

## **BILL ANALYSIS**

Senate Research Center

S.B. 727  
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Criminal Justice  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas needs to have a more reliable and complete resource to help law enforcement solve crimes and apprehend suspects.

Under current law, those sentenced to the Texas Department of Criminal Justice (TDCJ) or the Texas Youth Commission (TYC) are mandated to provide a DNA sample. In addition, those convicted of sex crimes must provide a DNA sample. However, individuals currently not required to provide a DNA sample are those sentenced to probation and those on deferred adjudication.

S.B. 727 requires certain persons to pay costs related to DNA testing and certain convicted felons, including juveniles on probation, to provide a DNA sample.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Article 102.020, Code of Criminal Procedure, to read as follows:

Art. 102.020. COSTS RELATED TO DNA TESTING.

SECTION 2. Amends Article 102.020, Code of Criminal Procedure, by amending Subsections (a) and (h), and adding Subsections (h-1) and (j), as follows:

(a) Requires a person to pay as a cost of court:

(1) \$250 on conviction of an offense listed in Section 411.1471(a)(1) (relating to the requirement that a defendant who is indicted or waives indictment for a felony prohibited or punishable under certain sections of the Penal Code is required to provide a DNA sample), Government Code;

(2) \$50 on conviction of an offense listed in Section 411.1471(a)(3) (relating to the requirement that a defendant convicted of an offense under Section 21.07 (Public Lewdness) or 21.08 (Indecent Exposure), Penal Code, is required to provide a DNA sample) of that code; or

(3) \$34 on placement of the person on community supervision, including deferred adjudication community supervision, if the person is required to submit a DNA sample under Section 11(j), Article 42.12. Makes conforming and nonsubstantive changes.

(h) Creates an exception under Subsection (h-1). Makes a nonsubstantive change.

(h-1) Requires the clerk of the court to transfer to the comptroller of public accounts (comptroller) any funds received under Subsection (a)(3). Requires the comptroller to credit the funds to the Department of Public Safety of the State of Texas (DPS) to help

defray the costs of any analyses performed on DNA samples provided by defendants who are required to pay a court cost under this article.

(j) Authorizes the court to waive the imposition of a court cost under this article if the court determines that the defendant is indigent and unable to pay the cost.

SECTION 3. Amends Chapter 54, Family Code, by adding Section 54.0409, as follows:

Sec. 54.0409. DNA SAMPLE REQUIRED ON CERTAIN FELONY ADJUDICATIONS. (a) Provides that this section applies only to conduct constituting the commission of a felony that is list in Section 3g(a)(1) (relating to certain provisions that do not apply to this article), Article 42.12 (Community Supervision), Code of Criminal Procedure, or for which it is shown that a deadly weapon, as defined by Section 1.07 (Definitions), Penal Code, was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct.

(b) Requires the court, if a court or jury makes a disposition under Section 54.04 (Disposition Hearing) in which a child is adjudicated as having engaged in conduct constituting the commission of a felony to which this section applies and the child is placed on probation, to require as a condition of probation that the child provide a DNA sample under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, for the purpose of creating a DNA record of the child, unless the child has already submitted the required sample under other state law.

SECTION 4. Amends Chapter 54, Family Code, by adding Section 54.0462, as follows:

Sec. 54.0462. PAYMENT OF FEES FOR OFFENSES REQUIRING DNA TESTING.

(a) Requires the juvenile court, if a child is adjudicated as having engaged in delinquent conduct that constitutes the commission of a felony and the provision of a DNA sample is required under Section 54.0409 or other law, to order the child, parent, or other person responsible for the child's support to pay to the court as a cost of court a \$50 fee if the disposition of the case includes a commitment to a facility operated by or under contract with the Texas Youth Commission (TYC), and a \$34 fee if the disposition of the case does not include a commitment described by this subsection and the child is required to submit a DNA sample under Section 54.0409 or other law.

(b) Requires the clerk of the court to transfer to the comptroller any funds received under this section. Requires the comptroller to credit the funds to DPS to help defray the costs of any analyses performed on DNA samples provided by children who are required to pay a court cost under this section.

(c) Requires the court, if the court finds that a child, parent, or other person responsible for the child's support is unable to pay the fee required under Subsection (a), to enter into the child's case records a statement of that finding. Authorizes the court to waive a fee under this section only if the court makes the finding under this subsection.

SECTION 5. Amends Section 61.002(a), Family Code, to provide that this chapter, except as provided by Subsection (b) (relating to the inapplicability of Section 61.002 to the entry and enforcement of a child support order under Section 54.06 (Judgments for Support)), applies to a proceeding to enter a juvenile court order for payment of fees under Section 54.0462. Makes nonsubstantive changes.

SECTION 6. Amends Section 11, Article 42.12, Code of Criminal Procedure, by adding Subsection (j), to require a judge granting community supervision to a defendant convicted of a felony to require that the defendant, as a condition of community supervision, provide a DNA sample under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record of the defendant, unless the defendant has already submitted the required sample under other state law.

SECTION 7. (a) Amends Section 102.021, Government Code, to conform to Chapter 1263 (H.B. 3060), Acts of the 80th Legislature, Regular Session, 2007, and further amends it, as follows:

Sec. 102.021. COURT COSTS ON CONVICTION: CODE OF CRIMINAL PROCEDURE. Requires a person convicted of an offense to pay certain fees under the Code of Criminal Procedure, in addition to all other costs, including:

(3)(B) fees for services of peace officer executing or processing an issued arrest warrant, capias, or capias pro fine (Art. 102.011 (Fees for Services of Peace Officers), Code of Criminal Procedure), rather than executing or processing an issued arrest warrant or capias...\$50;

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

(14) court cost for DNA testing for the offense of public lewdness or indecent exposure, rather than court cost on an offense of public lewdness or indecent exposure, (Art. 102.020(a)(2), rather than Art. 102.020, Code of Criminal Procedure)...\$50;

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

(18) costs attendant to convictions under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, and under Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, to help fund drug court programs established under Chapter 469 (Drug Court Programs), Health and Safety Code (Art. 102.0178 (Costs Attendant to Certain Intoxication and Drug Convictions), Code of Criminal Procedure)...\$50. Makes nonsubstantive changes.

(b) Repealer: Section 102.0215 (Additional Court Costs on Conviction: Code of Criminal Procedure), Government Code.

SECTION 8. Amends Section 103.0212, Government Code, to conform to Chapters 910 (H.B. 2949) and 1053 (H.B. 2151), Acts of the 80th Legislature, Regular Session, 2007, and further amends it, as follows:

Sec. 103.0212. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: FAMILY CODE. Requires an accused or defendant, or a party to a civil suit, as applicable, to pay certain fees and costs under the Family Code if ordered by the court or otherwise required:

(2)(B) in juvenile court, a request fee for a teen court program, rather than a teen court administration fee, (Sec. 54.032 (Deferral of Adjudication and Dismissal of Certain Cases on Completion of Teen Court Program), Family Code)...\$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;

(D) a juvenile delinquency prevention fee (Sec. 54.0461 (Payment of Juvenile Delinquency Prevention Fees), Family Code)...\$50, rather than \$5;

(F) a fee to cover costs of required duties of teen court (Sec. 54.032, Family Code)...\$20, if the court ordering the fee is located in the Texas-Louisiana border region, but otherwise not to exceed \$10;

(G) a fee for DNA testing on commitment to certain facilities (Sec. 54.0462, Family Code)...\$50; and

(H) a fee for DNA testing after placement on probation or as otherwise required by law (Sec. 54.0462, Family Code)...\$34.

SECTION 9. Amends Section 411.141(3), Government Code, to redefine "criminal justice agency."

SECTION 10. Amends Sections 411.148(a), (d), (f-1), (j), and (k), Government Code, as follows:

(a) Provides that this section applies to an individual, other than a juvenile, who is ordered by a magistrate or court to provide a DNA sample under Section 411.154 (Enforcement by Court Order) or other law, including as part of an order granting community supervision to the individual; or a juvenile who, following an adjudication for conduct constituting a felony, is confined in a facility operated by or under contract with TYC or placed on probation, if the conduct constitutes a felony described by Section 54.0409, Family Code. Makes nonsubstantive changes.

(d) Requires TYC, if an individual described by Subsection (a)(2)(A) (relating to an individual confined in a facility operated by or under contract with TYC), is received into custody by TYC, to collect the sample from the individual during the initial examination or at another time determined by TYC. Requires a criminal justice agency, if an individual who is required under this section or other law to provide a DNA sample is in the custody or under the supervision of another criminal justice agency, such as a community supervision and corrections department, a parole office, or a local juvenile probation department or parole office, to collect the sample from the individual at a time determined by the agency.

(f-1) Requires TYC to notify the public safety director that an individual described by Subsection (a)(2)(A), rather than Subsection (a)(2) (relating to a juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with the Texas Youth Commission), is to be released from custody not earlier than the 120th day before the individual's release date.

(j) Makes a conforming change.

(k) Provides that when a criminal justice agency of this state agrees to accept custody or supervision of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the criminal justice agency that agrees to accept custody or supervision of the individual is required to collect a DNA sample under this subchapter if the individual was convicted of or adjudicated as having engaged in conduct constituting a felony and is otherwise required to provide a DNA sample under this section. Deletes existing text providing that when a criminal justice agency of this state agrees to accept custody of an individual from another state or jurisdiction under an interstate compact or a reciprocal agreement with a local, county, state, or federal agency, the acceptance is conditional on the individual providing a DNA sample under this subchapter if the individual was convicted of a felony.

SECTION 11. Repealer: Section 411.148(e) (regarding the collection of DNA from an individual received into custody of TYC), Government Code.

SECTION 12. (a) Makes application of Section 11(j), Article 42.12, Code of Criminal Procedure, and Section 54.0409, Family Code, as added by this Act, prospective.

(b) Makes application of the changes in law made by this Act in amending Article 102.020, Code of Criminal Procedure, and adding Section 54.0462, Family Code, prospective.

SECTION 13. Provides that to the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions and corrections in enacted codes.

SECTION 14. Provides that this Act does not make an appropriation. Provides that a provision in this Act that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

SECTION 15. Effective date: September 1, 2009.