

BILL ANALYSIS

C.S.H.B. 3383
By: Madden
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent articles show that property crimes and property crime claims are on the rise in Texas. As a result, several Texas law enforcement agencies are interested in utilizing their budgets to test evidence in property crimes for DNA to reduce the rate of property crime. Currently, these agencies cannot work with a private DNA laboratory to test evidence because the FBI requires public laboratories to review certain analyses from private laboratories. Texas' public laboratories cannot spare the resources for this review because of the high demand for DNA testing for violent crimes. Private laboratories have offered to test many cases submitted to public laboratories at no charge to help offset the costs of these reviews; however, no public laboratories have been willing to accept this offer.

In order to remedy this issue, C.S.H.B. 3383 seeks to increase the authorized use of a private DNA laboratory for forensic analysis on items related to the investigation or prosecution of certain property crimes.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3383 amends the Government Code to authorize a law enforcement agency, if the law enforcement agency pays all the costs, to submit a sample or specimen related to the investigation or prosecution of an offense of arson, criminal mischief, or other property damage or destruction, robbery, burglary, criminal trespass, or theft to a private DNA laboratory for forensic analysis accredited by the Department of Public Safety and the American Society of Crime Laboratory Directors, Forensic Quality Services International, or any other nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community.

C.S.H.B. 3383 requires, with respect to forensic analyses performed by a private DNA laboratory, a public DNA laboratory that services the geographic area where the law enforcement agency is located to perform the quality assurance reviews required by the Federal Bureau of Investigation (FBI). The bill requires the public DNA laboratory to use contractors to perform the quality assurance reviews required by the FBI if the laboratory does not have the personnel capacity to perform the necessary quality assurance reviews and if FBI regulations allow contractors to be used for that purpose. The bill requires the law enforcement agency requesting the DNA testing to pay the cost of the quality assurance reviews. The bill requires the public DNA laboratory, if the FBI regulations do not allow contractors to be used to perform the necessary quality assurance reviews or if contractors are not available for that purpose, to enter into a barter agreement with the private DNA laboratory to enable personnel at the public DNA laboratory to perform the necessary quality assurance reviews.

C.S.H.B. 3383 requires the private DNA laboratory, under the barter agreement, to perform forensic DNA analyses for the public DNA laboratory in relation to the investigation or prosecution of a variety of offenses at no cost to the public DNA laboratory and in a volume necessary to enable the public DNA laboratory to perform all necessary quality assurance reviews and sets out the assumptions on which the barter agreement calculation must be based. The bill establishes the formula for determining the amount of forensic analyses performed at no charge by a private DNA laboratory as part of the barter agreement and requires the amount to be rounded to the nearest whole number. The bill entitles the public DNA laboratory to retain any costs saved as a result of the barter agreement and requires the laboratory to use the savings, if any, to expedite forensic analyses of samples or specimens related to violent offenses. The bill defines "analyst."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3383 differs from the original by defining "analyst" as a person employed at a DNA laboratory who is qualified to perform some or all aspects of a forensic DNA analysis on certain samples or specimens, whereas the original defines "analyst" as a person employed at a DNA laboratory who is qualified to perform a forensic analysis on those samples or specimens.

C.S.H.B. 3383 differs from the original by requiring, with respect to forensic analyses performed by a private DNA laboratory, a public DNA laboratory that services the geographic area where the law enforcement agency is located to perform the quality assurance reviews required by the Federal Bureau of Investigation (FBI), whereas the original requires, with respect to those analyses, a public laboratory that services the geographic area where the private DNA laboratory is located to perform such reviews.

C.S.H.B. 3383 contains provisions not included in the original requiring the public DNA laboratory to use contractors to perform the required quality assurance reviews if the laboratory does not have the personnel capacity to perform the necessary reviews and if FBI regulations allow contractors to be used for that purpose and requiring the law enforcement agency requesting the DNA testing to pay the cost of the reviews.

C.S.H.B. 3383 differs from the original by requiring the public DNA laboratory to enter into a barter agreement with the private DNA laboratory if FBI regulations do not allow contractors to be used to perform the necessary quality assurance reviews or if contractors are not available for that purpose, whereas the original requires the public DNA laboratory to enter into a barter agreement with the private DNA laboratory if the public DNA laboratory does not have adequate resources to perform the necessary quality assurance reviews. The substitute differs from the original by requiring the public DNA laboratory to enter into the barter agreement to enable personnel at the public DNA laboratory to perform the necessary quality assurance reviews, whereas the original requires the public DNA laboratory to enter into the agreement with respect to which the quality assurance reviews must be performed.

C.S.H.B. 3383 differs from the original by setting out the assumptions on which the barter agreement calculation must be based, whereas the original sets out the required conditions of the barter agreement. The substitute differs from the original by including among the assumptions that an analyst employed at the public DNA laboratory is able to perform a certain number of quality assurance reviews unless the analyst has other testing-related duties, whereas the original includes among the conditions that such an analyst must perform that number of quality assurance reviews. The substitute differs from the original by including among the assumptions that the private DNA laboratory must agree to perform a set amount of forensic analyses for the public DNA laboratory at no charge not later than the 60th day after the date the private DNA

laboratory receives the samples or specimens, whereas the original includes the condition that the private DNA laboratory must agree to perform a set amount of analyses each week. The substitute differs from the original by including among the assumptions that the public DNA laboratory must send the private DNA laboratory a specified proportion of different types or categories of samples or specimens, whereas the original includes in the conditions that the private DNA laboratory must perform forensic analyses on the specified proportion of different types or categories of samples or specimens.

C.S.H.B. 3383 differs from the original by establishing that the set amount of forensic analyses performed by a private DNA laboratory at no charge is equal to the total number of samples or specimens submitted to the public DNA laboratory for quality assurance review, divided by 50, and then multiplied by the total number of samples or specimens for which the public DNA laboratory has performed forensic analyses during the 12-month period preceding the date of the agreement, divided by the number of analysts employed at the public laboratory during that period, and further divided by 52, whereas the original establishes that the set amount for those analyses performed by a private DNA laboratory each week is equal to the total number of samples or specimens for which the public DNA laboratory has performed during that 12-month period, divided by the number of public DNA laboratory-employed analysts during that period, and further divided by 52. The substitute contains a provision not included in the original requiring the amount of forensic analyses performed at no charge by a private DNA laboratory, as determined by the formula, to be rounded to the nearest whole number.

C.S.H.B. 3383 differs from the original in nonsubstantive ways.