

By: Patrick S.B. No. 1347
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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)]~~ an individual who is:

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

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

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

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

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

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

(e) During the diagnostic process or at another time determined by the department, [(d) If an individual described by Subsection (a)(1)(B) is received into custody by] the Texas Department of Criminal Justice[, that department] shall collect the sample from an [the] individual described by Subsection (a) who is imprisoned in a penal institution operated by or under contract with the department or who is under the supervision of the pardons and paroles division of [during the diagnostic process or at another time determined by] the Texas Department of Criminal Justice. If an individual described by Subsection (a) is in the custody or under the supervision of another criminal justice agency such as a community supervision and corrections department, that agency shall collect the sample from the individual at a time determined by the agency.

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

~~commission.]~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 411.150. DNA RECORDS OF CERTAIN JUVENILES. (a) A juvenile to whom this section applies ~~[who is committed to the Texas Youth Commission]~~ shall provide one or more DNA ~~[blood]~~ samples or other specimens ~~[taken by or at the request of the commission]~~ for the purpose of creating a DNA record if the juvenile has not already provided the required sample ~~[specimen]~~ under other state law or if the director makes a request for the sample as described by Subsection (h). If the juvenile is committed to or under the supervision of the commission, the Texas Youth Commission shall collect the sample during the initial examination or at another

time determined by the commission. If the juvenile is in the custody or under the supervision of another criminal justice agency such as a local juvenile probation department, that agency shall collect the sample from the juvenile at a time determined by the 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 adjudicated as having engaged in conduct constituting the commission of a felony [The department, in conjunction with the Texas Youth Commission, shall adopt rules regarding the collection, preservation, and shipment of a blood sample or other specimen of a juvenile described by this section].

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

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

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

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

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

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

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

(f) If a juvenile to whom this section applies is due to be released from a facility operated by or under contract with the commission, the Texas Youth Commission shall notify the director of the juvenile's release not earlier than the 10th day before the juvenile's release date. The Texas Youth Commission, in consultation with the director, shall determine the form of the notification described by this subsection.

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

4-1 (h) If, in consultation with the director, it is determined
 4-2 that an acceptable sample has already been received from a
 4-3 juvenile, additional samples are not required unless requested by
 4-4 the director ~~[The Texas Youth Commission may contract with an~~
 4-5 ~~individual or entity for the provision of phlebotomy services under~~
 4-6 ~~this section]~~.

4-7 SECTION 4. Section 11, Article 42.12, Code of Criminal
 4-8 Procedure, is amended by adding Subsection (j) to read as follows:

4-9 (j) A judge granting community supervision to a defendant
 4-10 convicted of a felony shall require that the defendant, as a
 4-11 condition of community supervision, provide a DNA sample under
 4-12 Subchapter G, Chapter 411, Government Code, for the purpose of
 4-13 creating a DNA record of the defendant, unless the defendant has
 4-14 already submitted the required sample under other state law.

4-15 SECTION 5. Chapter 54, Family Code, is amended by adding
 4-16 Section 54.0409 to read as follows:

4-17 Sec. 54.0409. DNA SAMPLE REQUIRED ON FELONY ADJUDICATION.
 4-18 If a court or jury makes a disposition under Section 54.04 in which
 4-19 a child adjudicated as having engaged in conduct constituting the
 4-20 commission of a felony is placed on probation, the court shall
 4-21 require as a condition of probation that the child provide a DNA
 4-22 sample under Subchapter G, Chapter 411, Government Code, for the
 4-23 purpose of creating a DNA record of the child, unless the child has
 4-24 already submitted the required sample under other state law.

4-25 SECTION 6. Subchapter F, Chapter 508, Government Code, is
 4-26 amended by adding Section 508.1861 to read as follows:

4-27 Sec. 508.1861. DNA SAMPLE REQUIRED ON FELONY CONVICTION. A
 4-28 parole panel shall require as a condition of parole or mandatory
 4-29 supervision that a releasee convicted of a felony provide a DNA
 4-30 sample under Subchapter G, Chapter 411, for the purpose of creating
 4-31 a DNA record of the releasee, unless the releasee has already
 4-32 submitted the required sample under other state law.

4-33 SECTION 7. Subchapter F, Chapter 61, Human Resources Code,
 4-34 is amended by adding Section 61.0814 to read as follows:

4-35 Sec. 61.0814. DNA SAMPLE REQUIRED ON FELONY ADJUDICATION.
 4-36 Before releasing a child adjudicated as having engaged in conduct
 4-37 constituting the commission of a felony under supervision, the
 4-38 commission shall require as a condition of release that the child
 4-39 provide a DNA sample under Subchapter G, Chapter 411, Government
 4-40 Code, for the purpose of creating a DNA record of the child, unless
 4-41 the child has already submitted the required sample under other
 4-42 state law.

4-43 SECTION 8. (a) Except as provided by Subsection (b) of
 4-44 this section, the change in law made by this Act applies to an
 4-45 individual who:

4-46 (1) before the effective date of this Act was not
 4-47 otherwise required by state law to provide a DNA sample; and

4-48 (2) is convicted of committing an offense or is
 4-49 adjudicated as having engaged in conduct constituting the
 4-50 commission of an offense on or after the effective date of this Act.

4-51 (b) As required by Section 411.148, Government Code, as
 4-52 amended by this Act:

4-53 (1) the Texas Department of Criminal Justice shall
 4-54 collect a DNA sample from each individual who was convicted of an
 4-55 offense before the effective date of this Act, from whom a DNA
 4-56 sample was not required before the effective date of this Act, and
 4-57 who on or after the effective date of this Act is:

4-58 (A) imprisoned in a penal institution operated by
 4-59 or under contract with the Texas Department of Criminal Justice; or

4-60 (B) placed under the supervision of the pardons
 4-61 and paroles division of the Texas Department of Criminal Justice;
 4-62 and

4-63 (2) any other appropriate criminal justice agency
 4-64 shall collect a DNA sample from an individual who was convicted of
 4-65 an offense before the effective date of this Act, from whom a DNA
 4-66 sample was not required before the effective date of this Act, and
 4-67 who on or after the effective date of this Act is in the custody or
 4-68 placed under the supervision of that agency.

4-69 (c) As required by Section 411.150, Government Code, as

amended by this Act:

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

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

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

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