

SUBJECT: Establishing a DNA database for missing persons

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 7 ayes — B. Turner, Berman, Driver, Hupp, Isett, King, Villareal

0 nays

2 absent — Keel, Gutierrez

WITNESSES: For — Lance Idol

Against — None

On — Arthur Eisenberg, University of North Texas Health Science Center at Fort Worth; Drew T. Durham, Office of the Attorney General; Ron Urbanovsky, Texas Department of Public Safety

DIGEST: CSHB 3041 would require the board of regents of the University of North Texas System to develop at the University of North Texas Health Science Center at Fort Worth a DNA database to identify unidentified human remains and high-risk missing persons. The database would be separate from the Texas Department of Public Safety's (DPS) DNA database.

The center would have to compare DNA samples taken from unidentified human remains with DNA samples taken from personal articles belonging to high-risk missing persons or from parents of high-risk missing persons or other appropriate people. A high-risk person would mean a person missing as a result of an abduction by a stranger, a person missing under suspicious or unknown circumstances, and a person missing more than 30 days, or less than 30 days at the discretion of the investigating agency, if there was reason to believe that the missing person was in danger or deceased.

The database could contain only DNA genetic markers commonly recognized as appropriate for human identification. It could not contain markers that predict biological function, except to the extent that they were appropriate for human identification. The results of DNA analysis would

have to be compatible with the Federal Bureau of Investigation's DNA database. Entities charged under state law with collecting DNA samples from unidentified human remains would have to submit the samples to the center for analysis and inclusion in the database.

Within 30 days of the filing of a report that a high-risk person was missing, law enforcement agencies would have to inform the person's parents or other appropriate people that they could provide a DNA sample for analysis or a personal article belonging to the missing person for analysis. Agencies could not use any form of incentive or coercion to compel someone to provide a sample. The center would have to develop a kit for law enforcement agencies to use to take DNA samples.

Before submitting a DNA sample, law enforcement agencies would have to reverify the status of a high-risk person.

The center could disclose the results of a DNA analysis only to personnel of the center, law enforcement agencies, medical examiners, prosecuting attorneys, and parents or other people who voluntarily provided a DNA sample. DNA samples extracted from living people would have to be destroyed after a positive identification was made and a report issued.

It would be a Class B misdemeanor (punishable by up to 180 days in jail and/or a maximum fine of \$2,000) to violate the bill's destruction or confidentiality provisions. A person who intentionally violated the destruction or confidentiality provisions also would be liable for civil damages to the DNA donor for \$5,000 for each violation, plus reasonable attorney's fees and court costs.

The center would have to create an advisory committee of medical examiners, law enforcement officials, and other interested people to impose priorities regarding the identification of the backlog of high-risk missing-persons cases and unidentified human remains. The center could use federal funds to reduce the backlog of cases, and the reduction of the backlog could be outsourced to other laboratories.

CSHB 3041 would establish the missing persons DNA database fund as a general revenue fund account. The Legislature could appropriate money from

the crime victims' compensation fund and the crime victims' auxiliary fund to fund the database. Money in the account could be used only to establish and maintain center infrastructure; pay the costs of DNA sample storage, analysis, and labor costs for the database; reimburse counties for pathology and exhumation as considered necessary by the center; publicize the DNA database; educate law enforcement officers about the database; and provide outreach programs related to the database.

Funding for fiscal 2003 would have to be used to develop the DNA database and center infrastructure and to establish center protocols and employ personnel. The center would have to begin case analyses in 2004 and could establish priorities, giving priority to cases involving children.

This bill would take effect September 1, 2002.

**SUPPORTERS
SAY:**

CSHB 3041 would give the state a distinct database and a laboratory dedicated to the important job of identifying high-risk missing persons. The state should be committed to helping Texans identify loved ones who are crime victims. A statewide database is necessary because the bodies of persons reported missing in one area of the state easily can turn up in another area.

A database is needed that is separate from the one operated by DPS. The DPS database is used for law enforcement, while the database created by this bill would be dedicated to identifying remains. The new database also would not be associated with identifying the manner and means of death.

A separate database would address the privacy concerns some family members of victims have in submitting samples to DPS. Family members may believe that their sample could be used to link them to crimes or even to traffic tickets. A separate, voluntary database housed in a higher education institution instead of a law enforcement agency would reassure family members that their sample would be used only to help find and identify their loved ones.

The University of North Texas Health Science Center at Fort Worth has the expertise and facilities to set up a missing persons database for the state. It already conducts forensic testing and has experience dealing with DNA. It is

the only lab with expertise in mitochondrial DNA analysis, the kind often used to identify DNA in decaying or destroyed bodies.

Spending money from the crime victims' compensation fund to help find high-risk missing persons would be an appropriate use of this money, which is dedicated to helping victims and their families. The fund is expected to end fiscal 2001 with a balance of about \$252 million, so the state easily could afford to use about \$733,000 of this money for a new database.

OPPONENTS
SAY:

CSHB 3041 is unnecessary. The state's 14 current forensic labs can handle the relatively small workload for analyzing DNA in missing persons cases and can send the information to DPS, which maintains a series of databases, including one for missing persons. Money in the crime victims' compensation fund and the crime victims' auxiliary fund should be spent to compensate victims or provide direct services to crime victims.

NOTES:

The bill's fiscal note estimates a cost of \$732,588 in fiscal 2002 and about \$400,000 each year after that.

The committee substitute made numerous changes to the filed version, including allowing law enforcement agencies to submit samples to the center as soon as practicable instead of 30 days after a missing persons report was filed; defining how the center could use funds appropriated for the database; and requiring the center to begin analysis in 2004 instead of 2003.

The companion bill, SB 1304 by Harris, passed the Senate by 28-0 on April 20 and was reported favorably, as substituted, by the House Public Safety Committee on April 30, making it eligible to be considered in lieu of HB 3041.

HB 3041
House Research Organization
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