

SUBJECT:           Allowing forcible DNA testing of certain inmates

COMMITTEE:       Public Safety — favorable, without amendment

VOTE:             6 ayes — Berman, Carter, Driver, Hupp, P. King, Najera

0 nays

3 absent — B. Turner, Keel, Gutierrez

WITNESSES:       For — None

Against — None

On — Carl Reynolds, Texas Department of Criminal Justice

BACKGROUND:     The Department of Public Safety (DPS) maintains a DNA database for the purpose of helping federal, state, or local criminal justice or law enforcement agencies investigate or prosecute offenses in which biological evidence is recovered. DNA evidence can be used to investigate, exclude, or identify suspects and in prosecuting a criminal case. The database also can be used to help recover and identify human remains in a disaster situation and to identify living or deceased missing persons. The DNA database can be used to establish a database of population statistics, for identification research, for protocol development, and for DNA laboratory quality control if personal information is obscured.

State law requires prison inmates to provide DNA samples if they have been convicted of or are serving time for an offense for:

- ! indecency with a child;
- ! sexual assault;
- ! aggravated sexual assault;
- ! aggravated kidnapping with intent to commit a sexual offense; or
- ! burglary with intent to commit a sexual offense.

Inmates not falling into these categories must provide DNA samples if ordered by a court to do so.

DNA samples also are taken from juvenile offenders who have been convicted of or are serving time for the above offenses. The Texas Youth Commission (TYC) oversees the collection and recording of these samples.

The sample is obtained during the diagnostic process, usually in the form of a blood sample.

An inmate may not be held past his or her statutory release date for failing or refusing to provide a DNA sample, although the institution may take other administrative action. DPS, a prosecuting attorney, or the attorney general may obtain a court order requiring an inmate to submit to a blood test.

**DIGEST:**

HB 3215 would amend the Government Code to allow the voluntary or forced collection of a sample or specimen intended for the DNA database. A medical staff employee of the Texas Department of Criminal Justice (TDCJ) or of TYC could obtain a voluntary sample from any inmate or juvenile offender. An employee of TDCJ or TYC could use force against an inmate or juvenile offender required to provide a sample, when and to the degree that the employee reasonably believed that force was immediately necessary.

The bill also would amend Government Code, sec. 411.150 to require TYC to obtain, preserve, and maintain records of DNA samples from juvenile offenders in conformance with the provisions for adult inmates.

HB 3215 also would allow TDCJ and TYC to contract with an individual or entity to provide required phlebotomy (blood sampling) services.

The bill would take effect September 1, 1999.

**SUPPORTERS  
SAY:**

HB 3215 would clarify existing law. When the Legislature created the state's DNA database in 1995, its intent was to require certain inmates to submit to blood samples. TDCJ and TYC do not feel they have the statutory authority to use force on inmates or juvenile offenders who refuse to give the samples. Sometimes use of force is the only means by which authorities can make an inmate or juvenile offender comply with the requirement. The bill also would give TDCJ and TYC clear authority to take blood samples from volunteers.

The DNA database is an important tool in proving both guilt and innocence. It also can have a deterrent effect, in that criminals who know that their DNA

sample is contained in the database may be less likely to commit crimes in the future.

Most inmates comply with the request for a blood sample. Inmates who refuse to submit a DNA sample are likely to be hiding something, or else they would not refuse. These are the inmates who most need to be represented in the database.

It is important for every inmate convicted of a sexual offense to be represented in the database. Not only does the database provide law enforcement with a useful tool for tracking criminals, but it could allow officials to rule out the involvement of some suspects without conducting a lengthy investigation.

OPPONENTS  
SAY:

Forcible collection of DNA samples would violate an inmate's constitutional rights. Physical evidence necessary to an ongoing investigation in which an inmate is a suspect can be subpoenaed or procured by a court order. No inmate should have to submit to sampling not based on suspicion.

Inmates can refuse medical procedures in prison if the condition is not limb- or life-threatening. They should not have to give blood to fulfill a non-emergency law enforcement need.

Allowing a TDCJ or TYC employee to use force on the basis of perceived need could promote abuse of inmates by guards. Use of force should be limited to the most extreme circumstances. A court order, not force, should be used when an inmate refuses to give a sample.

OTHER  
OPPONENTS  
SAY:

Government Code, sec. 411.146(b) specifies that a person who collects a blood sample or other specimen is not liable in a civil or criminal action if the sample is collected in a reasonable, generally accepted professional manner. Collecting a blood sample by force is not a generally accepted practice. Any phlebotomist under contract with TDCJ or TYC could be subject to liability for performing a blood test while the inmate is restrained.