

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.