

By: Eiland

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

4 SECTION 1. The heading to Section 411.1471, Government
5 Code, is amended to read as follows:

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

8 SECTION 2. Section 411.1471(a), Government Code, is amended
9 to read as follows:

10 (a) This section applies to a defendant who has not already
11 provided a sample to an arresting agency as required by Section
12 411.148(a)(1)(C) and who [~~is~~]:

13 (1) is indicted or waives indictment for a felony
14 prohibited or punishable under any of the following Penal Code
15 sections:

16 (A) Section 20.04(a)(4);

17 (B) Section 21.11;

18 (C) Section 22.011;

19 (D) Section 22.021;

20 (E) Section 25.02;

21 (F) Section 30.02(d);

22 (G) Section 43.05;

23 (H) Section 43.25;

24 (I) Section 43.26;

1 (J) Section 21.02; or

2 (K) Section 20A.03;

3 (2) is arrested for a felony described by Subdivision
4 (1) after having been previously convicted of or placed on deferred
5 adjudication for an offense described by Subdivision (1) or an
6 offense punishable under Section 30.02(c)(2), Penal Code; or

7 (3) is convicted of an offense under Section 21.07 or
8 21.08, Penal Code.

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

12 (a) This section applies to:

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

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

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

19 (C) arrested for any offense punishable as a
20 Class B misdemeanor or higher; or

21 (2) a juvenile who, following an adjudication for
22 conduct constituting a felony, is:

23 (A) confined in a facility operated by or under
24 contract with the Texas Juvenile Justice Department [~~Youth~~
25 ~~Commission~~]; or

26 (B) placed on probation, if the conduct
27 constitutes a felony described by Section 54.0409, Family Code.

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

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

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

1 ~~Subsection (a)(1)(B)]~~ may not be held past the individual's
2 statutory release date if the individual fails or refuses to
3 provide a DNA sample under this section. The Texas Department of
4 Criminal Justice may take lawful administrative action, including
5 disciplinary action resulting in the loss of good conduct time,
6 against an individual [~~described by Subsection (a)(1)(B)]~~ who
7 refuses to provide a sample as required by Subsection (d) [~~under~~
8 ~~this section~~]. In this subsection, "statutory release date" means
9 the date on which an individual is discharged from the individual's
10 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 4. 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 5. The change in law made by this Act applies only
3 to a person arrested for an offense committed on or after the
4 effective date of this Act. A person arrested for an offense
5 committed before the effective date of this Act is covered by the
6 law in effect when the offense was committed, and the former law is
7 continued in effect for that purpose. For purposes of this section,
8 an offense was committed before the effective date of this Act if
9 any element of the offense occurred before that date.

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