

By: Eiland

H.B. No. 1038

Substitute the following for H.B. No. 1038:

By: Pickett

C.S.H.B. No. 1038

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the creation of DNA records for the DNA database system;  
3 authorizing the imposition of a fee.

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

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

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

10 (b) The court shall order a defendant to whom this article  
11 applies to pay a fee of \$27 to the arresting law enforcement agency  
12 to reimburse the agency for the cost of the evidence collection kit  
13 used to collect a DNA sample from the defendant under Section  
14 411.148(a)(1)(C), Government Code.

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

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

20 (1) filing of a restitution lien (Art. 42.22, Code of  
21 Criminal Procedure) . . . \$5;

22 (2) issuance and service of a warrant of arrest for  
23 certain offenses if prescribed by the municipality (Art. 45.203,  
24 Code of Criminal Procedure) . . . not to exceed \$25; [~~and~~]

1           (3) a fee for each agency or organization designated  
2 by a registered sex offender for receipt of a copy of an order  
3 making the registration nonpublic (Art. [Sec.] 62.353, Code of  
4 Criminal Procedure) . . . \$20; and

5           (4) a fee to reimburse a law enforcement agency for the  
6 cost of an evidence collection kit (Art. 102.015, Code of Criminal  
7 Procedure) . . . \$27.

8           SECTION 3. The heading to Section 411.1471, Government  
9 Code, is amended to read as follows:

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

12           SECTION 4. Section 411.1471(a), Government Code, is amended  
13 to read as follows:

14           (a) This section applies to a defendant who has not already  
15 provided a sample to an arresting agency as required by Section  
16 411.148(a)(1)(C) and who [~~is~~]:

17           (1) is indicted or waives indictment for a felony  
18 prohibited or punishable under any of the following Penal Code  
19 sections:

- 20                   (A) Section 20.04(a)(4);
- 21                   (B) Section 21.11;
- 22                   (C) Section 22.011;
- 23                   (D) Section 22.021;
- 24                   (E) Section 25.02;
- 25                   (F) Section 30.02(d);
- 26                   (G) Section 43.05;
- 27                   (H) Section 43.25;

- 1 (I) Section 43.26;
- 2 (J) Section 21.02; or
- 3 (K) Section 20A.03;
- 4 (2) is arrested for a felony described by Subdivision
- 5 (1) after having been previously convicted of or placed on deferred
- 6 adjudication for an offense described by Subdivision (1) or an
- 7 offense punishable under Section 30.02(c)(2), Penal Code; or
- 8 (3) is convicted of an offense under Section 21.07 or
- 9 21.08, Penal Code.

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

- 13 (a) This section applies to:
  - 14 (1) an individual, other than a juvenile, who is:
    - 15 (A) ordered by a magistrate or court to provide a
    - 16 DNA sample under Section 411.154 or other law, including as part of
    - 17 an order granting community supervision to the individual; ~~[or]~~
    - 18 (B) confined in a penal institution operated by
    - 19 or under contract with the Texas Department of Criminal Justice; or
    - 20 (C) arrested for any offense punishable as a
    - 21 Class B misdemeanor or higher; or
  - 22 (2) a juvenile who, following an adjudication for
  - 23 conduct constituting a felony, is:
    - 24 (A) confined in a facility operated by or under
    - 25 contract with the Texas Juvenile Justice Department [~~Youth~~
    - 26 ~~Commission~~]; or
    - 27 (B) placed on probation, if the conduct

1 constitutes a felony described by Section 54.0409, Family Code.

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

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

23 (f) The Texas Department of Criminal Justice shall notify  
24 the director that an individual described by Subsection (a)(1)(B)  
25 is to be released from custody not earlier than the 120th day before  
26 the individual's statutory release date and not later than the 90th  
27 day before the individual's statutory release date. The [~~An~~]

1 individual [~~described by Subsection (a)(1)(B)~~] may not be held past  
2 the individual's statutory release date if the individual fails or  
3 refuses to provide a DNA sample under this section. The Texas  
4 Department of Criminal Justice may take lawful administrative  
5 action, including disciplinary action resulting in the loss of good  
6 conduct time, against an individual [~~described by Subsection~~  
7 ~~(a)(1)(B)~~] who refuses to provide a sample as required by  
8 Subsection (d) [~~under this section~~]. In this subsection,  
9 "statutory release date" means the date on which an individual is  
10 discharged from the individual's controlling sentence.

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

16 SECTION 6. Section 411.148(i)(1), Government Code, is  
17 amended to read as follows:

18 (1) The Texas Department of Criminal Justice as soon  
19 as practicable shall cause a sample to be collected from an  
20 individual, other than an individual who has already provided a  
21 sample to an arresting agency as required by Subsection (a)(1)(C),  
22 [~~described by Subsection (a)(1)(B)~~] if:

23 (A) the individual is confined in another penal  
24 institution after sentencing and before admission to the  
25 department; and

26 (B) the department determines that the  
27 individual is likely to be released before being admitted to the

1 department.

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

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

8 (1) notifies the director in writing that the DNA  
9 record has been ordered to be expunged under this section or Chapter  
10 55, Code of Criminal Procedure, and provides the director with a  
11 certified copy of the court order that expunges the DNA record; or

12 (2) provides the director with:

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

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

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

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

1 DNA record are also expunged from the CODIS database.

2 SECTION 8. (a) Except as provided by Subsection (b) of this  
3 section, the change in law made by this Act applies only to a person  
4 arrested for an offense committed on or after the effective date of  
5 this Act. A person arrested for an offense committed before the  
6 effective date of this Act is governed by the law in effect on the  
7 date the offense was committed, and the former law is continued in  
8 effect for that purpose. For purposes of this subsection, an  
9 offense was committed before the effective date of this Act if any  
10 element of the offense occurred before that date.

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

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

18 (b) Sections 1 through 6 of this Act take effect 30 days  
19 after the date on which the comptroller of public accounts  
20 certifies that the Department of Public Safety of the State of Texas  
21 has received sufficient gifts or grants or funds from sources other  
22 than the General Appropriations Act to improve its crime laboratory  
23 equipment and services to enable the analysis of DNA samples  
24 collected from arrested persons as required by Section  
25 411.148(a)(1)(C), Government Code. The department shall provide to  
26 the comptroller timely notice of the receipt of sufficient gifts,  
27 grants, or funds.

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