

1-1 By: Patrick S.B. No. 727  
1-2 (In the Senate - Filed February 9, 2009; February 25, 2009,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 7, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 7, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 727 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the creation of DNA records for the DNA database system.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. The heading to Article 102.020, Code of Criminal  
1-13 Procedure, is amended to read as follows:

1-14 Art. 102.020. COSTS RELATED TO [ON CONVICTION FOR OFFENSES  
1-15 REQUIRING] DNA TESTING.

1-16 SECTION 2. Article 102.020, Code of Criminal Procedure, is  
1-17 amended by amending Subsections (a) and (h) and adding Subsection  
1-18 (h-1) to read as follows:

1-19 (a) A person shall pay as a cost of court:

1-20 (1) \$250 [~~as a court cost~~] on conviction of an offense  
1-21 listed in Section 411.1471(a)(1), Government Code;

1-22 (2) [~~and~~] \$50 [~~as a court cost~~] on conviction of an  
1-23 offense listed in Section 411.1471(a)(3) of that code; or

1-24 (3) \$34 on placement of the person on community  
1-25 supervision, including deferred adjudication community  
1-26 supervision, if the person is required to submit a DNA sample under  
1-27 Section 11(j), Article 42.12.

1-28 (h) Except as provided by Subsection (h-1), the [The]  
1-29 comptroller shall deposit 35 percent of the funds received under  
1-30 this article in the state treasury to the credit of the state  
1-31 highway fund and 65 percent of the funds received under this article  
1-32 to the credit of the criminal justice planning account in the  
1-33 general revenue fund.

1-34 (h-1) The clerk of the court shall transfer to the  
1-35 comptroller any fees received under Subsection (a)(3). As  
1-36 appropriate, the comptroller shall apportion the fees among the  
1-37 funds of each entity required by law to take a DNA sample of the  
1-38 person.

1-39 SECTION 3. Chapter 54, Family Code, is amended by adding  
1-40 Section 54.0409 to read as follows:

1-41 Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY  
1-42 ADJUDICATIONS. (a) This section applies only to conduct  
1-43 constituting the commission of a felony:

1-44 (A) that is listed in Section 3g(a)(1), Article  
1-45 42.12, Code of Criminal Procedure; or

1-46 (B) for which it is shown that a deadly weapon, as  
1-47 defined by Section 1.07, Penal Code, was used or exhibited during  
1-48 the commission of the conduct or during immediate flight from the  
1-49 commission of the conduct.

1-50 (b) If a court or jury makes a disposition under Section  
1-51 54.04 in which a child is adjudicated as having engaged in conduct  
1-52 constituting the commission of a felony to which this section  
1-53 applies and the child is placed on probation, the court shall  
1-54 require as a condition of probation that the child provide a DNA  
1-55 sample under Subchapter G, Chapter 411, Government Code, for the  
1-56 purpose of creating a DNA record of the child, unless the child has  
1-57 already submitted the required sample under other state law.

1-58 SECTION 4. Chapter 54, Family Code, is amended by adding  
1-59 Section 54.0462 to read as follows:

1-60 Sec. 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA  
1-61 TESTING. (a) If a child is adjudicated as having engaged in  
1-62 delinquent conduct that constitutes the commission of a felony and  
1-63 the provision of a DNA sample is required under Section 54.0409 or

2-1 other law, the juvenile court shall order the child, parent, or  
 2-2 other person responsible for the child's support to pay to the court  
 2-3 as a cost of court:

2-4 (1) a \$50 fee if the disposition of the case includes a  
 2-5 commitment to a facility operated by or under contract with the  
 2-6 Texas Youth Commission; and

2-7 (2) a \$34 fee if the disposition of the case does not  
 2-8 include a commitment described by Subdivision (1) and the child is  
 2-9 required to submit a DNA sample under Section 54.0409 or other law.

2-10 (b) The clerk of the court shall transfer to the comptroller  
 2-11 any fees received under this section. As appropriate, the  
 2-12 comptroller shall apportion the fees among the funds of each entity  
 2-13 required by law to take a DNA sample of the child.

2-14 (c) If the court finds that a child, parent, or other person  
 2-15 responsible for the child's support is unable to pay the fee  
 2-16 required under Subsection (a), the court shall enter into the  
 2-17 child's case records a statement of that finding. The court may  
 2-18 waive a fee under this section only if the court makes the finding  
 2-19 under this subsection.

2-20 SECTION 5. Subsection (a), Section 61.002, Family Code, is  
 2-21 amended to read as follows:

2-22 (a) Except as provided by Subsection (b), this chapter  
 2-23 applies to a proceeding to enter a juvenile court order:

2-24 (1) for payment of probation fees under Section  
 2-25 54.061;

2-26 (2) for restitution under Sections 54.041(b) and  
 2-27 54.048;

2-28 (3) for payment of graffiti eradication fees under  
 2-29 Section 54.0461;

2-30 (4) for community service under Section 54.044(b);

2-31 (5) for payment of costs of court under Section  
 2-32 54.0411 or other provisions of law;

2-33 (6) requiring the person to refrain from doing any act  
 2-34 injurious to the welfare of the child under Section 54.041(a)(1);

2-35 (7) enjoining contact between the person and the child  
 2-36 who is the subject of a proceeding under Section 54.041(a)(2);

2-37 (8) ordering a person living in the same household  
 2-38 with the child to participate in counseling under Section  
 2-39 54.041(a)(3);

2-40 (9) requiring a parent or guardian of a child found to  
 2-41 be truant to participate in an available program addressing truancy  
 2-42 under Section 54.041(f);

2-43 (10) requiring a parent or other eligible person to  
 2-44 pay reasonable attorney's fees for representing the child under  
 2-45 Section 51.10(e);

2-46 (11) requiring the parent or other eligible person to  
 2-47 reimburse the county for payments the county has made to an attorney  
 2-48 appointed to represent the child under Section 51.10(j);

2-49 (12) requiring payment of deferred prosecution  
 2-50 supervision fees under Section 53.03(d);

2-51 (13) requiring a parent or other eligible person to  
 2-52 attend a court hearing under Section 51.115;

2-53 (14) requiring a parent or other eligible person to  
 2-54 act or refrain from acting to aid the child in complying with  
 2-55 conditions of release from detention under Section 54.01(r); ~~or~~

2-56 (15) requiring a parent or other eligible person to  
 2-57 act or refrain from acting under any law imposing an obligation of  
 2-58 action or omission on a parent or other eligible person because of  
 2-59 the parent's or person's relation to the child who is the subject of  
 2-60 a proceeding under this title; or

2-61 (16) for payment of fees under Section 54.0462.

2-62 SECTION 6. Section 11, Article 42.12, Code of Criminal  
 2-63 Procedure, is amended by adding Subsection (j) to read as follows:

2-64 (j) A judge granting community supervision to a defendant  
 2-65 convicted of a felony shall require that the defendant, as a  
 2-66 condition of community supervision, provide a DNA sample under  
 2-67 Subchapter G, Chapter 411, Government Code, for the purpose of  
 2-68 creating a DNA record of the defendant, unless the defendant has  
 2-69 already submitted the required sample under other state law.

3-1 SECTION 7. (a) Section 102.021, Government Code, is  
3-2 amended to conform to Chapter 1263 (H.B. 3060), Acts of the 80th  
3-3 Legislature, Regular Session, 2007, and is further amended to read  
3-4 as follows:

3-5 Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL  
3-6 PROCEDURE. A person convicted of an offense shall pay the following  
3-7 under the Code of Criminal Procedure, in addition to all other  
3-8 costs:

3-9 (1) court cost on conviction of any offense, other  
3-10 than a conviction of an offense relating to a pedestrian or the  
3-11 parking of a motor vehicle (Art. 102.0045, Code of Criminal  
3-12 Procedure) . . . \$4;

3-13 (2) a fee for services of prosecutor (Art. 102.008,  
3-14 Code of Criminal Procedure) . . . \$25;

3-15 (3) fees for services of peace officer:

3-16 (A) issuing a written notice to appear in court  
3-17 for certain violations (Art. 102.011, Code of Criminal Procedure)  
3-18 . . . \$5;

3-19 (B) executing or processing an issued arrest  
3-20 warrant, ~~or~~ capias, or capias pro fine (Art. 102.011, Code of  
3-21 Criminal Procedure) . . . \$50;

3-22 (C) summoning a witness (Art. 102.011, Code of  
3-23 Criminal Procedure) . . . \$5;

3-24 (D) serving a writ not otherwise listed (Art.  
3-25 102.011, Code of Criminal Procedure) . . . \$35;

3-26 (E) taking and approving a bond and, if  
3-27 necessary, returning the bond to courthouse (Art. 102.011, Code of  
3-28 Criminal Procedure) . . . \$10;

3-29 (F) commitment or release (Art. 102.011, Code of  
3-30 Criminal Procedure) . . . \$5;

3-31 (G) summoning a jury (Art. 102.011, Code of  
3-32 Criminal Procedure) . . . \$5;

3-33 (H) attendance of a prisoner in habeas corpus  
3-34 case if prisoner has been remanded to custody or held to bail (Art.  
3-35 102.011, Code of Criminal Procedure) . . . \$8 each day;

3-36 (I) mileage for certain services performed (Art.  
3-37 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

3-38 (J) services of a sheriff or constable who serves  
3-39 process and attends examining trial in certain cases (Art. 102.011,  
3-40 Code of Criminal Procedure) . . . not to exceed \$5;

3-41 (4) services of a peace officer in conveying a witness  
3-42 outside the county (Art. 102.011, Code of Criminal Procedure) . . .  
3-43 \$10 per day or part of a day, plus actual necessary travel expenses;

3-44 (5) overtime of peace officer for time spent  
3-45 testifying in the trial or traveling to or from testifying in the  
3-46 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

3-47 (6) court costs on an offense relating to rules of the  
3-48 road, when offense occurs within a school crossing zone (Art.  
3-49 102.014, Code of Criminal Procedure) . . . \$25;

3-50 (7) court costs on an offense of passing a school bus  
3-51 (Art. 102.014, Code of Criminal Procedure) . . . \$25;

3-52 (8) court costs on an offense of truancy or  
3-53 contributing to truancy (Art. 102.014, Code of Criminal Procedure)  
3-54 . . . \$20;

3-55 (9) cost for visual recording of intoxication arrest  
3-56 before conviction (Art. 102.018, Code of Criminal Procedure) . . .  
3-57 \$15;

3-58 (10) cost of certain evaluations (Art. 102.018, Code  
3-59 of Criminal Procedure) . . . actual cost;

3-60 (11) additional costs attendant to certain  
3-61 intoxication convictions under Chapter 49, Penal Code, for  
3-62 emergency medical services, trauma facilities, and trauma care  
3-63 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

3-64 (12) additional costs attendant to certain child  
3-65 sexual assault and related convictions, for child abuse prevention  
3-66 programs (Art. 102.0186, Code of Criminal Procedure) . . . \$100;

3-67 (13) court cost for DNA testing for certain felonies  
3-68 (Art. 102.020(a)(1) [~~102.020~~], Code of Criminal Procedure) . . .  
3-69 \$250;

4-1 (14) court cost for DNA testing for the [on an] offense  
4-2 of public lewdness or indecent exposure (Art. 102.020(a)(2)  
4-3 [~~102.020~~], Code of Criminal Procedure) . . . \$50;

4-4 (15) court cost for DNA testing for certain felonies  
4-5 (Art. 102.020(a)(3), Code of Criminal Procedure) . . . \$34;

4-6 (16) if required by the court, a restitution fee for  
4-7 costs incurred in collecting restitution installments and for the  
4-8 compensation to victims of crime fund (Art. 42.037, Code of  
4-9 Criminal Procedure) . . . \$12; [~~and~~]

4-10 (17) [~~(16)~~] if directed by the justice of the peace or  
4-11 municipal court judge hearing the case, court costs on conviction  
4-12 in a criminal action (Art. 45.041, Code of Criminal Procedure)  
4-13 . . . part or all of the costs as directed by the judge; and

4-14 (18) costs attendant to convictions under Chapter 49,  
4-15 Penal Code, and under Chapter 481, Health and Safety Code, to help  
4-16 fund drug court programs established under Chapter 469, Health and  
4-17 Safety Code (Art. 102.0178, Code of Criminal Procedure) . . . \$50.

4-18 (b) Section 102.0215, Government Code, is repealed.

4-19 SECTION 8. Section 103.0212, Government Code, is amended to  
4-20 conform to Chapters 910 (H.B. 2949) and 1053 (H.B. 2151), Acts of  
4-21 the 80th Legislature, Regular Session, 2007, and is further amended  
4-22 to read as follows:

4-23 Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR  
4-24 CIVIL CASES: FAMILY CODE. An accused or defendant, or a party to a  
4-25 civil suit, as applicable, shall pay the following fees and costs  
4-26 under the Family Code if ordered by the court or otherwise required:

4-27 (1) in family matters:

4-28 (A) issuing writ of withholding (Sec. 8.262,  
4-29 Family Code) . . . \$15;

4-30 (B) filing copy of writ of withholding to  
4-31 subsequent employer (Sec. 8.267, Family Code) . . . \$15;

4-32 (C) issuing and delivering modified writ of  
4-33 withholding or notice of termination (Sec. 8.302, Family Code)  
4-34 . . . \$15;

4-35 (D) issuing and delivering notice of termination  
4-36 of withholding (Sec. 8.303, Family Code) . . . \$15;

4-37 (E) issuance of change of name certificate (Sec.  
4-38 45.106, Family Code) . . . \$10;

4-39 (F) protective order fee (Sec. 81.003, Family  
4-40 Code) . . . \$16;

4-41 (G) filing suit requesting adoption of child  
4-42 (Sec. 108.006, Family Code) . . . \$15;

4-43 (H) filing fees for suits affecting parent-child  
4-44 relationship (Sec. 110.002, Family Code):

4-45 (i) suit or motion for modification (Sec.  
4-46 110.002, Family Code) . . . \$15;

4-47 (ii) motion for enforcement (Sec. 110.002,  
4-48 Family Code) . . . \$15;

4-49 (iii) notice of application for judicial  
4-50 writ of withholding (Sec. 110.002, Family Code) . . . \$15;

4-51 (iv) motion to transfer (Sec. 110.002,  
4-52 Family Code) . . . \$15;

4-53 (v) petition for license suspension (Sec.  
4-54 110.002, Family Code) . . . \$15;

4-55 (vi) motion to revoke a stay of license  
4-56 suspension (Sec. 110.002, Family Code) . . . \$15; and

4-57 (vii) motion for contempt (Sec. 110.002,  
4-58 Family Code) . . . \$15;

4-59 (I) order or writ of income withholding to be  
4-60 delivered to employer (Sec. 110.004, Family Code) . . . not to  
4-61 exceed \$15;

4-62 (J) filing fee for transferred case (Sec.  
4-63 110.005, Family Code) . . . \$45;

4-64 (K) filing a writ of withholding (Sec. 158.319,  
4-65 Family Code) . . . \$15;

4-66 (L) filing a request for modified writ of  
4-67 withholding or notice of termination (Sec. 158.403, Family Code)  
4-68 . . . not to exceed \$15;

4-69 (M) filing an administrative writ to employer

5-1 (Sec. 158.503, Family Code) . . . not to exceed \$15; and  
 5-2 (N) genetic testing fees in relation to a child  
 5-3 born to a gestational mother (Sec. 160.762, Family Code) . . . as  
 5-4 assessed by the court; and  
 5-5 (2) in juvenile court:  
 5-6 (A) fee schedule for deferred prosecution  
 5-7 services (Sec. 53.03, Family Code) . . . maximum fee of \$15 a month;  
 5-8 (B) a request fee for a teen court program  
 5-9 [administration fee] (Sec. 54.032, Family Code) . . . \$20, if the  
 5-10 court ordering the fee is located in the Texas-Louisiana border  
 5-11 region, but otherwise not to exceed \$10;  
 5-12 (C) court costs for juvenile probation diversion  
 5-13 fund (Sec. 54.0411, Family Code) . . . \$20;  
 5-14 (D) a juvenile delinquency prevention fee (Sec.  
 5-15 54.0461, Family Code) . . . \$50 [~~\$5~~]; ~~and~~  
 5-16 (E) a court fee for child's probationary period  
 5-17 (Sec. 54.061, Family Code) . . . not to exceed \$15 a month;  
 5-18 (F) a fee to cover costs of required duties of  
 5-19 teen court (Sec. 54.032, Family Code) . . . \$20, if the court  
 5-20 ordering the fee is located in the Texas-Louisiana border region,  
 5-21 but otherwise not to exceed \$10;  
 5-22 (G) a fee for DNA testing on commitment to  
 5-23 certain facilities (Sec. 54.0462, Family Code) . . . \$50; and  
 5-24 (H) a fee for DNA testing after placement on  
 5-25 probation or as otherwise required by law (Sec. 54.0462, Family  
 5-26 Code) . . . \$34.  
 5-27 SECTION 9. Subdivision (3), Section 411.141, Government  
 5-28 Code, is amended to read as follows:  
 5-29 (3) "Criminal justice agency" means:  
 5-30 (A) a federal or state agency that is engaged in  
 5-31 the administration of criminal justice under a statute or executive  
 5-32 order and that allocates a substantial part of its annual budget to  
 5-33 the administration of criminal justice;  
 5-34 (B) a secure correctional facility as defined by  
 5-35 Section 1.07, Penal Code; or  
 5-36 (C) a community supervision and corrections  
 5-37 department, a parole office, or a local juvenile probation  
 5-38 department or parole office [has the meaning assigned by Article  
 5-39 60.01, Code of Criminal Procedure].  
 5-40 SECTION 10. Subsections (a), (d), (f-1), (j), and (k),  
 5-41 Section 411.148, Government Code, are amended to read as follows:  
 5-42 (a) This section applies to:  
 5-43 (1) an individual, other than a juvenile, who is:  
 5-44 (A) ordered by a magistrate or court to provide a  
 5-45 DNA sample under Section 411.154 or other law, including as part of  
 5-46 an order granting community supervision to the individual; or  
 5-47 (B) confined in a penal institution operated by  
 5-48 or under contract with the Texas Department of Criminal Justice; or  
 5-49 (2) a juvenile who ~~[is]~~, following ~~[after]~~ an  
 5-50 adjudication for conduct constituting a felony, is:  
 5-51 (A) confined in a facility operated by or under  
 5-52 contract with the Texas Youth Commission; or  
 5-53 (B) placed on probation, if the conduct  
 5-54 constitutes a felony described by Section 54.0409, Family Code.  
 5-55 (d) If an individual described by Subsection (a)(1)(B) is  
 5-56 received into custody by the Texas Department of Criminal Justice,  
 5-57 that department shall collect the sample from the individual during  
 5-58 the diagnostic process or at another time determined by the Texas  
 5-59 Department of Criminal Justice. If an individual described by  
 5-60 Subsection (a)(2)(A) is received into custody by the Texas Youth  
 5-61 Commission, the youth commission shall collect the sample from the  
 5-62 individual during the initial examination or at another time  
 5-63 determined by the youth commission. If an individual who is  
 5-64 required under this section or other law to provide a DNA sample is  
 5-65 in the custody or under the supervision of another criminal justice  
 5-66 agency, such as a community supervision and corrections department,  
 5-67 a parole office, or a local juvenile probation department or parole  
 5-68 office, that agency shall collect the sample from the individual at  
 5-69 a time determined by the agency.

6-1 (f-1) The Texas Youth Commission shall notify the director  
6-2 that an individual described by Subsection (a)(2)(A) [~~(a)(2)~~] is to  
6-3 be released from custody not earlier than the 120th day before the  
6-4 individual's release date.

6-5 (j)(1) The Texas Youth Commission as soon as practicable  
6-6 shall cause a sample to be collected from an individual described by  
6-7 Subsection (a)(2)(A) [~~(a)(2)~~] if:

6-8 (A) the individual is detained in another  
6-9 juvenile detention facility after adjudication and before  
6-10 admission to the youth commission; and

6-11 (B) the youth commission determines the  
6-12 individual is likely to be released before being admitted to the  
6-13 youth commission.

6-14 (2) The administrator of the other juvenile detention  
6-15 facility shall cooperate with the Texas Youth Commission as  
6-16 necessary to allow the youth commission to perform its duties under  
6-17 this subsection.

6-18 (k) When a criminal justice agency of this state agrees to  
6-19 accept custody or supervision of an individual from another state  
6-20 or jurisdiction under an interstate compact or a reciprocal  
6-21 agreement with a local, county, state, or federal agency, the  
6-22 acceptance is conditional on the individual providing a DNA sample  
6-23 under this subchapter if the individual was convicted of or  
6-24 adjudicated as having engaged in conduct constituting a felony and  
6-25 is otherwise required to provide a DNA sample under this section.

6-26 SECTION 11. Subsection (e), Section 411.148, Government  
6-27 Code, is repealed.

6-28 SECTION 12. (a) The changes in law made by this Act in  
6-29 adding Subsection (j), Section 11, Article 42.12, Code of Criminal  
6-30 Procedure, and Section 54.0409, Family Code, apply only to a person  
6-31 who is granted community supervision or placed on juvenile  
6-32 probation on or after the effective date of this Act.

6-33 (b) The changes in law made by this Act in amending Article  
6-34 102.020, Code of Criminal Procedure, and adding Section 54.0462,  
6-35 Family Code, apply only to an offense committed or conduct engaged  
6-36 in on or after the effective date of this Act. An offense committed  
6-37 or conduct engaged in before the effective date of this Act is  
6-38 covered by the law in effect at the time the offense was committed  
6-39 or the conduct was engaged in, and the former law is continued in  
6-40 effect for that purpose. For purposes of this section, an offense  
6-41 was committed or conduct was engaged in before the effective date of  
6-42 this Act if any element of the offense or conduct occurred before  
6-43 that date.

6-44 SECTION 13. To the extent of any conflict, this Act prevails  
6-45 over another Act of the 81st Legislature, Regular Session, 2009,  
6-46 relating to nonsubstantive additions to and corrections in enacted  
6-47 codes.

6-48 SECTION 14. This Act takes effect September 1, 2009.

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