

SENATE AMENDMENTS
2nd Printing

By: Hernandez, Faircloth H.B. No. 941

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

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

12 SECTION 2. Section 102.021, Government Code, is amended to
13 read as follows:

14 Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL
15 PROCEDURE. A person convicted of an offense shall pay the
16 following under the Code of Criminal Procedure, in addition to all
17 other costs:

- 18 (1) court cost on conviction of any offense, other
19 than a conviction of an offense relating to a pedestrian or the
20 parking of a motor vehicle (Art. 102.0045, Code of Criminal
21 Procedure) \$4;
- 22 (2) a fee for services of prosecutor (Art. 102.008,
23 Code of Criminal Procedure) \$25;
- 24 (3) fees for services of peace officer:

1 (A) issuing a written notice to appear in court
2 for certain violations (Art. 102.011, Code of Criminal
3 Procedure) \$5;
4 (B) executing or processing an issued arrest
5 warrant, capias, or capias pro fine (Art. 102.011, Code of Criminal
6 Procedure) \$50;
7 (C) summoning a witness (Art. 102.011, Code of
8 Criminal Procedure) \$5;
9 (D) serving a writ not otherwise listed (Art.
10 102.011, Code of Criminal Procedure) \$35;
11 (E) taking and approving a bond and, if
12 necessary, returning the bond to courthouse (Art. 102.011, Code of
13 Criminal Procedure) \$10;
14 (F) commitment or release (Art. 102.011, Code of
15 Criminal Procedure) \$5;
16 (G) summoning a jury (Art. 102.011, Code of
17 Criminal Procedure) \$5;
18 (H) attendance of a prisoner in habeas corpus
19 case if prisoner has been remanded to custody or held to bail (Art.
20 102.011, Code of Criminal Procedure) \$8 each day;
21 (I) mileage for certain services performed (Art.
22 102.011, Code of Criminal Procedure) \$0.29 per mile; and
23 (J) services of a sheriff or constable who serves
24 process and attends examining trial in certain cases (Art. 102.011,
25 Code of Criminal Procedure) not to exceed \$5;
26 (4) services of a peace officer in conveying a
27 witness outside the county (Art. 102.011, Code of

1 Criminal Procedure) . . . \$10 per day or part of a day, plus
2 actual necessary travel expenses;

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

6 (6) court costs on an offense relating to rules of the
7 road, when offense occurs within a school crossing zone (Art.
8 102.014, Code of Criminal Procedure) \$25;

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

11 (8) court costs on an offense of truancy or
12 contributing to truancy (Art. 102.014, Code of Criminal
13 Procedure) \$20;

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

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

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

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

27 (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. Section 411.142(c), Government Code, is amended to read as follows:

(c) The director may receive, analyze, store, and destroy a DNA record or DNA sample for the purposes described by Section 411.143. If a DNA sample was collected solely for the purpose of creating a DNA record, the director may destroy the sample after any test results associated with the sample are entered into the DNA

1 database and the CODIS database.

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

4 Sec. 411.1471. DNA RECORDS OF PERSONS ARRESTED FOR, CHARGED
5 WITH, OR CONVICTED OF CERTAIN OFFENSES [~~FELONIES~~].

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

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

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

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

13 (B) Section 21.11;

14 (C) Section 22.011;

15 (D) Section 22.021;

16 (E) Section 25.02;

17 (F) Section 30.02(d);

18 (G) Section 43.05;

19 (H) Section 43.25;

20 (I) Section 43.26;

21 (J) Section 21.02; or

22 (K) Section 20A.03;

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

27 (3) convicted of an offense under Section 21.07, ~~or~~

1 21.08, or 25.04, Penal Code.

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

15 (f) A defendant who provides a DNA sample under this section
16 is not required to provide a DNA sample under Section 411.148 of
17 this code or under Section 11(j), Article 42.12, Code of Criminal
18 Procedure, unless the [an] attorney representing the state in the
19 prosecution of the felony offense that makes Section 411.148 or
20 11(j) applicable to the defendant ~~[offenses]~~ establishes to the
21 satisfaction of the director that the interests of justice or
22 public safety require that the defendant provide additional
23 samples.

24 SECTION 6. The change in law made by this Act in amending
25 Article 102.020, Code of Criminal Procedure, and Section 411.1471,
26 Government Code, applies only to an offense committed on or after
27 the effective date of this Act. An offense committed before the

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1 effective date of this Act is governed by the law in effect at the
2 time the offense was committed, and the former law is continued in
3 effect for that purpose. For purposes of this section, an offense
4 was committed before the effective date of this Act if any element
5 of the offense occurred before that date.

6 SECTION 7. This Act takes effect September 1, 2015.

ADOPTED
is amended
MAY 12 2015
Lotay Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Chad Perry*

1 Amend H.B. No. 941 (senate committee report) as follows:

2 (1) In the recital to SECTION 1 of the bill (page 1, lines 19
3 and 20), strike "Article 102.020(h-1), Code of Criminal Procedure,
4 is" and substitute "Articles 102.020(a) and (h-1), Code of Criminal
5 Procedure, are".

6 (2) In SECTION 1 of the bill, following the recital (page 1,
7 between lines 20 and 21), insert the following:

8 (a) A person shall pay as a cost of court:

9 (1) \$250 on conviction of an offense listed in Section
10 411.1471(a)(1), Government Code;

11 (2) \$50 on conviction of an offense described by
12 ~~[listed in]~~ Section 411.1471(a)(3), Government Code ~~[of that code]~~;
13 or

14 (3) \$34 on placement of the person on community
15 supervision, including deferred adjudication community
16 supervision, if the person is required to submit a DNA sample under
17 Section 11(j), Article 42.12.

18 (3) In SECTION 2 of the bill, strike amended Section
19 102.021(14), Government Code (page 2, lines 34 through 36), and
20 substitute the following:

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

25 (4) In SECTION 5 of the bill, strike amended Section
26 411.1471(a)(3), Government Code (page 3, lines 17 and 18), and
27 substitute the following:

28 (3) convicted of an offense:

29 (A) under Title 5, Penal Code, other than an

1 offense described by Subdivision (1), that is punishable as a Class
2 A misdemeanor or any higher category of offense; or
3 (B) under Section [21.07 or] 21.08, 25.04, 43.03,
4 or 43.24, Penal Code.

FLOOR AMENDMENT NO. 2

BY: Craig E. Evers

1 Amend Floor Amendment No. 1 by Perry to HB 941 on page 2,
2 line 2, by inserting ", except for an offense punishable as a
3 Class A misdemeanor under Section 20.02, 22.01, or 22.05, Penal
4 Code" between "offense" and "i".

ADOPTED

MAY 12 2015

Leroy Spaw
Secretary of the Senate

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 13, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB941 by Hernandez (Relating to the creation of DNA records for the DNA database system.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB941, As Passed 2nd House: a positive impact of \$1,650,240 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$825,120
2017	\$825,120
2018	\$825,120
2019	\$825,120
2020	\$825,120

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue (Loss) from <i>State Highway Fund</i> 6	Probable Revenue (Loss) from <i>Criminal Justice Plan Ac</i> 421	Probable Revenue Gain from <i>General Revenue Fund</i> 1
2016	(\$49,789)	(\$92,465)	\$825,120
2017	(\$49,789)	(\$92,465)	\$825,120
2018	(\$49,789)	(\$92,465)	\$825,120
2019	(\$49,789)	(\$92,465)	\$825,120
2020	(\$49,789)	(\$92,465)	\$825,120

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to expand the category of cases to which a \$50 court cost for DNA Testing would apply upon conviction.

The bill would also provide that all of the 90 percent (10 percent is retained by the county) of the \$50 fees currently collected for convictions of the crimes of public lewdness and indecent exposure, and the additional fees that will be collected for convictions in an expanded category of cases (all new fees under this bill) that are remitted to the State would be credited to the Department of Public Safety (DPS) to help defray the cost of collecting and analyzing DNA samples. Under current law, 35 percent of the fees that go to the state are directed to the state highway fund and 65 percent are directed to the criminal justice planning account.

Under current law, when a person is convicted or placed on deferred adjudication for public lewdness and indecent exposure the court must require the defendant to provide samples for the creation of a DNA record. The bill would only require this upon conviction, not placement on deferred adjudication, and expands the provision to include convictions in an expanded category of cases. The bill also clarifies when a defendant is not required to provide a DNA sample if the defendant has already provided one under other law.

The Office of Court Administration (OCA) indicates that revenue losses for cases under current law to the state highway fund (\$49,789) and the criminal justice planning account (\$92,465) that are to be offset by General Revenue credits (\$142,254) to DPS to defray the costs of collecting and analyzing DNA samples from the class of offenses, as described, are anticipated to be relatively minimal.

Together, OCA estimates fees from convictions for current cases redirected to General Revenue (\$142,254) and expanded category of cases subject to the \$50 fee \$682,866) would generate \$825,120 in General Revenue each fiscal year.

DPS anticipates that any costs associated with the provisions of the bill can be absorbed within current agency resources.

The bill would take effect September 1, 2015.

Methodology

Based upon historical records, OCA estimates bill provisions would apply to 7,903 convictions each fiscal year under current law. The fee collected for the convictions under current law would be approximately \$395,150 (7,903 x \$50). The collection rate on these assessed costs is projected to be 40 percent, so, of the amount assessed, the amount collected would be \$158,060 (\$395,150 x 0.40).

Counties retain 10 percent of the revenue. That amount would be \$15,806, which is not included in the local impact because it is considered ongoing. The balance of \$142,254 would be directed to the state. As described above, this amount would be redirected to General Revenue for use by DPS, with a corresponding decrease in the state highway fund and the criminal justice planning fund.

OCA also estimates bill provisions would apply to 37,937 additional convictions each fiscal year would be subject to the fee. The fee collected for the expanded categories of convictions would be approximately \$1,896,850 (37,937 x \$50). The collection rate on these assessed costs is projected to be 40 percent, so, of the amount assessed, the amount collected would be \$758,740 (\$1,896,850 x 0.40).

Counties retain 10 percent of the revenue. That amount would be \$75,874. The balance of \$682,866 would be directed to the state.

Local Government Impact

There would be a positive fiscal implication to counties due to the expanded class of cases subject to the \$50 fee, estimated to be \$75,874 each fiscal year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, TB, KVe, KJo, MW, KKR, ESi, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 1, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB941 by Hernandez (Relating to the creation of DNA records for the DNA database system.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to expand the category of cases to which a \$50 court cost for DNA Testing would apply to the conviction of the crime of enticing a child. The bill would also provide that all of the 90 percent (10 percent is retained by the county) of the \$50 fees currently collected for convictions of the crimes of public lewdness and indecent exposure, and the additional fees that will be collected for conviction of the crime of enticing a child (a new fee under this bill) that are remitted to the State would be credited to the Department of Public Safety (DPS) to help defray the cost of collecting and analyzing DNA samples. Under current law, 35 percent of the fees that go to the state are directed to the state highway fund and 65 percent are directed to the criminal justice planning account.

Under current law, when a person is convicted or placed on deferred adjudication for public lewdness and indecent exposure the court must require the defendant to provide samples for the creation of a DNA record. The bill would only require this upon conviction, not placement on deferred adjudication, and expands the provision to include conviction of the crime of enticing a child.

The bill also clarifies when a defendant is not required to provide a DNA sample if the defendant has already provided one under other law.

The Office of Court Administration indicates that any revenue losses to the state highway fund and the criminal justice planning account that are to be offset by General Revenue credits to DPS to defray the costs of collecting and analyzing DNA samples from the class of offenses, as described, are not anticipated to have a significant fiscal implication. DPS anticipates that any costs associated with the provisions of the bill can be absorbed within current agency resources.

The bill would take effect September 1, 2015.

Local Government Impact

There may be a slight positive fiscal impact to local government resulting from the \$50 fee being assessed for convictions of the crime of enticing a child. However, because of the collection rate and the minimal amount of the fee that is retained by the counties, any positive implication is not

expected to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, KVe, KJo, MW, TB, KKR, ESi, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 13, 2015

TO: Honorable Jim Murphy, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB941 by Hernandez (relating to the creation of DNA records for the DNA database system.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to expand the category of cases to which a \$50 court cost for DNA Testing would apply to the conviction of the crime of enticing a child. The bill would also provide that all of the 90 percent (10 percent is retained by the county) of the \$50 fees currently collected for convictions of the crimes of public lewdness and indecent exposure, and the additional fees that will be collected for conviction of the crime of enticing a child (a new fee under this bill) that are remitted to the State would be credited to the Department of Public Safety (DPS) to help defray the cost of collecting and analyzing DNA samples. Under current law, 35 percent of the fees that go to the state are directed to the state highway fund and 65 percent are directed to the criminal justice planning account.

Under current law, when a person is convicted or placed on deferred adjudication for public lewdness and indecent exposure the court must require the defendant to provide samples for the creation of a DNA record. The bill would only require this upon conviction, not placement on deferred adjudication, and expands the provision to include conviction of the crime of enticing a child.

The bill also clarifies when a defendant is not required to provide a DNA sample if the defendant has already provided one under other law.

The Office of Court Administration indicates that any revenue losses to the state highway fund and the criminal justice planning account that are to be offset by General Revenue credits to DPS to defray the costs of collecting and analyzing DNA samples from the class of offenses, as described, are not anticipated to have a significant fiscal implication. DPS anticipates that any costs associated with the provisions of the bill can be absorbed within current agency resources.

The bill would take effect September 1, 2015.

Local Government Impact

There may be a slight positive fiscal impact to local government resulting from the \$50 fee being assessed for convictions of the crime of enticing a child. However, because of the collection rate and the minimal amount of the fee that is retained by the counties, any positive implication is not

expected to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, KVe, KJo, MW, TB, KKR, ESi, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 1, 2015

TO: Honorable Jim Murphy, Chair, House Committee on Corrections

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB941** by Hernandez (Relating to the creation of DNA records for the DNA database system.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB941, As Introduced: a negative impact of (\$4,010,884) through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	(\$2,046,875)
2017	(\$1,964,009)
2018	(\$1,964,009)
2019	(\$1,964,009)
2020	(\$1,974,015)

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain from <i>Criminal Justice Plan</i> <i>Ac</i> 421	Probable Revenue Gain from <i>State Highway Fund</i> 6	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1	Change in Number of State Employees from FY 2013
2016	\$568,702	\$306,224	(\$2,046,875)	9.0
2017	\$568,702	\$306,224	(\$1,964,009)	9.0
2018	\$568,702	\$306,224	(\$1,964,009)	9.0
2019	\$568,702	\$306,224	(\$1,964,009)	9.0
2020	\$568,702	\$306,224	(\$1,974,015)	9.0

Fiscal Analysis

This bill would amend the Government Code regarding the Department of Public Safety and DNA records of persons charged with or convicted of certain felonies, Class B misdemeanors, or subject

to deferred adjudication of certain offenses.

The bill would amend the Code of Criminal Procedure to require persons to pay a \$50 court cost for DNA Testing if the person was: 1) convicted of a Class B misdemeanor or higher under Title 5 of the Penal Code, or 2) placed on deferred adjudication for offenses of public lewdness or indecent exposure.

Under current law, a \$50 court cost is assessed only on a person convicted of public lewdness or indecent exposure.

The bill would amend that provision to require a person convicted of a Class B misdemeanor or higher to pay the \$50 court cost, unless they were convicted of an offense that would mandate the payment of an existing \$250 court cost. The bill would require a person placed on deferred adjudication for public lewdness or indecent exposure to pay a \$34 court cost.

The bill would require that DNA samples collected by DPS for the purpose of creating a new DNA record be destroyed immediately after being entered into the DNA database.

This bill would take effect September 1, 2015.

Methodology

Historical records indicate approximately 48,607 convicted offenders per year would be required to provide a DNA sample for testing. This analysis assumes the Texas Department of Public Safety (DPS) would need nine new FTEs to meet the provisions of the bill. These nine FTEs would include five Forensic Scientists I to complete approximately 9,721 samples per year; one Program Specialist liaison with the agencies that would be submitting DNA samples from convicted misdemeanor defendants; one Crime Laboratory Specialist to receive and store the new DNA samples; and one Forensic Scientist VI to supervise the new staff. This analysis includes a total cost of \$651,171 in General Revenue per fiscal year for salary and benefits. Other costs each fiscal year would include consumable supplies, equipment, travel, utilities and rent. The majority of these other costs are due to consumable supplies needed for processing DNA samples. This analysis includes \$27 per sample for a total cost of approximately \$1.3 million per fiscal year to process 48,607 DNA samples.

Based upon historical records of the Office of Court Administration, an approximate 48,607 cases statewide in district courts and statutory county court are estimated to be Class B Misdemeanors under Title 5 of the Penal Code, including but not limited to criminal homicide, kidnapping, human trafficking, sexual offenses and assaultive offenses. At \$50 per each new test required, an estimated \$2,430,350 each fiscal year would be assessed in cost-generated revenue. Assuming a 40 percent collection rate, \$972,140 each fiscal year might be collected. Of this amount, the state would receive 90 percent (\$874,926): 65 percent to the Criminal Justice Planning Fund No. 421 (\$568,702) and 35 percent to the State Highway Fund No. 6 (\$306,224).

Local Government Impact

Counties would receive of to 10 percent of revenue generated under the bill, estimated to be \$97,214 each fiscal year.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304

Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, KVe, KJo, MW, TB, KKR, ESi, AI