

SUBJECT: Requiring DNA samples from those convicted of enticing a child

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt

0 nays

WITNESSES: For — David Fugitt, Austin Police Department; Amy Mills, Dallas Police Department; Holly Whillock, Houston Police Department; (*Registered, but did not testify*: Donald Baker, Austin Police Department; Justin Wood, Harris County District Attorney's Office)

Against — None

On — (*Registered, but did not testify*: Skylor Hearn, Texas Department of Public Safety)

BACKGROUND: Penal Code, sec. 25.04 makes it a crime to knowingly entice, persuade, or take children from the custody of their parents or guardians or from a person standing in the stead of children's parents or guardians. The offense must be done with the intent to interfere with the lawful custody of a child younger than 18. The crime of enticing a child is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) unless there was intent to commit a felony against the child, in which case it is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

The Department of Public Safety (DPS) maintains the state's computerized database under Government Code, ch. 411, subch. G. Its principal purpose is to help criminal justice agencies investigate and prosecute crimes. Law enforcement authorities are required to collect DNA from convicted felons, those charged with certain felonies, those required by the state to register as sex offenders, and repeat offenders who are arrested for specific crimes. In addition, those convicted of or placed on deferred adjudication for the misdemeanor crimes of public lewdness

or indecent exposure are required to provide a sample for the purpose of creating a DNA record.

DIGEST:

CSHB 941 would expand the state's DNA database to include samples from those convicted of enticing a child. Courts would have to require defendants convicted of enticing a child to provide a sample for the purpose of creating a DNA record.

Courts would no longer have to require those placed on deferred adjudication for public lewdness or indecent exposure to submit a sample for the database.

The bill would require DPS to destroy DNA samples collected solely to create a DNA record. The destruction would have to occur immediately after test results associated with the sample were entered into the state DNA and federal CODIS databases.

Those convicted of enticing a child would be required to pay a court cost of \$50 for the required DNA testing. The fee would go to DPS to defray the cost of the DNA analysis, but counties could choose to retain 10 percent of the fee. The bill would revise the distribution of the current \$50 fee paid by those convicted of or placed on deferred adjudication for public lewdness or indecent exposure. Instead of 35 percent of the fee going to the State Highway Fund and 65 percent going to the criminal justice planning account, the fee would go to the DPS and the counties.

The current provision that allows offenders to give only one DNA sample, even though they may be required to do so under multiple sections, would be extended to include those required to give a sample as a condition of probation.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 941 would help improve public safety by requiring those who are convicted of enticing a child to submit a DNA sample for the state's

database. The bill would be a logical, narrow extension of current law, which already requires collection of DNA samples from those convicted of the misdemeanor crimes of public lewdness and indecent exposure.

Having DNA samples from those convicted of enticing a child would help law enforcement agencies investigate, solve, and prevent crime. DNA records can help accurately and quickly identify suspects so that the guilty can be convicted and the innocent exonerated. These critical data could help prevent future offenses.

It is important to include those convicted of enticing a child in the state's DNA database because such offenders may have a history of other crimes, especially against children, that comes to light only after the person's DNA is collected and linked with previous incidents. Offenders convicted of enticing a child may have had more serious crimes in mind, such as kidnapping or indecency with a child, but were stopped before they could carry out that offense, or they could have agreed to plead guilty to enticing a child to avoid a more serious charge.

The bill would apply narrowly to convictions for enticing a child, mirroring current law that applies to convictions for the misdemeanor offenses of public lewdness and indecent exposure. The bill would focus the state's efforts on dangerous offenders by eliminating the current requirement that those who receive deferred adjudication for public lewdness and indecent exposure provide samples.

Collecting DNA has become the standard method for compiling identity information about people convicted of crimes, and the state's database is well established. The samples are not used to obtain private information or to infringe on privacy.

The bill would increase public safety without adding a financial burden by requiring offenders to pay a \$50 fee to defray the cost to the counties and to DPS of collecting and analyzing the samples.

OPPONENTS

Any expansion of Texas' DNA data collection efforts should be linked to

SAY: those arrested or convicted of more serious crimes only. Such a targeted approach would keep the collection and analysis system from being overwhelmed, which would constitute the best use of state resources. As Texas expands its database to include more misdemeanor offenses, it runs the risk of upsetting the balance between public safety and privacy.

**OTHER
OPPONENTS
SAY:** Requiring DPS to destroy DNA samples could conflict with requirements related to DPS lab accreditation. Destruction of samples also could make it difficult for DPS to perform additional testing, if needed, and to carry out other practices, such as match confirmations.

NOTES: The Legislative Budget Board's fiscal note estimates that the bill could be implemented within DPS' current resources. Local governments could see a slight positive fiscal impact from their share of the \$50 court cost.

The committee substitute made several changes to the original bill, including eliminating provisions that would have required DNA samples from anyone convicted of a class B misdemeanor or higher offenses. The committee substitute added the provision requiring a sample from those convicted of enticing a child.

The bill's author plans to offer a floor amendment that would make the requirement that DPS destroy DNA samples permissive instead of mandatory.

A similar bill, SB 725 by Perry, was reported favorably by the Senate Criminal Justice Committee on April 8 and recommended for the local and uncontested calendar.