

BILL ANALYSIS

C.S.H.B. 1038
By: Eiland
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that Texas investigators recently solved a decade-old murder case by using the DNA database in another state to locate and convict the perpetrator, who was in the database because of a drug-related arrest earlier that year. This connection was possible because the other state's law requires DNA samples to be taken at the time of arrest, rather than after the conviction of a felony charge. Current Texas law requires persons indicted or arrested for or convicted of certain felony offenses to provide to a law enforcement agency a DNA sample for purposes of creating a DNA record in the DNA database system. Interested parties contend that expanding this requirement to include DNA taken from individuals at the time of arrest will make Texas' database more comprehensive and could increase the likelihood of solving crimes and finding matches in future criminal DNA evidence. C.S.H.B. 1038 aims to provide Texas with the same comprehensive database as other states by requiring DNA samples to be taken at the time of arrest from an individual charged with any offense punishable as a Class B misdemeanor or higher.

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. 1038 amends the Government Code to require an individual, other than a juvenile, who is arrested for any offense punishable as a Class B misdemeanor or higher to provide one or more DNA samples for the purpose of creating a DNA record and to require the arresting agency that lawfully arrests the individual to collect the sample from the individual during the fingerprinting and booking process. The bill exempts such an individual whose DNA sample has already been collected in this manner from statutory provisions relating to the collection and maintenance of a DNA specimen from certain offenders for purposes of creating a record in the DNA database system. The bill authorizes an employee of an arresting agency to use force against an individual required to provide a DNA sample when and to the degree the employee reasonably believes the force is immediately necessary to collect the sample.

C.S.H.B. 1038 specifies that the expunction required by the public safety director of the Department of Public Safety (DPS) of a DNA record of an individual from a DNA database based on the person providing certain documentation includes the destruction of the associated DNA sample. The bill expands the documents with which such an individual may provide the director for that expunction purpose to include a certified copy of the judgment in the case showing an acquittal, an entry of nolle prosequi, or a discharge and dismissal after the successful completion of a pretrial diversion program or the successful completion of a period of deferred adjudication community supervision; or, if the DNA sample was collected in relation to the arrest of the person, a sworn affidavit stating that no charges arising from the arrest have been filed before the first anniversary of the date of the person's arrest. The bill requires the director or the director's designee, when a person's DNA sample and DNA record are expunged from the

DNA database, to ensure that the person's DNA sample and DNA record are also expunged from the CODIS database. The bill's provisions apply to the expunction of a DNA record from a DNA database regardless of whether the record was created before, on, or after the bill's effective date.

C.S.H.B. 1038 amends the Code of Criminal Procedure and the Government Code to require a court to order a defendant arrested for an offense other than an offense punishable by fine only to pay a \$27 fee to the arresting law enforcement agency to reimburse the agency for the cost of the evidence collection kit used to collect a DNA sample from the defendant as required by the bill's provisions. The bill's provisions, except for the provisions regarding the public safety director's duty to expunge or remove DNA records, take effect 30 days after the date on which the comptroller of public accounts certifies that DPS has received sufficient gifts, grants, or funds from sources other than the General Appropriations Act to improve its crime laboratory equipment and services to enable the analysis of DNA samples collected from arrested provisions as required by the bill's provisions. The bill requires DPS to provide to the comptroller timely notice of the receipt of sufficient gifts, grants, or funds. The bill's provisions, excluding the aforementioned expunction-related provisions, have no effect if the comptroller by September 1, 2015, does not make that certification.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1038 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.015 to read as follows:

Art. 102.015. FEE FOR COLLECTION OF DNA AFTER CERTAIN ARRESTS. (a) This article applies only to a defendant arrested for an offense other than an offense punishable by fine only.

(b) The court shall order a defendant to whom this article applies to pay a fee of \$27 to the arresting law enforcement agency to reimburse the agency for the cost of the evidence collection kit used to collect a DNA sample from the defendant under Section 411.148(a)(1)(C), Government Code.

No equivalent provision.

SECTION 2. Section 103.024, Government Code, is amended to read as follows:

Sec. 103.024. MISCELLANEOUS FEES AND COSTS: CODE OF CRIMINAL PROCEDURE. Fees and costs shall be paid or collected under the Code of Criminal Procedure as follows:

(1) filing of a restitution lien (Art. 42.22,

Code of Criminal Procedure) . . . \$5;
(2) issuance and service of a warrant of arrest for certain offenses if prescribed by the municipality (Art. 45.203, Code of Criminal Procedure) . . . not to exceed \$25; ~~and~~
(3) a fee for each agency or organization designated by a registered sex offender for receipt of a copy of an order making the registration nonpublic (Art. [See.] 62.353, Code of Criminal Procedure) . . . \$20; and
(4) a fee to reimburse a law enforcement agency for the cost of an evidence collection kit (Art. 102.015, Code of Criminal Procedure) . . . \$27.

SECTION 1. The heading to Section 411.1471, Government Code, is amended.

SECTION 3. Same as introduced version.

SECTION 2. Section 411.1471(a), Government Code, is amended.

SECTION 4. Same as introduced version.

SECTION 3. Section 411.148, Government Code, is amended by amending Subsections (a), (d), (f), and (h) and adding Subsection (d-1) to read as follows:

SECTION 5. Section 411.148, Government Code, is amended by amending Subsections (a), (d), (f), and (h) and adding Subsection (d-1) to read as follows:

- (a) This section applies to:
- (1) an individual, other than a juvenile, who is:
 - (A) ordered by a magistrate or court to provide a DNA sample under Section 411.154 or other law, including as part of an order granting community supervision to the individual; ~~[or]~~
 - (B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or
 - (C) arrested for any offense punishable as a Class B misdemeanor or higher; or
 - (2) a juvenile who, following an adjudication for conduct constituting a felony, is:
 - (A) confined in a facility operated by or under contract with the Texas Juvenile Justice Department [~~Youth Commission~~]; or
 - (B) placed on probation, if the conduct constitutes a felony described by Section 54.0409, Family Code.
 - (d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of

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- (1) an individual, other than a juvenile, who is:
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 - (B) confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice; or
 - (C) arrested for any offense punishable as a Class B misdemeanor or higher; or
 - (2) a juvenile who, following an adjudication for conduct constituting a felony, is:
 - (A) confined in a facility operated by or under contract with the Texas Juvenile Justice Department [~~Youth Commission~~]; or
 - (B) placed on probation, if the conduct constitutes a felony described by Section 54.0409, Family Code.
 - (d) If an individual described by Subsection (a)(1)(B) is received into custody by the Texas Department of Criminal Justice, that

Criminal Justice, that department shall collect the sample from the individual during the diagnostic process or at another time determined by the Texas Department of Criminal Justice. If an individual described by Subsection (a)(2)(A) is received into custody by the Texas Juvenile Justice Department [~~Youth Commission~~], the Texas Juvenile Justice Department [~~youth commission~~] shall collect the sample from the individual during the initial examination or at another time determined by the Texas Juvenile Justice Department [~~youth commission~~]. If an individual who is required under this section or other law to provide a DNA sample is in the custody or under the supervision of another criminal justice agency, such as a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office, that agency shall collect the sample from the individual at a time determined by the agency. The duties imposed by this subsection do not apply if a sample has already been collected under Subsection (d-1).

(d-1) If an individual described by Subsection (a)(1)(C) is lawfully arrested, the arresting agency shall collect the sample from the individual during the fingerprinting and booking process.

(f) The Texas Department of Criminal Justice shall notify the director that an individual to whom Subsection (d) applies [~~described by Subsection (a)(1)(B)~~] is to be released from custody not earlier than the 120th day before the individual's statutory release date and not later than the 90th day before the individual's statutory release date. The [An] individual [described by Subsection (a)(1)(B)] may not be held past the individual's statutory release date if the individual fails or refuses to provide a DNA sample under this section. The Texas Department of Criminal Justice may take lawful administrative action, including disciplinary action resulting in the loss of good conduct time, against an individual [described by Subsection (a)(1)(B)] who refuses to provide a sample as required by Subsection (d) [under this section]. In this subsection, "statutory release date" means the date on which an individual is discharged from the individual's controlling

department shall collect the sample from the individual during the diagnostic process or at another time determined by the Texas Department of Criminal Justice. If an individual described by Subsection (a)(2)(A) is received into custody by the Texas Juvenile Justice Department [~~Youth Commission~~], the Texas Juvenile Justice Department [~~youth commission~~] shall collect the sample from the individual during the initial examination or at another time determined by the Texas Juvenile Justice Department [~~youth commission~~]. If an individual who is required under this section or other law to provide a DNA sample is in the custody or under the supervision of another criminal justice agency, such as a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office, that agency shall collect the sample from the individual at a time determined by the agency. The duties imposed by this subsection do not apply if a sample has already been collected under Subsection (d-1).

(d-1) If an individual described by Subsection (a)(1)(C) is lawfully arrested, the arresting agency shall collect the sample from the individual during the fingerprinting and booking process.

(f) The Texas Department of Criminal Justice shall notify the director that an individual described by Subsection (a)(1)(B) is to be released from custody not earlier than the 120th day before the individual's statutory release date and not later than the 90th day before the individual's statutory release date. The [An] individual [described by Subsection (a)(1)(B)] may not be held past the individual's statutory release date if the individual fails or refuses to provide a DNA sample under this section. The Texas Department of Criminal Justice may take lawful administrative action, including disciplinary action resulting in the loss of good conduct time, against an individual [described by Subsection (a)(1)(B)] who refuses to provide a sample as required by Subsection (d) [under this section]. In this subsection, "statutory release date" means the date on which an individual is discharged from the individual's controlling sentence.

sentence.

(h) An employee of a criminal justice agency or of an arresting agency may use force against an individual required to provide a DNA sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to collect the sample.

SECTION 4. Section 411.148(i)(1), Government Code, is amended.

No equivalent provision.

SECTION 5. The change in law made by

83R 27688

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(h) An employee of a criminal justice agency or of an arresting agency may use force against an individual required to provide a DNA sample under this section when and to the degree the employee reasonably believes the force is immediately necessary to collect the sample.

SECTION 6. Same as introduced version.

SECTION 7. Section 411.151, Government Code, is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

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

(1) notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55, Code of Criminal Procedure, and provides the director with a certified copy of the court order that expunges the DNA record; or

(2) provides the director with:

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

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

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

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

SECTION 8. **(a) Except as provided by**

13.126.352

this Act applies only to a person arrested for an offense committed on or after the effective date of this Act. A person arrested for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 6. This Act takes effect September 1, 2013.

Subsection (b) of this section, the change in law made by this Act applies only to a person arrested for an offense committed on or after the effective date of this Act. A person arrested for an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

(b) The change in law made by Section 7 of this Act in amending Section 411.151, Government Code, applies to the expunction of a DNA record from a DNA database regardless of whether the record was created before, on, or after the effective date of this Act.

SECTION 9. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2013.

(b) Sections 1 through 6 of this Act take effect 30 days after the date on which the comptroller of public accounts certifies that the Department of Public Safety of the State of Texas has received sufficient gifts or grants or funds from sources other than the General Appropriations Act to improve its crime laboratory equipment and services to enable the analysis of DNA samples collected from arrested persons as required by Section 411.148(a)(1)(C), Government Code. The department shall provide to the comptroller timely notice of the receipt of sufficient gifts, grants, or funds.

(c) If the comptroller by September 1, 2015, does not make the certification described by Subsection (b) of this section, Sections 1 through 6 of this Act have no effect.