SUBJECT: Requiring DNA samples of all inmate felony offenders

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Haggerty, Farrar, Allen, Ellis, Gray, Hopson, Isett, Ritter

0 nays

1 present, not voting — Hodge

WITNESSES: For — William Harrell, American Civil Liberties Union of Texas; *Registered but not testifying:* Kevin F. Lawrence and Tom Gaylor, Texas Municipal Police Association

Against — None

On — Pat Johnson, Texas Department of Public Safety; William Harrell, ACLU of Texas

BACKGROUND: Prison inmates must give blood samples or other specimens to create DNA records at the request of the institutional (prison) division of the Texas Department of Criminal Justice (TDCJ) if the inmate is ordered by a court to do so or is serving a sentence for specified violent offenses. Those offenses are murder, aggravated assault, first-degree burglary, second-degree burglary if committed in a habitation, an offense that requires registration under the state's sex-offender registration law, or any offense if the inmate has been convicted previously of one of the above offenses or a similar offense under federal law or the laws of another state.

Juvenile offenders committed to the Texas Youth Commission (TYC) must provide blood samples or other specimens to create a DNA record if ordered to do so by a juvenile court or if the juvenile was committed for one of the offenses that trigger the requirement for adult offenders to give samples.

DIGEST:

CSHB 588 would require adult inmates serving sentences in TDCJ's institutional division for any felony and juveniles committed to TYC for a felony violation to provide blood or other specimens to create a DNA record.

This bill would take effect January 1, 2002, and would apply only to adult offenders who began serving sentences and juveniles committed to TYC after that date. If the Department of Public Safety (DPS) does not receive a federal grant to pay the associated costs, CSHB 588 would be null and void.

SUPPORTERS SAY:

CSHB 588 would broaden the category of offenders who must submit DNA samples for the state database so that both the defense and the prosecution in cases can take advantage of DNA technology. DNA testing can help identify perpetrators of crimes as well as exclude people from the list of suspects. Many offenders are repeat offenders, and having their DNA records in the database could help solve and deter crimes. Because felonies are serious crimes, making felony offenders part of the database would be appropriate.

CSHB 588 would not lead to violations of privacy. Current state law tightly controls access to the DNA database, so there is no need for specific restrictions in CSHB 588. Government Code, chapter 411 makes DNA records in the database confidential and not subject to the open records law. It restricts uses of the records and restricts database access to criminal justice agencies for judicial proceedings, criminal defense purposes, or statistical analysis if personally identifiable information has been removed. DNA profiles for the database are developed for identification purposes only, not for medical or other reasons.

The federal government has been supporting state's efforts with their DNA databases and may provide funds to cover the bill.

OPPONENTS SAY:

Expanding the state's DNA database to include all felons would go too far in the state's DNA collection efforts and could lead to violations of privacy. While taking DNA from violent offenders may be justified, CSHB 588 would include offenders who had committed nonviolent property crimes and other offenses such as driving while intoxicated. These offenders have not committed the types of violent offenses that warrant the state keeping their DNA profiles.

The number of people in the database — even if they are offenders — should be kept to a minium. As the database expands, the risk increases that the information could be used for purposes other than law enforcement, such as to delve into a person's genetic makeup for medical or insurance purposes.

OTHER OPPONENTS SAY:

CSHB 588 should contain assurances that the DNA data would be confidential and would be used only by law enforcement agencies or for criminal defense purposes. It also should include provisions for expunging DNA records if people later were found not guilty of the offenses for which they were charged, and it should contain a specific penalty for violating privacy provisions.

NOTES:

HB 588 as filed would have required that samples be taken from offenders who began serving sentences for felonies before the bill's effective date, which would have been immediate if the bill received the necessary two-thirds record vote of the membership of each house. The committee substitute also added the provision that the bill would be null and void if DPS did not receive a federal grant to pay for implementing the bill.

The bill's fiscal note estimates a cost of about $907,000 annually in federal funds.

Article 11 of the House-approved version of SB 1 by Ellis, the general appropriations bill for fiscal 2002-03, contains a rider that would appropriate $400,000 to DPS contingent on enactment of HB 588 and receipt of an equal amount of federal matching funds.