

By: Patrick

S.B. No. 1548

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the creation of DNA records for the DNA database system
3 and to an offense involving the release of a DNA sample to an
4 unauthorized recipient.

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

6 SECTION 1. Section 54.0409(b), Family Code, is amended to
7 read as follows:

8 (b) Unless the child has already submitted a required sample
9 under other state law [~~If a court or jury makes a disposition under~~
10 ~~Section 54.04 in which a child is adjudicated as having engaged in~~
11 ~~conduct constituting the commission of a felony to which this~~
12 ~~section applies and the child is placed on probation], the court
13 shall require as a condition of deferred prosecution or probation,
14 as appropriate, that a [~~the~~] child provide a DNA sample under
15 Subchapter G, Chapter 411, Government Code, for the purpose of
16 creating a DNA record of the child if:~~

17 (1) the child is placed on deferred prosecution after
18 a petition is filed alleging that the child engaged in conduct
19 constituting the commission of a felony to which this section
20 applies; or

21 (2) the child is placed on probation after a
22 disposition under Section 54.04 by the court or a jury in which the
23 child is adjudicated as having engaged in conduct constituting the
24 commission of a felony to which this section applies [~~, unless the~~

1 ~~child has already submitted the required sample under other state~~
2 ~~law].~~

3 SECTION 2. Section 54.0462(a), Family Code, is amended to
4 read as follows:

5 (a) If a child is alleged to have engaged in or adjudicated
6 as having engaged in delinquent conduct that constitutes the
7 commission of a felony and if the provision of a DNA sample is
8 required under Section 54.0409 or other law in relation to that
9 conduct, the juvenile court shall order the child, parent, or other
10 person responsible for the child's support to pay to the court as a
11 cost of court:

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

15 (2) a \$34 fee if the disposition of the case does not
16 include a commitment described by Subdivision (1) but does include
17 placement of the child on probation or deferred prosecution [~~and~~
18 ~~the child is required to submit a DNA sample under Section 54.0409~~
19 ~~or other law~~].

20 SECTION 3. Section 103.0212, Government Code, is amended to
21 read as follows:

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

26 (1) in family matters:

27 (A) issuing writ of withholding (Sec. 8.262,

- 1 Family Code) . . . \$15;
- 2 (B) filing copy of writ of withholding to
- 3 subsequent employer (Sec. 8.267, Family Code) . . . \$15;
- 4 (C) issuing and delivering modified writ of
- 5 withholding or notice of termination (Sec. 8.302, Family Code)
- 6 . . . \$15;
- 7 (D) issuing and delivering notice of termination
- 8 of withholding (Sec. 8.303, Family Code) . . . \$15;
- 9 (E) issuance of change of name certificate (Sec.
- 10 45.106, Family Code) . . . \$10;
- 11 (F) protective order fee (Sec. 81.003, Family
- 12 Code) . . . \$16;
- 13 (G) filing suit requesting adoption of child
- 14 (Sec. 108.006, Family Code) . . . \$15;
- 15 (H) filing fees for suits affecting parent-child
- 16 relationship (Sec. 110.002, Family Code):
- 17 (i) suit or motion for modification (Sec.
- 18 110.002, Family Code) . . . \$15;
- 19 (ii) motion for enforcement (Sec. 110.002,
- 20 Family Code) . . . \$15;
- 21 (iii) notice of application for judicial
- 22 writ of withholding (Sec. 110.002, Family Code) . . . \$15;
- 23 (iv) motion to transfer (Sec. 110.002,
- 24 Family Code) . . . \$15;
- 25 (v) petition for license suspension (Sec.
- 26 110.002, Family Code) . . . \$15;
- 27 (vi) motion to revoke a stay of license

1 suspension (Sec. 110.002, Family Code) . . . \$15; and

2 (vii) motion for contempt (Sec. 110.002,
3 Family Code) . . . \$15;

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

7 (J) filing fee for transferred case (Sec.
8 110.005, Family Code) . . . \$45;

9 (K) filing a writ of withholding (Sec. 158.319,
10 Family Code) . . . \$15;

11 (L) filing a request for modified writ of
12 withholding or notice of termination (Sec. 158.403, Family Code)
13 . . . not to exceed \$15;

14 (M) filing an administrative writ to employer
15 (Sec. 158.503, Family Code) . . . not to exceed \$15; and

16 (N) genetic testing fees in relation to a child
17 born to a gestational mother (Sec. 160.762, Family Code) . . . as
18 assessed by the court; and

19 (2) in juvenile court:

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

22 (B) a request fee for a teen court program (Sec.
23 54.032, Family Code) . . . \$20, if the court ordering the fee is
24 located in the Texas-Louisiana border region, but otherwise not to
25 exceed \$10;

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

1 (D) a juvenile delinquency prevention fee (Sec.
2 54.0461, Family Code) . . . \$50;

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

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

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

11 (H) a fee for DNA testing after placement on
12 probation or deferred prosecution or as otherwise required by law
13 (Sec. 54.0462, Family Code) . . . \$34.

14 SECTION 4. Section 411.142, Government Code, is amended by
15 amending Subsections (c) and (e) and adding Subsections (e-1) and
16 (e-2) to read as follows:

17 (c) The director may receive, analyze, store, and destroy a
18 DNA record or DNA sample for the purposes described by Section
19 411.143.

20 (e) The director, with advice from the Department of
21 Information Resources, shall develop biennial plans to:

22 (1) improve the reporting and accuracy of the DNA
23 database; ~~and~~

24 (2) develop and maintain a monitoring system capable
25 of identifying inaccurate or incomplete information; and

26 (3) develop and maintain a computerized system to
27 minimize duplicate sample collection and testing.

1 (e-1) For the purpose of verifying whether a DNA sample has
2 previously been collected from any person, the department may make
3 information regarding the sample available, by secure electronic
4 means, to:

5 (1) local, state, and federal law enforcement
6 agencies; and

7 (2) the Texas Department of Criminal Justice, the
8 Texas Youth Commission, and other correctional facilities, as
9 defined by Section 1.07, Penal Code.

10 (e-2) Information provided by the department under
11 Subsection (e-1) may not include any test results associated with a
12 DNA sample.

13 SECTION 5. Section 411.143, Government Code, is amended by
14 adding Subsection (d-1) to read as follows:

15 (d-1) Regardless of the purpose for obtaining the
16 information, information in the DNA database that relates to a DNA
17 sample collected under Section 411.1471 or 411.148 may not be
18 analyzed for human physical traits, predisposition for disease, or
19 any other health-related purpose.

20 SECTION 6. The heading to Section 411.1471, Government
21 Code, is amended to read as follows:

22 Sec. 411.1471. DNA RECORDS OF PERSONS CHARGED WITH OR
23 CONVICTED OF CERTAIN OFFENSES [~~FELONIES~~].

24 SECTION 7. Sections 411.1471(a) and (f), Government Code,
25 are amended to read as follows:

26 (a) This section applies to a defendant who is:

27 (1) indicted or waives indictment for a felony

1 prohibited or punishable under any of the following Penal Code
2 sections:

- 3 (A) Section 20.04(a)(4);
- 4 (B) Section 21.11;
- 5 (C) Section 22.011;
- 6 (D) Section 22.021;
- 7 (E) Section 25.02;
- 8 (F) Section 30.02(d);
- 9 (G) Section 43.05;
- 10 (H) Section 43.25;
- 11 (I) Section 43.26; or
- 12 (J) Section 21.02;

13 (2) arrested for any offense punishable as a Class B
14 misdemeanor or any higher category of offense [~~a felony described~~
15 ~~by Subdivision (1) after having been previously convicted of or~~
16 ~~placed on deferred adjudication for an offense described by~~
17 ~~Subdivision (1) or an offense punishable under Section 30.02(c)(2),~~
18 ~~Penal Code~~]; or

19 (3) convicted of or placed on deferred adjudication
20 for an offense under Section 21.07 or 21.08, Penal Code.

21 (f) A defendant who provides a DNA sample under this section
22 is not required to provide a DNA sample under Section 411.148 unless
23 an attorney representing the state [~~in the prosecution of felony~~
24 ~~offenses~~] establishes to the satisfaction of the director that the
25 interests of justice or public safety require that the defendant
26 provide additional samples.

27 SECTION 8. Section 411.148(a), Government Code, is amended

1 to read as follows:

2 (a) This section applies to:

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

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

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

9 (2) a juvenile who ~~[, following an adjudication for~~
10 ~~conduct constituting a felony,~~] is:

11 (A) following an adjudication for conduct
12 constituting any felony, confined in a facility operated by or
13 under contract with the Texas Youth Commission; ~~[or]~~

14 (B) placed on probation following an
15 adjudication for ~~[, if the]~~ conduct constituting ~~[constitutes]~~ a
16 felony described by Section 54.0409, Family Code; or

17 (C) placed on deferred prosecution after a
18 petition is filed alleging that the juvenile engaged in conduct
19 constituting a felony described by Section 54.0409, Family Code.

20 SECTION 9. Section 411.151, Government Code, is amended by
21 amending Subsection (a) and adding Subsection (e) to read as
22 follows:

23 (a) The director shall expunge a DNA record of an individual
24 from a DNA database, including the destruction of the associated
25 DNA sample, if the person:

26 (1) notifies the director in writing that the DNA
27 record has been ordered to be expunged under this section or Chapter

1 55, Code of Criminal Procedure, and provides the director with a
2 certified copy of the court order that expunges the DNA record; or

3 (2) provides the director with:

4 (A) a certified copy of a court order issued
5 under Section 58.003, Family Code, that seals the juvenile record
6 of the adjudication that resulted in the DNA record;

7 (B) a certified copy of the judgment in the case
8 showing an acquittal, an entry of nolle prosequi, or a discharge and
9 dismissal after the successful completion of a pretrial diversion
10 program or the successful completion of a period of deferred
11 adjudication community supervision; or

12 (C) if the DNA sample was collected in relation
13 to the arrest of the person, a sworn affidavit stating that no
14 charges arising from the arrest have been filed before the first
15 anniversary of the date of the person's arrest.

16 (e) When a person's DNA sample and DNA record are expunged
17 from the DNA database under this subchapter, the director or the
18 director's designee shall ensure that the person's DNA sample and
19 DNA record are also expunged from the CODIS database.

20 SECTION 10. Section 411.153(b), Government Code, is amended
21 to read as follows:

22 (b) A person commits an offense if the person knowingly:

23 (1) discloses to an unauthorized recipient
24 information in a DNA record or information related to a DNA analysis
25 of a sample collected under this subchapter; or

26 (2) releases the DNA sample or a portion of the sample
27 to an unauthorized recipient.

1 SECTION 11. Section 411.154(a), Government Code, is amended
2 to read as follows:

3 (a) On the request of the director or a local law
4 enforcement agency, a district or county attorney or the attorney
5 general may petition a district court for an order requiring a
6 person to:

7 (1) comply with this subchapter or a rule adopted
8 under this subchapter; or

9 (2) refrain from acting in violation of this
10 subchapter or a rule adopted under this subchapter.

11 SECTION 12. (a) The changes in law made by this Act in
12 amending Section 54.0409, Family Code, and Section 411.148,
13 Government Code, apply only to a child who is placed on deferred
14 prosecution on or after the effective date of this Act.

15 (b) The change in law made by this Act in amending Section
16 54.0462, Family Code, applies only to conduct engaged in on or after
17 the effective date of this Act. Conduct engaged in before the
18 effective date of this Act is covered by the law in effect at the
19 time the conduct was engaged in, and the former law is continued in
20 effect for that purpose. For purposes of this section, conduct was
21 engaged in before the effective date of this Act if any element of
22 the conduct occurred before that date.

23 SECTION 13. The change in law made by this Act in amending
24 Section 411.1471(a)(2), Government Code, applies only to:

25 (1) a person arrested for an offense punishable as a
26 Class B or A misdemeanor that is committed on or after January 1,
27 2014; and

1 (2) a person arrested for an offense punishable as a
2 felony that is committed on or after January 1, 2012.

3 SECTION 14. This Act takes effect September 1, 2011.