SUBJECT: Establishing a DNA database

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes — Oakley, Bailey, Carter, Driver, Luna, Madden, McCoulskey

0 nays

2 absent — Allen, Edwards

WITNESSES: For — Grant Hartline, Texas Association Against Sexual Assault; S.C. Van Vleck Fort Worth Police Department; Kenneth Williams, Patsy Day

Against — None

BACKGROUND: DNA, or deoxyribonucleic acid, forms the molecular basis for heredity and can be used to identify an individual from fluids such as blood or semen.

DIGEST: CSHB 40 would authorize the director of the Department of Public Safety (DPS) to establish and maintain a computerized DNA database to classify, match and store results of DNA analysis and allow DNA evidence to be admissible as evidence of identity.

Adults and juvenile offenders in certain sexual-offense cases would be required to provide specimens for inclusion in the database, and the Texas Department of Criminal Justice (TDCJ) would be required to obtain samples.

The database could be used in the investigation or prosecution of offenses, for identifying human remains from a disaster or for a humanitarian reason, identifying missing persons and establishing population statistics. The database could not be used to obtain information about physical traits or predisposition for diseases unless it was related to another purpose of the system. The system would have to be compatible with the national DNA identification index system used by the FBI.

CSHB 40 would take effect September 1, 1995.

DNA records. The database could contain records of the following:

• adults or juveniles convicted of certain crimes;
• deceased crime victims;
• specimens obtained in crime investigations;
• unidentified missing persons and unidentified persons;
• close biological relatives of missing persons;
• persons at risk of becoming lost, such as a child or a mentally incapacitated person, if required by a court or consented to by a parent or guardian.

TDCJ would have to obtain specimens and send them to DPS if an inmate was ordered by a court to provide a sample or was serving a sentence for one of the following offenses:

• indecency with a child, sexual assault, aggravated sexual assault;
• any offense if the offender had previously been convicted for indecency with a child, sexual assault, aggravated sexual assault;
• a felony in which the court had entered an affirmative finding that the offense involved a specific intent to arouse or gratify the sexual desire of any person.

Inmates would be required to give samples prior to their earliest parole eligibility date, or, for inmates admitted to TDCJ after February 1, 1996, upon admission. Offenders who refused to give a sample would be subject to administrative penalties but could not be held past their statutory release date.

Juveniles committed to the Texas Youth Commission for offenses occurring on or after January 1, 1996, would have to provide samples if they were ordered to do so by a court or were adjudicated for indecency with a child, sexual assault or aggravated sexual assault.

Judges would be able to order defendants to submit a specimen to DPS for the DNA database as a condition of probation, for offenses committed on or after January 1, 1996.

Access to database. Database records could be provided by DPS or laboratories only by court order or through written request. Full records could be released only to DNA laboratories, criminal justice or law enforcement agencies, defendants or defense counsels or persons authorized by a court or by law. Partial records that did not include personal identifying information could be released for statistical or research purposes, development of analysis techniques and quality control and to or the FBI's national DNA identification system.

DPS could release information concerning the number of requests made for a defendant's DNA record and the name of the requesting person. Persons could authorize release of their own records to anyone. If a request was not written, DPS could release data without the personal identifying information or tell the requestor that the record exists but that a written request is required. DNA records would be confidential and not subject to the Open Records Act.

Expunction of records. DPS would be required to expunge DNA records of persons upon court order and notification in writing of the order. Persons could petition a court to have their records expunged if:

• they were acquitted or convicted and then pardoned;
• an indictment was not presented, became void or was dismissed because of mistake, false information or other reason indicating absence of probable cause; the person had been released, no charge was pending and any charge did not result in a final conviction or court-ordered probation, and the person had not been convicted of a felony in the five years preceding arrest for the current charge;
• the conviction that related to the DNA record has been reversed and prosecution for the offense was barred.

Admissibility of DNA analysis. Results of DNA analysis would be admissible in criminal proceeding to prove or disprove identity unless a court found the results were unreliable or untrustworthy because a laboratory or law enforcement agency failed to comply with DPS rules. Expert testimony about the merits of DNA identification would not be necessary for DNA analysis to be admitted as evidence.

DPS authority. DPS would have to establish mandatory procedures and rules for DNA laboratories and for law enforcement agencies for the collection, preservation, shipping and analysis of a specimen. DPS could only accept specimens from live persons that were taken in a medically approved manner by a health care professional or a trained person who was supervised by a doctor. Laboratories could analyze samples only to type the genetic markers, for criminal justice or law enforcement purposes or for other purposes of the database. DPS rules would have to be adopted by January 1, 1996.

DPS could charge a reasonable fee for DNA analysis submitted voluntarily or to provide research information. DPS would be required to provide free vials and other items for the specimens. The DPS director would be authorized to conduct DNA analyses or to contract with another entity to perform analyses. The Texas Department of Criminal Justice would be authorized to collect specimens or to contract with another entity for the collection.

With advice from the Department of Information Resources DPS would have to develop plans to improve the reporting and accuracy of the database and have a monitoring system to identify inaccurate or incomplete information.

SUPPORTERS SAY:

CSHB 40 would give Texas a useful aid in the fight against crime and help the state locate missing persons. DNA databases allow crime laboratories to compare a crime scene DNA profile to DNA profiles in the database and to statistically describe how often the match occurs in the population. Sex offenders often repeat their crimes, and establishing a database would let law enforcement officers compare database DNA from across the state, and even in the federal system, against DNA from physical evidence gathered after a crime.

DNA profiles are highly individualized and allow development of a list of suspects to consider in an investigation, along with other factors. A DNA database can help innocent suspects by proving they did not commit an offense.

CSHB 40 would allow Texas to join the approximately 25 other states and the federal government that are authorized to keep DNA records. DNA databases have generated leads in several cases. The first U.S. case solved by searching DNA records was a 1991 rape/murder in Minnesota. More than 24,000 DNA records are contained in the federal and state databases. CSHB 40 would ensure that the Texas database is compatible with the federal system and standards.

DNA databases pose no more threat to rights to privacy than the statewide fingerprint database. Only adults and juveniles who commit specific crimes would be required to submit samples. It is necessary to include juveniles because they are increasingly committing violent sex crimes and, like adults, are often repeat offenders.

Labs would be regulated and have to follow standard procedures. A sample could not be accepted unless it was collected in a medically approved manner.

Numerous safeguards are contained in the bill to ensure that information in a DNA database is not misused. For example, labs could analyze specimens only for very specific purposes. No insurance companies or others seeking information about physical traits or predisposition for disease could misuse information in the database. DPS could release full database records with persons names only to labs, criminal justice and law enforcement agencies, defendants or persons authorized by courts. DNA records would be confidential and not subject to the Open Records Act. CSHB 40 would allow DNA records to be expunged following already-established procedures.

The cost of setting up a database would be completely offset by its value in speeding the solving of crimes, and represents only a fraction of the cost to victims of violent crime. Investing in a DNA database, with a large part of the costs in the first year for the set-up, would be similar to the investment the state had to make in the computerized fingerprint system. CSHB 40 would not appropriate any money but would allow the database to be established if funds were available. The House-approved version of the general appropriations bill contains $1.6 million in fiscal 1996 and

$600,000 in 1997 for the database in the Article 11 "wish list." In addition, the state may be able to obtain federal grants to pay for part of the costs.

OPPONENTS SAY:

The creation of a DNA database could infringe on persons' right to privacy. A DNA database would vastly increase the amount of information the government has on file about citizens and would be one more move toward comprehensive files on individuals.

A DNA database might cause law officers to unreasonably focus only on those in the database when searching for suspects. They might also overvalue DNA evidence, when DNA technology is not foolproof, profiles are not unique to individuals and mistakes can be made in labs. Courts could also overestimate data reliability just because the state maintains it.

The bill would go too far in eliminating any requirement for expert testimony about the reliability and trustworthiness of DNA for its admissibility as evidence of identity. DNA testing is still a new field, and factfinders should be able to determine for themselves how effective it may be as an identification tool.

A DNA database could be misused by those outside of law enforcement. Although the bill would prohibit obtaining information about physical traits or predisposition for disease, future amendments could lead to the misuses of this information by insurance companies, employers and others.

OTHER OPPONENTS SAY:

Juveniles should not be included in a DNA database. Including juveniles would erode the separation between the juvenile and adult justice systems.

NOTES:

According to the fiscal note, CSHB 40 would cost about $1.5 million in general revenue in 1996 and about $444,000 each year thereafter.

The committee substitute made changes that included requiring samples from juveniles and from adults convicted of any felony, if certain conditions are met; allowing judges to order probationers to submit specimens; allowing voluntary submissions to the database; outlining the admissibility of DNA analysis; allowing DNA records to be released to persons authorized by a court order; specifying the records permitted in the

data base; outlining the purposes of the database; and requiring DPS to establish procedures for DNA laboratories.

A similar bill, SB 874 by Madla, which was reported favorably by the Senate Criminal Justice Committee on April 11, would require DPS to maintain a DNA database of specimens from adults who have been convicted of or placed on probation for specific offenses; juvenile offenders are not included. SB 874 would require offenders to pay a fee to cover the costs of analysis and make the bill contingent on obtaining a federal funding grant.