

By: Patrick, Whitmire

S.B. No. 1347

A BILL TO BE ENTITLED

AN ACT

relating to a mandatory DNA record for individuals convicted of certain offenses or adjudicated as having engaged in conduct constituting the commission of certain offenses.

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

SECTION 1. Subdivision (3), Section 411.141, Government Code, is amended to read as follows:

(3) "Criminal justice agency" means:

(A) a federal or state agency that is engaged in the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice;

(B) a secure correctional facility as defined by Section 1.07, Penal Code; or

(C) a community supervision and corrections department, parole office, or a local juvenile probation department or parole office ~~[has the meaning assigned by Article 60.01, Code of Criminal Procedure].~~

SECTION 2. Section 411.148, Government Code, as reenacted and amended by Chapters 1224 and 1245, Acts of the 79th Legislature, Regular Session, 2005, is reenacted and further amended to read as follows:

Sec. 411.148. MANDATORY DNA RECORD. (a) This section applies to[+]

1 ~~[(1)]~~ an individual who is:

2 (1) ~~[(A)]~~ ordered by a magistrate or court to provide
3 a DNA sample under Section ~~[411.150 or]~~ 411.154 or other law; or

4 (2) convicted of a felony ~~[(B) confined in a penal~~
5 ~~institution operated by or under contract with the Texas Department~~
6 ~~of Criminal Justice; or~~

7 ~~[(2) a juvenile who is, after an adjudication for~~
8 ~~conduct constituting a felony, confined in a facility operated by~~
9 ~~or under contract with the Texas Youth Commission].~~

10 (b) This section does not apply to a juvenile who is ordered
11 by a juvenile court to provide a DNA sample under Section 411.150.

12 (c) An individual described by Subsection (a) shall provide
13 one or more DNA samples for the purpose of creating a DNA record.

14 (d) ~~[(c)]~~ A criminal justice agency shall collect a sample
15 ordered by a magistrate or court as provided by Subsection (a)(1) in
16 compliance with the order.

17 (e) During the diagnostic process or at another time
18 determined by the department, ~~[(d) If an individual described by~~
19 ~~Subsection (a)(1)(B) is received into custody by]~~ the Texas
20 Department of Criminal Justice~~[, that department]~~ shall collect the
21 sample from an ~~[the]~~ individual described by Subsection (a) who is
22 imprisoned in a penal institution operated by or under contract
23 with the department or who is under the supervision of the pardons
24 and paroles division of ~~[during the diagnostic process or at~~
25 ~~another time determined by]~~ the Texas Department of Criminal
26 Justice. If an individual described by Subsection (a) is in the
27 custody or under the supervision of another criminal justice agency

1 such as a community supervision and corrections department, that
2 agency shall collect the sample from the individual at a time
3 determined by the agency.

4 ~~[(c) If an individual described by Subsection (a)(2) is~~
5 ~~received into custody by the Texas Youth Commission, the youth~~
6 ~~commission shall collect the sample from the individual during the~~
7 ~~initial examination or at another time determined by the youth~~
8 ~~commission.]~~

9 (f) If an individual described by Subsection (a) is due to
10 be released from a penal institution operated by or under contract
11 with the Texas Department of Criminal Justice, the [The] Texas
12 Department of Criminal Justice shall notify the director of the
13 individual's release ~~[that an individual described by Subsection~~
14 ~~(a) is to be released from custody]~~ not earlier than the 120th day
15 before the individual's release date and not later than the 90th day
16 before the individual's release date. ~~[The Texas Youth Commission~~
17 ~~shall notify the director that an individual described by~~
18 ~~Subsection (a) is to be released from custody not earlier than the~~
19 ~~10th day before the individual's release date.]~~ The Texas
20 Department of Criminal Justice ~~[and the Texas Youth Commission]~~, in
21 consultation with the director, shall determine the form of the
22 notification described by this subsection.

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

25 (h) An employee of a criminal justice agency may use force
26 against an individual required to provide a DNA sample under this
27 section when and to the degree the employee reasonably believes the

1 force is immediately necessary to collect the sample.

2 (i) If [~~(1) The Texas Department of Criminal Justice as~~
3 ~~soon as practicable shall cause a sample to be collected from an~~
4 ~~individual described by Subsection (a)(1)(B) if:~~

5 [~~(A) the individual is confined in another penal~~
6 ~~institution after sentencing and before admission to the~~
7 ~~department; and~~

8 [~~(B) the department determines that the~~
9 ~~individual is likely to be released before being admitted to the~~
10 ~~department.~~

11 [~~(2) The administrator of the other penal institution~~
12 ~~shall cooperate with the Texas Department of Criminal Justice as~~
13 ~~necessary to allow the Texas Department of Criminal Justice to~~
14 ~~perform its duties under this subsection.~~

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

18 [~~(A) the individual is detained in another~~
19 ~~juvenile detention facility after adjudication and before~~
20 ~~admission to the youth commission; and~~

21 [~~(B) the youth commission determines the~~
22 ~~individual is likely to be released before being admitted to the~~
23 ~~youth commission.~~

24 [~~(2) The administrator of the other juvenile detention~~
25 ~~facility shall cooperate with the Texas Youth Commission as~~
26 ~~necessary to allow the youth commission to perform its duties under~~
27 ~~this subsection.~~

1 ~~[(k) — when]~~ a criminal justice agency of this state agrees to
 2 accept custody or supervision of an individual from another state
 3 or jurisdiction under an interstate compact or a reciprocal
 4 agreement with a local, county, state, or federal agency, the
 5 acceptance is conditional on the individual providing a DNA sample
 6 under this subchapter if the individual was convicted of a felony.

7 (j) ~~[(1)]~~ If, in consultation with the director, it is
 8 determined that an acceptable sample has already been received from
 9 an individual, additional samples are not required unless requested
 10 by the director.

11 SECTION 3. Section 411.150, Government Code, is amended to
 12 read as follows:

13 Sec. 411.150. DNA RECORDS OF CERTAIN JUVENILES. (a) A
 14 juvenile to whom this section applies ~~[who is committed to the Texas~~
 15 ~~Youth Commission]~~ shall provide one or more DNA ~~[blood]~~ samples or
 16 other specimens ~~[taken by or at the request of the commission]~~ for
 17 the purpose of creating a DNA record if the juvenile has not already
 18 provided the required sample ~~[specimen]~~ under other state law or if
 19 the director makes a request for the sample as described by
 20 Subsection (h). If the juvenile is committed to or under the
 21 supervision of the commission, the Texas Youth Commission shall
 22 collect the sample during the initial examination or at another
 23 time determined by the commission. If the juvenile is in the
 24 custody or under the supervision of another criminal justice agency
 25 such as a local juvenile probation department, that agency shall
 26 collect the sample from the juvenile at a time determined by the
 27 agency ~~[and if the juvenile is ordered by a juvenile court to give~~

~~the sample or specimen or is committed to the commission for an
adjudication as having engaged in delinquent conduct that violates:~~

~~[(1) an offense:~~

~~[(A) under Section 19.02, Penal Code (murder), or
Section 22.02, Penal Code (aggravated assault);~~

~~[(B) under Section 30.02, Penal Code (burglary),
if the offense is punishable under Subsection (c)(2) or (d) of that
section; or~~

~~[(C) for which the juvenile is required to
register as a sex offender under Chapter 62, Code of Criminal
Procedure; or~~

~~[(2) a penal law if the juvenile has previously been
convicted of or adjudicated as having engaged in:~~

~~[(A) a violation of a penal law described in
Subsection (a)(1); or~~

~~[(B) a violation of a penal law under federal law
or the laws of another state that involves the same conduct as a
violation of a penal law described by Subsection (a)(1)].~~

(b) This section applies to a juvenile who is:

(1) adjudicated as having engaged in conduct
constituting the commission of a felony;

(2) committed to the Texas Youth Commission and
ordered by a juvenile court to give a DNA sample; or

(3) committed to the Texas Youth Commission for an
adjudication as having engaged in delinquent conduct that violates
a misdemeanor penal law if in this state, in another state, or under
federal law the juvenile has previously been convicted of or

1 adjudicated as having engaged in conduct constituting the
2 commission of a felony [~~The department, in conjunction with the~~
3 ~~Texas Youth Commission, shall adopt rules regarding the collection,~~
4 ~~preservation, and shipment of a blood sample or other specimen of a~~
5 ~~juvenile described by this section]~~.

6 (c) A criminal justice agency shall collect a sample ordered
7 by a juvenile court as provided by Subsection (b)(2) in compliance
8 with the order [~~The Texas Youth Commission shall:~~

9 ~~[(1) obtain blood samples or other specimens from~~
10 ~~juveniles under this section;~~

11 ~~[(2) preserve each sample or other specimen collected;~~

12 ~~[(3) maintain a record of the collection of the sample~~
13 ~~or specimen; and~~

14 ~~[(4) send the sample or specimen to the director for~~
15 ~~scientific analysis under this subchapter]~~.

16 (d) A medical staff employee of a criminal justice agency
17 [~~the Texas Youth Commission~~] may obtain a voluntary sample or
18 specimen from any juvenile.

19 (e) An employee of a criminal justice agency [~~the Texas~~
20 ~~Youth Commission~~] may use force against a juvenile required to
21 provide a sample under this section when and to the degree the
22 employee reasonably believes the force is immediately necessary to
23 obtain the sample or specimen.

24 (f) If a juvenile to whom this section applies is due to be
25 released from a facility operated by or under contract with the
26 commission, the Texas Youth Commission shall notify the director of
27 the juvenile's release not earlier than the 10th day before the

1 juvenile's release date. The Texas Youth Commission, in
2 consultation with the director, shall determine the form of the
3 notification described by this subsection.

4 (g) If a criminal justice agency of this state agrees to
5 accept custody or supervision of a juvenile from another state or
6 jurisdiction under an interstate compact or a reciprocal agreement
7 with a local, county, state, or federal agency, the acceptance is
8 conditional on the juvenile providing a DNA sample under this
9 subchapter if the juvenile was adjudicated as having engaged in
10 conduct constituting the commission of a felony.

11 (h) If, in consultation with the director, it is determined
12 that an acceptable sample has already been received from a
13 juvenile, additional samples are not required unless requested by
14 the director ~~[The Texas Youth Commission may contract with an~~
15 ~~individual or entity for the provision of phlebotomy services under~~
16 ~~this section].~~

17 SECTION 4. Section 11, Article 42.12, Code of Criminal
18 Procedure, is amended by adding Subsection (j) to read as follows:

19 (j) A judge granting community supervision to a defendant
20 convicted of a felony shall require that the defendant, as a
21 condition of community supervision, provide a DNA sample under
22 Subchapter G, Chapter 411, Government Code, for the purpose of
23 creating a DNA record of the defendant, unless the defendant has
24 already submitted the required sample under other state law.

25 SECTION 5. Chapter 54, Family Code, is amended by adding
26 Section 54.0409 to read as follows:

27 Sec. 54.0409. DNA SAMPLE REQUIRED ON FELONY ADJUDICATION.

1 If a court or jury makes a disposition under Section 54.04 in which
2 a child adjudicated as having engaged in conduct constituting the
3 commission of a felony is placed on probation, the court shall
4 require as a condition of probation that the child provide a DNA
5 sample under Subchapter G, Chapter 411, Government Code, for the
6 purpose of creating a DNA record of the child, unless the child has
7 already submitted the required sample under other state law.

8 SECTION 6. Subchapter F, Chapter 508, Government Code, is
9 amended by adding Section 508.1861 to read as follows:

10 Sec. 508.1861. DNA SAMPLE REQUIRED ON FELONY CONVICTION. A
11 parole panel shall require as a condition of parole or mandatory
12 supervision that a releasee convicted of a felony provide a DNA
13 sample under Subchapter G, Chapter 411, for the purpose of creating
14 a DNA record of the releasee, unless the releasee has already
15 submitted the required sample under other state law.

16 SECTION 7. Subchapter F, Chapter 61, Human Resources Code,
17 is amended by adding Section 61.0814 to read as follows:

18 Sec. 61.0814. DNA SAMPLE REQUIRED ON FELONY ADJUDICATION.
19 Before releasing a child adjudicated as having engaged in conduct
20 constituting the commission of a felony under supervision, the
21 commission shall require as a condition of release that the child
22 provide a DNA sample under Subchapter G, Chapter 411, Government
23 Code, for the purpose of creating a DNA record of the child, unless
24 the child has already submitted the required sample under other
25 state law.

26 SECTION 8. (a) Except as provided by Subsection (b) of
27 this section, the change in law made by this Act applies to an

1 individual who:

2 (1) before the effective date of this Act was not
3 otherwise required by state law to provide a DNA sample; and

4 (2) is convicted of committing an offense or is
5 adjudicated as having engaged in conduct constituting the
6 commission of an offense on or after the effective date of this Act.

7 (b) As required by Section 411.148, Government Code, as
8 amended by this Act:

9 (1) the Texas Department of Criminal Justice shall
10 collect a DNA sample from each individual who was convicted of an
11 offense before the effective date of this Act, from whom a DNA
12 sample was not required before the effective date of this Act, and
13 who on or after the effective date of this Act is:

14 (A) imprisoned in a penal institution operated by
15 or under contract with the Texas Department of Criminal Justice; or

16 (B) placed under the supervision of the pardons
17 and paroles division of the Texas Department of Criminal Justice;
18 and

19 (2) any other appropriate criminal justice agency
20 shall collect a DNA sample from an individual who was convicted of
21 an offense before the effective date of this Act, from whom a DNA
22 sample was not required before the effective date of this Act, and
23 who on or after the effective date of this Act is in the custody or
24 placed under the supervision of that agency.

25 (c) As required by Section 411.150, Government Code, as
26 amended by this Act:

27 (1) the Texas Youth Commission shall collect a DNA

1 sample from a juvenile who was adjudicated as having engaged in
2 conduct constituting the commission of an offense before the
3 effective date of this Act, from whom a DNA sample was not required
4 before the effective date of this Act, and who on or after the
5 effective date of this Act is committed to or placed under the
6 supervision of the Texas Youth Commission; and

7 (2) any other appropriate criminal justice agency
8 shall collect a DNA sample from a juvenile who was adjudicated as
9 having engaged in conduct constituting the commission of an offense
10 before the effective date of this Act, from whom a DNA sample was
11 not required before the effective date of this Act, and who on or
12 after the effective date of this Act is in the custody or placed
13 under the supervision of the agency.

14 SECTION 9. This Act takes effect September 1, 2007.