

By: Patrick

S.B. No. 727

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. The heading to Article 102.020, Code of Criminal Procedure, is amended to read as follows:

Art. 102.020. COSTS RELATED TO [~~ON CONVICTION FOR OFFENSES REQUIRING~~] DNA TESTING.

SECTION 2. Article 102.020, Code of Criminal Procedure, is amended by amending Subsections (a) and (h) and adding Subsection (h-1) to read as follows:

(a) A person shall pay as a cost of court:

(1) \$250 [~~as a court cost~~] on conviction of an offense listed in Section 411.1471(a)(1), Government Code;

(2) [~~, and~~] \$50 [~~as a court cost~~] on conviction of an offense listed in Section 411.1471(a)(3) of that code; or

(3) \$34 on placement of the person on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Section 11(j), Article 42.12.

(h) Except as provided by Subsection (h-1), the [~~The~~] comptroller shall deposit 35 percent of the funds received under this article in the state treasury to the credit of the state highway fund and 65 percent of the funds received under this article to the credit of the criminal justice planning account in the

1 general revenue fund.

2 (h-1) The clerk of the court shall transfer to the
3 comptroller any fees received under Subsection (a)(3). As
4 appropriate, the comptroller shall apportion the fees among the
5 funds of each entity required by law to take a DNA sample of the
6 person.

7 SECTION 3. Chapter 54, Family Code, is amended by adding
8 Section 54.0409 to read as follows:

9 Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY
10 ADJUDICATIONS. (a) This section applies only to conduct
11 constituting the commission of a felony:

12 (A) that is listed in Section 3g(a)(1), Article
13 42.12, Code of Criminal Procedure; or

14 (B) for which it is shown that a deadly weapon, as
15 defined by Section 1.07, Penal Code, was used or exhibited during
16 the commission of the conduct or during immediate flight from the
17 commission of the conduct.

18 (b) If a court or jury makes a disposition under Section
19 54.04 in which a child is adjudicated as having engaged in conduct
20 constituting the commission of a felony to which this section
21 applies and the child is placed on probation, the court shall
22 require as a condition of probation that the child provide a DNA
23 sample under Subchapter G, Chapter 411, Government Code, for the
24 purpose of creating a DNA record of the child, unless the child has
25 already submitted the required sample under other state law.

26 SECTION 4. Chapter 54, Family Code, is amended by adding
27 Section 54.0462 to read as follows:

1 Sec. 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA
2 TESTING. (a) If a child is adjudicated as having engaged in
3 delinquent conduct that constitutes the commission of a felony and
4 the provision of a DNA sample is required under Section 54.0409 or
5 other law, the juvenile court shall order the child, parent, or
6 other person responsible for the child's support to pay to the court
7 as a cost of court:

8 (1) a \$50 fee if the disposition of the case includes a
9 commitment to a facility operated by or under contract with the
10 Texas Youth Commission; and

11 (2) a \$34 fee if the disposition of the case does not
12 include a commitment described by Subdivision (1) and the child is
13 required to submit a DNA sample under Section 54.0409 or other law.

14 (b) The clerk of the court shall transfer to the comptroller
15 any fees received under this section. As appropriate, the
16 comptroller shall apportion the fees among the funds of each entity
17 required by law to take a DNA sample of the child.

18 (c) If the court finds that a child, parent, or other person
19 responsible for the child's support is unable to pay the fee
20 required under Subsection (a), the court shall enter into the
21 child's case records a statement of that finding. The court may
22 waive a fee under this section only if the court makes the finding
23 under this subsection.

24 SECTION 5. Subsection (a), Section 61.002, Family Code, is
25 amended to read as follows:

26 (a) Except as provided by Subsection (b), this chapter
27 applies to a proceeding to enter a juvenile court order:

- 1 (1) for payment of probation fees under Section
2 54.061;
- 3 (2) for restitution under Sections 54.041(b) and
4 54.048;
- 5 (3) for payment of graffiti eradication fees under
6 Section 54.0461;
- 7 (4) for community service under Section 54.044(b);
- 8 (5) for payment of costs of court under Section
9 54.0411 or other provisions of law;
- 10 (6) requiring the person to refrain from doing any act
11 injurious to the welfare of the child under Section 54.041(a)(1);
- 12 (7) enjoining contact between the person and the child
13 who is the subject of a proceeding under Section 54.041(a)(2);
- 14 (8) ordering a person living in the same household
15 with the child to participate in counseling under Section
16 54.041(a)(3);
- 17 (9) requiring a parent or guardian of a child found to
18 be truant to participate in an available program addressing truancy
19 under Section 54.041(f);
- 20 (10) requiring a parent or other eligible person to
21 pay reasonable attorney's fees for representing the child under
22 Section 51.10(e);
- 23 (11) requiring the parent or other eligible person to
24 reimburse the county for payments the county has made to an attorney
25 appointed to represent the child under Section 51.10(j);
- 26 (12) requiring payment of deferred prosecution
27 supervision fees under Section 53.03(d);

1 (13) requiring a parent or other eligible person to
2 attend a court hearing under Section 51.115;

3 (14) requiring a parent or other eligible person to
4 act or refrain from acting to aid the child in complying with
5 conditions of release from detention under Section 54.01(r); [~~or~~]

6 (15) requiring a parent or other eligible person to
7 act or refrain from acting under any law imposing an obligation of
8 action or omission on a parent or other eligible person because of
9 the parent's or person's relation to the child who is the subject of
10 a proceeding under this title; or

11 (16) for payment of fees under Section 54.0462.

12 SECTION 6. Section 11, Article 42.12, Code of Criminal
13 Procedure, is amended by adding Subsection (j) to read as follows:

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

20 SECTION 7. (a) Section 102.021, Government Code, is
21 amended to conform to Chapter 1263 (H.B. 3060), Acts of the 80th
22 Legislature, Regular Session, 2007, and is further amended to read
23 as follows:

24 Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL
25 PROCEDURE. A person convicted of an offense shall pay the following
26 under the Code of Criminal Procedure, in addition to all other
27 costs:

1 (1) court cost on conviction of any offense, other
2 than a conviction of an offense relating to a pedestrian or the
3 parking of a motor vehicle (Art. 102.0045, Code of Criminal
4 Procedure) . . . \$4;

5 (2) a fee for services of prosecutor (Art. 102.008,
6 Code of Criminal Procedure) . . . \$25;

7 (3) fees for services of peace officer:

8 (A) issuing a written notice to appear in court
9 for certain violations (Art. 102.011, Code of Criminal Procedure)
10 . . . \$5;

11 (B) executing or processing an issued arrest
12 warrant, ~~or~~ capias, or capias pro fine (Art. 102.011, Code of
13 Criminal Procedure) . . . \$50;

14 (C) summoning a witness (Art. 102.011, Code of
15 Criminal Procedure) . . . \$5;

16 (D) serving a writ not otherwise listed (Art.
17 102.011, Code of Criminal Procedure) . . . \$35;

18 (E) taking and approving a bond and, if
19 necessary, returning the bond to courthouse (Art. 102.011, Code of
20 Criminal Procedure) . . . \$10;

21 (F) commitment or release (Art. 102.011, Code of
22 Criminal Procedure) . . . \$5;

23 (G) summoning a jury (Art. 102.011, Code of
24 Criminal Procedure) . . . \$5;

25 (H) attendance of a prisoner in habeas corpus
26 case if prisoner has been remanded to custody or held to bail (Art.
27 102.011, Code of Criminal Procedure) . . . \$8 each day;

- 1 (I) mileage for certain services performed (Art.
2 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and
- 3 (J) services of a sheriff or constable who serves
4 process and attends examining trial in certain cases (Art. 102.011,
5 Code of Criminal Procedure) . . . not to exceed \$5;
- 6 (4) services of a peace officer in conveying a witness
7 outside the county (Art. 102.011, Code of Criminal Procedure) . . .
8 \$10 per day or part of a day, plus actual necessary travel expenses;
- 9 (5) overtime of peace officer for time spent
10 testifying in the trial or traveling to or from testifying in the
11 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;
- 12 (6) court costs on an offense relating to rules of the
13 road, when offense occurs within a school crossing zone (Art.
14 102.014, Code of Criminal Procedure) . . . \$25;
- 15 (7) court costs on an offense of passing a school bus
16 (Art. 102.014, Code of Criminal Procedure) . . . \$25;
- 17 (8) court costs on an offense of truancy or
18 contributing to truancy (Art. 102.014, Code of Criminal Procedure)
19 . . . \$20;
- 20 (9) cost for visual recording of intoxication arrest
21 before conviction (Art. 102.018, Code of Criminal Procedure) . . .
22 \$15;
- 23 (10) cost of certain evaluations (Art. 102.018, Code
24 of Criminal Procedure) . . . actual cost;
- 25 (11) additional costs attendant to certain
26 intoxication convictions under Chapter 49, Penal Code, for
27 emergency medical services, trauma facilities, and trauma care

1 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

2 (12) additional costs attendant to certain child
3 sexual assault and related convictions, for child abuse prevention
4 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

5 (13) court cost for DNA testing for certain felonies
6 (Art. 102.020(a)(1) [~~102.020~~], Code of Criminal Procedure) . . .
7 \$250;

8 (14) court cost for DNA testing for the [~~on an~~] offense
9 of public lewdness or indecent exposure (Art. 102.020(a)(2)
10 [~~102.020~~], Code of Criminal Procedure) . . . \$50;

11 (15) court cost for DNA testing for certain felonies
12 (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

13 (16) if required by the court, a restitution fee for
14 costs incurred in collecting restitution installments and for the
15 compensation to victims of crime fund (Art. 42.037, Code of
16 Criminal Procedure) . . . \$12; [~~and~~]

17 (17) [~~(16)~~] if directed by the justice of the peace or
18 municipal court judge hearing the case, court costs on conviction
19 in a criminal action (Art. 45.041, Code of Criminal Procedure)
20 . . . part or all of the costs as directed by the judge; and

21 (18) costs attendant to convictions under Chapter 49,
22 Penal Code, and under Chapter 481, Health and Safety Code, to help
23 fund drug court programs established under Chapter 469, Health and
24 Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50.

25 (b) Section 102.0215, Government Code, is repealed.

26 SECTION 8. Section 103.0212, Government Code, is amended to
27 conform to Chapters 910 (H.B. 2949) and 1053 (H.B. 2151), Acts of

1 the 80th Legislature, Regular Session, 2007, and is further amended
2 to read as follows:

3 Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
4 CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a
5 civil suit, as applicable, shall pay the following fees and costs
6 under the Family Code if ordered by the court or otherwise required:

7 (1) in family matters:

8 (A) issuing writ of withholding (Sec. 8.262,
9 Family Code) . . . \$15;

10 (B) filing copy of writ of withholding to
11 subsequent employer (Sec. 8.267, Family Code) . . . \$15;

12 (C) issuing and delivering modified writ of
13 withholding or notice of termination (Sec. 8.302, Family Code)
14 . . . \$15;

15 (D) issuing and delivering notice of termination
16 of withholding (Sec. 8.303, Family Code) . . . \$15;

17 (E) issuance of change of name certificate (Sec.
18 45.106, Family Code) . . . \$10;

19 (F) protective order fee (Sec. 81.003, Family
20 Code) . . . \$16;

21 (G) filing suit requesting adoption of child
22 (Sec. 108.006, Family Code) . . . \$15;

23 (H) filing fees for suits affecting parent-child
24 relationship (Sec. 110.002, Family Code):

25 (i) suit or motion for modification (Sec.
26 110.002, Family Code) . . . \$15;

27 (ii) motion for enforcement (Sec. 110.002,

- 1 Family Code) . . . \$15;
- 2 (iii) notice of application for judicial
- 3 writ of withholding (Sec. 110.002, Family Code) . . . \$15;
- 4 (iv) motion to transfer (Sec. 110.002,
- 5 Family Code) . . . \$15;
- 6 (v) petition for license suspension (Sec.
- 7 110.002, Family Code) . . . \$15;
- 8 (vi) motion to revoke a stay of license
- 9 suspension (Sec. 110.002, Family Code) . . . \$15; and
- 10 (vii) motion for contempt (Sec. 110.002,
- 11 Family Code) . . . \$15;
- 12 (I) order or writ of income withholding to be
- 13 delivered to employer (Sec. 110.004, Family Code) . . . not to
- 14 exceed \$15;
- 15 (J) filing fee for transferred case (Sec.
- 16 110.005, Family Code) . . . \$45;
- 17 (K) filing a writ of withholding (Sec. 158.319,
- 18 Family Code) . . . \$15;
- 19 (L) filing a request for modified writ of
- 20 withholding or notice of termination (Sec. 158.403, Family Code)
- 21 . . . not to exceed \$15;
- 22 (M) filing an administrative writ to employer
- 23 (Sec. 158.503, Family Code) . . . not to exceed \$15; and
- 24 (N) genetic testing fees in relation to a child
- 25 born to a gestational mother (Sec. 160.762, Family Code) . . . as
- 26 assessed by the court; and
- 27 (2) in juvenile court:

1 (A) fee schedule for deferred prosecution
2 services (Sec. 53.03, Family Code) . . . maximum fee of \$15 a month;

3 (B) a request fee for a teen court program
4 ~~[administration fee]~~ (Sec. 54.032, Family Code) . . . \$20, if the
5 court ordering the fee is located in the Texas-Louisiana border
6 region, but otherwise not to exceed \$10;

7 (C) court costs for juvenile probation diversion
8 fund (Sec. 54.0411, Family Code) . . . \$20;

9 (D) a juvenile delinquency prevention fee (Sec.
10 54.0461, Family Code) . . . \$50 [~~\$5~~]; [~~and~~]

11 (E) a court fee for child's probationary period
12 (Sec. 54.061, Family Code) . . . not to exceed \$15 a month;

13 (F) a fee to cover costs of required duties of
14 teen court (Sec. 54.032, Family Code) . . . \$20, if the court
15 ordering the fee is located in the Texas-Louisiana border region,
16 but otherwise not to exceed \$10;

17 (G) a fee for DNA testing on commitment to
18 certain facilities (Sec. 54.0462, Family Code) . . . \$50; and

19 (H) a fee for DNA testing after placement on
20 probation or as otherwise required by law (Sec. 54.0462, Family
21 Code) . . . \$34.

22 SECTION 9. Subdivision (3), Section 411.141, Government
23 Code, is amended to read as follows:

24 (3) "Criminal justice agency" means:

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

1 the administration of criminal justice;

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

4 (C) a community supervision and corrections
5 department, a parole office, or a local juvenile probation
6 department or parole office [~~has the meaning assigned by Article~~
7 ~~60.01, Code of Criminal Procedure~~].

8 SECTION 10. Subsections (a), (d), (f-1), (j), and (k),
9 Section 411.148, Government Code, are amended to read as follows:

10 (a) This section applies to:

11 (1) an individual, other than a juvenile, who is:

12 (A) ordered by a magistrate or court to provide a
13 DNA sample under Section 411.154 or other law, including as part of
14 an order granting community supervision to the individual; or

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

17 (2) a juvenile who [~~is~~], following [~~after~~] an
18 adjudication for conduct constituting a felony, is:

19 (A) confined in a facility operated by or under
20 contract with the Texas Youth Commission; or

21 (B) placed on probation, if the conduct
22 constitutes a felony described by Section 54.0409, Family Code.

23 (d) If an individual described by Subsection (a)(1)(B) is
24 received into custody by the Texas Department of Criminal Justice,
25 that department shall collect the sample from the individual during
26 the diagnostic process or at another time determined by the Texas
27 Department of Criminal Justice. If an individual described by

1 Subsection (a)(2)(A) is received into custody by the Texas Youth
2 Commission, the youth commission shall collect the sample from the
3 individual during the initial examination or at another time
4 determined by the youth commission. If an individual who is
5 required under this section or other law to provide a DNA sample is
6 in the custody or under the supervision of another criminal justice
7 agency, such as a community supervision and corrections department,
8 a parole office, or a local juvenile probation department or parole
9 office, that agency shall collect the sample from the individual at
10 a time determined by the agency.

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

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)(A) [~~(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 or
7 adjudicated as having engaged in conduct constituting a felony and
8 is otherwise required to provide a DNA sample under this section.

9 SECTION 11. Subsection (e), Section 411.148, Government
10 Code, is repealed.

11 SECTION 12. (a) The changes in law made by this Act in
12 adding Subsection (j), Section 11, Article 42.12, Code of Criminal
13 Procedure, and Section 54.0409, Family Code, apply only to a person
14 who is granted community supervision or placed on juvenile
15 probation on or after the effective date of this Act.

16 (b) The changes in law made by this Act in amending Article
17 102.020, Code of Criminal Procedure, and adding Section 54.0462,
18 Family Code, apply only to an offense committed or conduct engaged
19 in on or after the effective date of this Act. An offense committed
20 or conduct engaged in before the effective date of this Act is
21 covered by the law in effect at the time the offense was committed
22 or the conduct was engaged in, and the former law is continued in
23 effect for that purpose. For purposes of this section, an offense
24 was committed or conduct was engaged in before the effective date of
25 this Act if any element of the offense or conduct occurred before
26 that date.

27 SECTION 13. To the extent of any conflict, this Act prevails

1 over another Act of the 81st Legislature, Regular Session, 2009,
2 relating to nonsubstantive additions to and corrections in enacted
3 codes.

4 SECTION 14. This Act does not make an appropriation. A
5 provision in this Act that creates a new governmental program,
6 creates a new entitlement, or imposes a new duty on a governmental
7 entity is not mandatory during a fiscal period for which the
8 legislature has not made a specific appropriation to implement the
9 provision.

10 SECTION 15. This Act takes effect September 1, 2009.