the interests of justice or  
11 public safety require that the defendant provide additional samples  
12 [~~or specimens~~].

13           SECTION 3. Section 411.148, Government Code, as reenacted  
14 and amended by Chapters 1224 and 1245, Acts of the 79th Legislature,  
15 Regular Session, 2005, is reenacted and amended to read as follows:

16           Sec. 411.148. MANDATORY DNA RECORD. (a) This section  
17 applies to:

18           (1) an individual who is:

19                   (A) ordered by a magistrate or court to provide a  
20 sample under Section [~~411.150 or~~] 411.154 or other law; or

21                   (B) confined in a penal institution operated by  
22 or under contract with the Texas Department of Criminal Justice; or

23           (2) a juvenile who is, after an adjudication for  
24 conduct constituting a felony, confined in a facility operated by  
25 or under contract with the Texas Youth Commission.

26           (b) An individual described by Subsection (a) shall provide  
27 one or more DNA samples for the purpose of creating a DNA record.

1 (c) A criminal justice agency shall collect a sample ordered  
2 by a magistrate or court in compliance with the order.

3 (d) If an individual described by Subsection (a)(1)(B) is  
4 received into custody by the Texas Department of Criminal Justice,  
5 that department shall collect the sample from the individual during  
6 the diagnostic process or at another time determined by the Texas  
7 Department of Criminal Justice.

8 (e) If an individual described by Subsection (a)(2) is  
9 received into custody by the Texas Youth Commission, the youth  
10 commission shall collect the sample from the individual during the  
11 initial examination or at another time determined by the youth  
12 commission.

13 (f) The Texas Department of Criminal Justice shall notify  
14 the director that an individual described by Subsection (a)(1)(B)  
15 ~~[(a)]~~ is to be released from custody not earlier than the 120th day  
16 before the individual's statutory release date and not later than  
17 the 90th day before the individual's statutory release date. An  
18 individual described by Subsection (a)(1)(B) may not be held past  
19 the individual's statutory release date if the individual fails or  
20 refuses to provide a DNA sample under this section. The Texas  
21 Department of Criminal Justice may take lawful administrative  
22 action, including disciplinary action resulting in the loss of good  
23 conduct time, against an individual described by Subsection  
24 (a)(1)(B) who refuses to provide a sample under this section. In  
25 this subsection, "statutory release date" means the date on which  
26 an individual is discharged from the individual's controlling  
27 sentence.

1           (f-1) The Texas Youth Commission shall notify the director  
2 that an individual described by Subsection (a)(2) [~~(a)~~] is to be  
3 released from custody not earlier than the 120th [~~10th~~] day before  
4 the individual's release date.

5           (f-2) The Texas Department of Criminal Justice and the Texas  
6 Youth Commission, in consultation with the director, shall  
7 determine the form of the notification described by Subsections (f)  
8 and (f-1) [~~this subsection~~].

9           (g) A medical staff employee of a criminal justice agency  
10 may collect a voluntary sample from an individual at any time.

11           (h) An employee of a criminal justice agency may use force  
12 against an individual required to provide a DNA sample under this  
13 section when and to the degree the employee reasonably believes the  
14 force is immediately necessary to collect the sample.

15           (i)(1) The Texas Department of Criminal Justice as soon as  
16 practicable shall cause a sample to be collected from an individual  
17 described by Subsection (a)(1)(B) if:

18                   (A) the individual is confined in another penal  
19 institution after sentencing and before admission to the  
20 department; and

21                   (B) the department determines that the  
22 individual is likely to be released before being admitted to the  
23 department.

24           (2) The administrator of the other penal institution  
25 shall cooperate with the Texas Department of Criminal Justice as  
26 necessary to allow the Texas Department of Criminal Justice to  
27 perform its duties under this subsection.

1           (j)(1) The Texas Youth Commission as soon as practicable  
2 shall cause a sample to be collected from an individual described by  
3 Subsection (a)(2) if:

4                   (A) the individual is detained in another  
5 juvenile detention facility after adjudication and before  
6 admission to the youth commission; and

7                   (B) the youth commission determines the  
8 individual is likely to be released before being admitted to the  
9 youth commission.

10           (2) The administrator of the other juvenile detention  
11 facility shall cooperate with the Texas Youth Commission as  
12 necessary to allow the youth commission to perform its duties under  
13 this subsection.

14           (k) When a criminal justice agency of this state agrees to  
15 accept custody of an individual from another state or jurisdiction  
16 under an interstate compact or a reciprocal agreement with a local,  
17 county, state, or federal agency, the acceptance is conditional on  
18 the individual providing a DNA sample under this subchapter if the  
19 individual was convicted of a felony.

20           (1) If, in consultation with the director, it is determined  
21 that an acceptable sample has already been received from an  
22 individual, additional samples are not required unless requested by  
23 the director.

24           SECTION 4. Section 411.153(b), Government Code, is amended  
25 to read as follows:

26           (b) A person commits an offense if the person knowingly  
27 discloses to an unauthorized recipient information in a DNA record

1 or information related to a DNA analysis of a sample collected under  
2 this subchapter.

3 SECTION 5. Section 411.150, Government Code, is repealed.

4 SECTION 6. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2007.