

By: Edwards

H.B. No. 3205

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the creation of DNA records for the DNA database system.

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

4 SECTION 1. Section 411.1471(a), Government Code, is amended
5 to read as follows:

6 (a) This section applies to a defendant who has not already
7 provided a sample to an arresting agency as required by Section
8 411.148(a)(1)(C) and who [~~is~~]:

9 (1) is indicted or waives indictment for a felony
10 prohibited or punishable under any of the following Penal Code
11 sections:

12 (A) Section 20.04(a)(4);

13 (B) Section 21.11;

14 (C) Section 22.011;

15 (D) Section 22.021;

16 (E) Section 25.02;

17 (F) Section 30.02(d);

18 (G) Section 43.05;

19 (H) Section 43.25;

20 (I) Section 43.26; or

21 (J) Section 21.02;

22 (2) is arrested for a felony described by Subdivision
23 (1) after having been previously convicted of or placed on deferred
24 adjudication for an offense described by Subdivision (1) or an

1 offense punishable under Section 30.02(c)(2), Penal Code; or

2 (3) is convicted of an offense under Section 21.07 or
3 21.08, Penal Code.

4 SECTION 2. Section 411.148, Government Code, is amended by
5 amending Subsections (a), (d), (f), and (h) and adding Subsection
6 (d-1) to read as follows:

7 (a) This section applies to:

8 (1) an individual who is:

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

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

13 (C) arrested for any offense punishable as a
14 Class B misdemeanor or higher; or

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

18 (d) If an individual described by Subsection (a)(1)(B) is
19 received into custody by the Texas Department of Criminal Justice,
20 that department shall collect the sample from the individual during
21 the diagnostic process or at another time determined by the Texas
22 Department of Criminal Justice, unless the individual has already
23 provided a sample to an arresting agency as required by Subsection
24 (a)(1)(C).

25 (d-1) If an individual described by Subsection (a)(1)(C) is
26 lawfully arrested, the arresting agency shall collect the sample
27 from the individual during the fingerprinting and booking process.

1 (f) The Texas Department of Criminal Justice shall notify
2 the director that an individual to whom Subsection (d) applies
3 ~~[described by Subsection (a)(1)(B)]~~ is to be released from custody
4 not earlier than the 120th day before the individual's statutory
5 release date and not later than the 90th day before the individual's
6 statutory release date. The ~~[An]~~ individual ~~[described by~~
7 ~~Subsection (a)(1)(B)]~~ may not be held past the individual's
8 statutory release date if the individual fails or refuses to
9 provide a DNA sample under this section. The Texas Department of
10 Criminal Justice may take lawful administrative action, including
11 disciplinary action resulting in the loss of good conduct time,
12 against an individual ~~[described by Subsection (a)(1)(B)]~~ who
13 refuses to provide a sample as required by Subsection (d) ~~[under~~
14 ~~this section]~~. In this subsection, "statutory release date" means
15 the date on which an individual is discharged from the individual's
16 controlling sentence.

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

22 SECTION 3. Section 411.148(i)(1), Government Code, is
23 amended to read as follows:

24 (1) The Texas Department of Criminal Justice as soon
25 as practicable shall cause a sample to be collected from an
26 individual, other than an individual who has already provided a
27 sample to an arresting agency as required by Subsection (a)(1)(C),

1 [~~described by Subsection (a)(1)(B)~~] if:

2 (A) the individual is confined in another penal
3 institution after sentencing and before admission to the
4 department; and

5 (B) the department determines that the
6 individual is likely to be released before being admitted to the
7 department.

8 SECTION 4. The change in law made by this Act applies only
9 to a person arrested for an offense committed on or after the
10 effective date of this Act. A person arrested for an offense
11 committed before the effective date of this Act is covered by the
12 law in effect when the offense was committed, and the former law is
13 continued in effect for that purpose. For purposes of this section,
14 an offense was committed before the effective date of this Act if
15 any element of the offense occurred before that date.

16 SECTION 5. This Act takes effect September 1, 2009.