

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 14, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB727 by Patrick, Dan (Relating to the creation of DNA records for the DNA database system.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB727, As Passed 2nd House: a positive impact of \$1,728,000 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would require a defendant convicted of certain offenses who is placed on community supervision, including deferred adjudication community supervision, to submit a DNA sample and to pay a court cost of \$34.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	\$502,000
2011	\$1,226,000
2012	\$1,249,000
2013	\$1,273,000
2014	\$1,298,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/ (Loss) from <i>General Revenue Fund</i> 1	Probable (Cost) from <i>State Highway Fund</i> 6	Change in Number of State Employees from FY 2009
2010	\$502,000	(\$2,197,948)	6.0
2011	\$1,226,000	(\$1,850,886)	6.0
2012	\$1,249,000	(\$1,850,886)	6.0
2013	\$1,273,000	(\$1,858,512)	6.0
2014	\$1,298,000	(\$1,850,886)	6.0

Fiscal Analysis

The bill would amend the Code of Criminal Procedure, Article 102.020 (a) by adding a required \$34 court cost for persons placed on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Article 42.12, Section 11(j). The court may waive the court cost if it determines that the defendant is indigent and unable to pay.

The bill would amend the Family Code, Chapter 54 to require DNA samples for certain felony

adjudications by juveniles and require the youth or parent to pay a \$50 disposition fee if committed to the Youth Commission (TYC) or a \$34 fee if the child is not committed to TYC. The changes made by the bill to the Code of Criminal Procedure, Article 102.020(a) and to the Family Code, Chapter 54 would apply only to offenses committed on or after the effective date of the bill. The bill would require courts to order DNA testing as a condition of probation for adults convicted of a felony and placed on community supervision, and juveniles adjudicated as having engaged in conduct constituting a felony and placed on juvenile probation. The bill would require the agency that has custody or supervision of the person to collect the sample.

The bill would require that funds collected from the \$34 and \$50 court costs are to be remitted to the Comptroller of Public Accounts, and that agency would credit these funds to the Department of Public Safety to defray the cost of DNA samples from the defendants required to pay these court costs.

The bill would amend the Code of Criminal Procedure, Article 42.12 by adding subsection 11(j) to require a defendant convicted of a felony to submit a DNA sample as a condition of community supervision unless the defendant has already submitted a DNA sample required by other state law. These changes would be applicable to a person placed on community supervision on or after the effective date of the bill.

The bill would amend the Government Code, Section 411.141(3) to revise the definition of criminal justice agency to include federal and state agencies engaged in the administration of criminal justice; secure correctional facilities; community supervision and corrections departments; parole officers; and local juvenile probation departments.

The bill would amend the Government Code, Section 411.146 by adding subsection (g) to require the director to destroy a DNA sample immediately after the creation of a DNA record if collected under Code of Criminal Procedure, Article 42.12, Section 11(j); Family Code, Section 54.0409; or Government Code, Sections 411.148, 411.1471, and 411.1473.

The bill would repeal Government Code, Section 411.148 (e) regarding TYC's notification responsibility of a juvenile's release. The bill would require TYC to notify the director of the Department of Public Safety (DPS) of the release of a juvenile described above not earlier than the 120th day before the release date and not later than the 90th day before the juvenile's release. The bill would take effect September 1, 2009.

Methodology

The Juvenile Probation Commission (JPC), the Department of Criminal Justice (TDCJ), and TYC anticipate no fiscal implication to the State. DPS anticipates a cost of \$2,197,948 in State Highway Fund 6 in fiscal year 2010 and \$1,850,886 in fiscal year 2011, with total costs of \$9,609,118 for all five years of this analysis.

DPS estimates 60,000 additional samples per year as a result of the bill. The agency reports that additional equipment, including an automated swab punching system, four DNA extraction robots, and one liquid handling robot totaling \$344,397 would be needed in the first year with continuing equipment costs of \$7,626 in future years. DPS anticipates the need for six additional full-time-equivalents (FTEs) with \$506,344 in salaries and wages, \$144,662 in benefits, and \$5,000 in travel in fiscal years 2010-11 with continuing FTE related costs of \$984,009 in future years.

The Comptroller of Public Accounts (CPA) bases its revenue estimate on the fiscal impact from the various new court costs on historical data from the Annual Statistical Report for the Texas Judiciary (for multiple years) and TDCJ, adjusted for growth, indigency, implementation, and retention by local governments. The court costs for adult placements on community supervision, juvenile placements in TYC facilities, juvenile placements on community supervision and other juvenile felony adjudications were reduced to reflect historical non-collection rates, and adjusted for an implementation lag. The bill directs the CPA to make deposits to funds of affected entities. For purposes of this fiscal impact estimate, the CPA assumed that these deposits would be made to General Revenue Fund 0001 since TDCJ, TYC and JPC are primarily funded with General Revenue. The CPA estimated approximately 40,000 adult placements for 2010 with an annual growth of 2.5 percent and a collection rate of 70

percent, with an assessment start date of January 1, 2010. The CPA estimated approximately 10,000 juvenile placements for 2010 with an annual growth of 0 percent and a collection rate of 70 percent, with an assessment start date of January 1, 2010.

According to the Office of Court Administration, the option for a judge to waive the \$34 court costs if a defendant is found indigent is not expected to have a substantial impact on estimated revenues.

Technology

The fiscal impact of technology for DPS is estimated at \$12,552 in fiscal years 2010-11, with continuing costs of \$10,308 in future years.

Local Government Impact

Local governmental entities could experience costs which would vary by county depending on the number of defendants placed on community supervision who are required to provide a DNA sample. The costs incurred may include purchasing additional DNA kits (Harris County stated a DNA testing kit costs \$3) and processing additional defendants required to create a DNA record. None of the \$34 and \$50 court costs added by the bill would be retained locally.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety, 665 Juvenile Probation Commission, 694 Youth Commission, 696 Department of Criminal Justice

LBB Staff: JOB, SD, GG, JJO, LM, ESi, AI, TP