

BILL ANALYSIS

C.S.H.B. 941
By: Hernandez
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is concern that certain individuals convicted of enticement of a child are not required to submit a DNA sample to be entered into the FBI's CODIS (Combined DNA Index System) database. Interested parties contend that including this sexual offense among those a conviction for which mandates an individual to submit such a DNA sample could help vindicate innocent suspects and link actual perpetrators to unsolved crimes. These parties point to the recidivistic nature of these types of crimes and the likelihood that an individual who committed a crime for which the individual is under investigation may have been convicted of a similar crime in the past for which the individual's DNA profile was placed in the DNA database. C.S.H.B. 941 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 941 amends the Government Code to expand the applicability of the requirement for certain persons charged with or convicted of certain offenses to provide one or more specimens for the purpose of creating a DNA record to include a person convicted of enticing a child. The bill exempts a defendant who provides a DNA specimen for the purpose of creating DNA records for defendants arrested or convicted of certain offenses from the requirement to provide a DNA specimen as a condition of community supervision, unless the attorney representing the state establishes to the satisfaction of the public safety director of the Department of Public Safety (DPS) that the interests of justice or public safety require that the defendant provide additional samples. The bill requires the public safety director to destroy a DNA sample collected solely for the purpose of creating a DNA record immediately after any test results associated with the sample are entered into the DNA database and the FBI's CODIS (Combined DNA Index System) database.

C.S.H.B. 941 amends the Code of Criminal Procedure to require the clerk of the court to transfer any funds received from the collection of the \$50 fee that a person is required to pay as a DNA testing court cost on conviction of certain offenses or the \$34 fee that a person is required to pay as a DNA testing court cost on placement of the person on community supervision to the comptroller of public accounts for purposes of crediting the funds to DPS to help defray the cost of collecting or analyzing DNA samples provided by defendants who are required to pay such court costs.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 941 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Articles 102.020(a) and (h-1), Code of Criminal Procedure, are amended to read as follows:

SECTION 1. Article 102.020(h-1), Code of Criminal Procedure, is amended to read as follows:

- (a) A person shall pay as a cost of court:
 - (1) \$250 on conviction of an offense listed in Section 411.1471(a)(1), Government Code;
 - (2) \$50 on conviction of an offense described by [listed—in] Section 411.1471(a)(3), Government Code, other than an offense described by Subdivision (1) of this subsection [of that code]; or
 - (3) \$34 on placement of the person on:
 - (A) community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Section 11(j), Article 42.12; or
 - (B) deferred adjudication community supervision for an offense described by Section 411.1471(a)(4), Government Code.

No equivalent provision.

(h-1) The clerk of the court shall transfer to the comptroller any funds received under Subsection (a)(2) or (3) [(a)(3)]. The comptroller shall credit the funds to the Department of Public Safety to help defray the cost of collecting or analyzing [any analyses—performed—on] DNA samples provided by defendants who are required to pay a court cost under this article.

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SECTION 2. Section 102.021, Government Code, is amended to read as follows:
Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

SECTION 2. Section 102.021, Government Code, is amended to read as follows:
Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. A person convicted of an offense shall pay the following under the Code of Criminal Procedure, in addition to all other costs:

(1) court cost on conviction of any offense, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle (Art. 102.0045, Code of Criminal Procedure)\$4;

(2) a fee for services of prosecutor (Art. 102.008, Code of Criminal Procedure)\$25;

(3) fees for services of peace officer:

(A) issuing a written notice to appear in court for certain violations (Art. 102.011, Code of Criminal Procedure)\$5;

(B) executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal Procedure)\$50;

(C) summoning a witness (Art. 102.011, Code of Criminal Procedure)\$5;

(D) serving a writ not otherwise listed (Art. 102.011, Code of Criminal Procedure)\$35;

(E) taking and approving a bond and, if necessary, returning the bond to courthouse (Art. 102.011, Code of Criminal Procedure)\$10;

(F) commitment or release (Art. 102.011, Code of Criminal Procedure)\$5;

(G) summoning a jury (Art. 102.011, Code of Criminal Procedure)\$5;

(H) attendance of a prisoner in habeas corpus case if prisoner has been remanded to custody or held to bail (Art. 102.011, Code of Criminal Procedure)\$8 each day;

(I) mileage for certain services performed (Art. 102.011, Code of Criminal Procedure)\$0.29 per mile; and

(J) services of a sheriff or constable who serves process and attends examining trial in certain cases (Art. 102.011, Code of Criminal Procedure)not to exceed \$5;

(4) services of a peace officer in conveying a witness outside the county (Art. 102.011, Code of Criminal Procedure) . . . \$10 per day or part of a day, plus actual necessary travel expenses;

(5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) actual cost;

(6) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure)\$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure)\$25;

(8) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code

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(5) overtime of peace officer for time spent testifying in the trial or traveling to or from testifying in the trial (Art. 102.011, Code of Criminal Procedure) actual cost;

(6) court costs on an offense relating to rules of the road, when offense occurs within a school crossing zone (Art. 102.014, Code of Criminal Procedure)\$25;

(7) court costs on an offense of passing a school bus (Art. 102.014, Code of Criminal Procedure)\$25;

(8) court costs on an offense of truancy or contributing to truancy (Art. 102.014, Code

of Criminal Procedure)\$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure)\$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) \$250;

(14) court cost for DNA testing for certain felonies [~~the offense of public lewdness or indecent exposure~~] (Art. 102.020(a)(2), Code of Criminal Procedure)\$50;

(15) court cost for DNA testing for certain misdemeanors and felonies (Art. 102.020(a)(3), Code of Criminal Procedure)\$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure)\$12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; and

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law (Art. 102.0178, Code of Criminal Procedure) . . . \$60.

SECTION 3. Section 411.142(c), Government Code, is amended.

SECTION 4. The heading to Section

of Criminal Procedure)\$20;

(9) cost for visual recording of intoxication arrest before conviction (Art. 102.018, Code of Criminal Procedure)\$15;

(10) cost of certain evaluations (Art. 102.018, Code of Criminal Procedure) actual cost;

(11) additional costs attendant to certain intoxication convictions under Chapter 49, Penal Code, for emergency medical services, trauma facilities, and trauma care systems (Art. 102.0185, Code of Criminal Procedure) \$100;

(12) additional costs attendant to certain child sexual assault and related convictions, for child abuse prevention programs (Art. 102.0186, Code of Criminal Procedure) \$100;

(13) court cost for DNA testing for certain felonies (Art. 102.020(a)(1), Code of Criminal Procedure) \$250;

(14) court cost for DNA testing for the offense of public lewdness, [or] indecent exposure, or enticing a child (Art. 102.020(a)(2), Code of Criminal Procedure)\$50;

(15) court cost for DNA testing for certain felonies (Art. 102.020(a)(3), Code of Criminal Procedure)\$34;

(16) if required by the court, a restitution fee for costs incurred in collecting restitution installments and for the compensation to victims of crime fund (Art. 42.037, Code of Criminal Procedure)\$12;

(17) if directed by the justice of the peace or municipal court judge hearing the case, court costs on conviction in a criminal action (Art. 45.041, Code of Criminal Procedure) . . . part or all of the costs as directed by the judge; and

(18) costs attendant to convictions under Chapter 49, Penal Code, and under Chapter 481, Health and Safety Code, to help fund drug court programs established under Chapter 122, 123, 124, or 125, Government Code, or former law (Art. 102.0178, Code of Criminal Procedure) . . . \$60.

SECTION 3. Same as introduced version.

SECTION 4. The heading to Section

411.1471, Government Code, is amended to read as follows:

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

SECTION 5. Sections 411.1471(a), (b), and (f), Government Code, are amended to read as follows:

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

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

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

(B) Section 21.11;

(C) Section 22.011;

(D) Section 22.021;

(E) Section 25.02;

(F) Section 30.02(d);

(G) Section 43.05;

(H) Section 43.25;

(I) Section 43.26;

(J) Section 21.02; or

(K) Section 20A.03;

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

(3) convicted of an offense punishable as a Class B misdemeanor or any higher category of offense; or

(4) placed on deferred adjudication for an offense under Section 21.07 or 21.08, Penal Code.

(b) After a defendant described by Subsection (a)(1) is indicted or waives indictment, the court in which the case is pending shall require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record. A law enforcement agency arresting a defendant described by Subsection (a)(2), immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs, shall require the defendant to provide one or more specimens for the purpose of creating a DNA record. After a defendant described by Subsection (a)(3) or (4) is convicted or placed on deferred adjudication, as

411.1471, Government Code, is amended to read as follows:

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

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

(B) Section 21.11;

(C) Section 22.011;

(D) Section 22.021;

(E) Section 25.02;

(F) Section 30.02(d);

(G) Section 43.05;

(H) Section 43.25;

(I) Section 43.26;

(J) Section 21.02; or

(K) Section 20A.03;

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

(3) convicted of an offense under Section 21.07, ~~[or]~~ 21.08, or 25.04, Penal Code.

(b) After a defendant described by Subsection (a)(1) is indicted or waives indictment, the court in which the case is pending shall require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record. A law enforcement agency arresting a defendant described by Subsection (a)(2), immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs, shall require the defendant to provide one or more specimens for the purpose of creating a DNA record. After a defendant described by Subsection (a)(3) is convicted ~~[or placed on deferred adjudication],~~ the court shall

applicable, the court shall require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

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

SECTION 6. The change in law made by this Act in amending Article 102.020, Code of Criminal Procedure, and Section 411.1471, Government Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time 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 7. This Act takes effect September 1, 2015.

require the defendant to provide to a law enforcement agency one or more specimens for the purpose of creating a DNA record.

(f) A defendant who provides a DNA sample under this section is not required to provide a DNA sample under Section 411.148 of this code or under Section 11(j), Article 42.12, Code of Criminal Procedure, unless the [an] attorney representing the state in the prosecution of the felony offense that makes Section 411.148 or 11(j) applicable to the defendant [offenses] establishes to the satisfaction of the director that the interests of justice or public safety require that the defendant provide additional samples.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.