



DNA Collection Requirements Effective September 1, 2009 Newly Enacted Texas Family Code Section 54.0409

The 81st Legislature passed Senate Bill 727, with an effective date of September 1, 2009, which creates a new section to the Texas Family Code. Newly enacted Section 54.0409 provides:

DNA SAMPLE REQUIRED ON CERTAIN FELONY ADJUDICATIONS.

(a) This section applies only to conduct constituting the commission of a felony:

(1) that is listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(2) for which it is shown that a deadly weapon, as defined by Section 1.07, Penal Code, was used or exhibited during the commission of the conduct or during immediate flight from the commission of the conduct.

(b) If a court or jury makes a disposition under Section 54.04 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, the court shall require as a condition of probation that the child provide a DNA sample under Subchapter G, Chapter 411, 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.

To whom does the new statute apply?

The new collection requirement applies to juveniles placed on probation on or after September 1, 2009, for a felony adjudication where there has been a deadly weapon finding or for any 3g offense (Code of Criminal Procedure Article 42.12, Section 3g), which include: Murder; Capital Murder; Indecency with a Child; Aggravated Kidnapping; Aggravated Sexual Assault; Aggravated Robbery; offenses under Chapter 481 of the Texas Health and Safety Code (Controlled Substances Act) for which punishment is increased under Section 481.140 (Use of a Child) or Section 481.134 (Drug-Free Zones); Sexual Assault; First Degree Injury to a Child; Sexual Performance by a Child; and First Degree Criminal Solicitation.

For purposes of ordering the collection of the sample as a condition of probation, the date the juvenile is placed on probation controls; not the date of conduct/offense. However, it is the conduct/offense date that will control for purposes of ordering the accompanying fee for the collection of the sample (see section below entitled "Must the Court Order a Fee Related to the Sample?" for more detail).

Who is responsible for collecting the samples?

The Juvenile Probation Department is responsible for collecting the DNA sample from juveniles placed on probation. If a juvenile is committed to the Texas Youth Commission, TYC is responsible for collecting the DNA sample.

How is DNA sample defined and how should it be collected?

Texas Government Code Section 411.141 defines DNA sample as follows:

8) "DNA sample" means a blood sample or other biological sample or specimen provided by an individual under this subchapter or submitted to the director under this subchapter for DNA analysis or storage.

No specificity is provided in the various code amendments to Senate Bill 727 as to how the sample should be collected. However, DPS administrative rules (Texas Administrative Code Title 37, Part 1, Section 28.4) provide the following direction:

- (1) a blood sample is collected in a medically approved manner by:
 - (A) a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or
 - (B) another person who is trained to properly collect blood samples and supervised by a licensed physician; or
- (2) a sample other than blood is collected in a manner approved by the director in a policy adopted under this chapter.

A saliva (also referred to as buccal or cheek swab) sample is the only "sample other than blood" that DPS will accept. DPS advises that with regard to the collection of saliva samples, "a manner approved by the director" requires that the person collecting the sample be trained and that the training consists of viewing an 8-minute DVD prepared and distributed by DPS (see below for instructions on ordering the DVD and other materials).

When must the sample be collected?

There is no time limit specified in the statute for collecting the sample from a juvenile placed on probation. Texas Government Code Section 411.148 provides that it will be collected "at a time determined by the [juvenile probation department]". DPS advises that as they begin the implementation of the new collection requirements, the distribution of the required kits will initially be somewhat slow. For this reason, please keep in mind that it may not be possible to collect the samples immediately upon disposition if kits are unavailable to your department.

What do I do with the sample after collection?

Mail it as soon as possible, preferably on the same day as collection, in the postage-paid envelope that is provided with each kit. Specific instructions are included with the kit.

Must I use a kit provided by DPS?

Yes, DPS will not accept a kit purchased or obtained from any other source.

Is there a cost to the Juvenile Probation Department for the kit?

No, there is no cost for the kit.

Must the Court order a fee related to the sample?

Pursuant to newly enacted Texas Family Code Section 54.0462, upon placing a child on probation for an offense requiring registration, the court must assess a \$34 fee unless the court makes a finding that the child, parent, or other responsible person is unable to pay the fee. If the juvenile is committed to a facility operated by or under contract with TYC, the court must order a \$50 fee unless the court makes a finding that the child, parent, or other responsible person is unable to pay the fee. The clerk of the court must transfer to the comptroller any funds received under Section 54.0462 and the comptroller must credit the funds to DPS to help defray the cost of analyses performed on DNA samples.

Section 54.0462, which provides for the ordering of fees associated with the collection of DNA samples, applies only to conduct engaged in on or after September 1, 2009. Section 54.0409, which requires the collection of the DNA samples, applies to juveniles placed on probation on or after September 1, 2009, for an applicable felony offense. Effectively, this means that the court will order the collection of a sample on all applicable felony adjudications where the juvenile is placed on probation after September 1, but will only order the associated fee if the adjudication is related to conduct engaged in on or after September 1.

How do I order required materials from DPS?

You may order the necessary materials, including training DVDs, kits, and database cards used for fingerprinting, by going to the DPS website at www.txdps.state.tx.us and click on the tab at the top that says "Site Index". Scroll down to section 'C' and look for the CODIS DNA Kit Order Form link and click on it. This will bring you to a page that has two order forms (Buccal and Blood). Choose the option for Buccal Swab kits. Print the order form and fax or mail it to the DPS laboratory at the fax number/address provided on the form.

Where can I view the full text of Senate Bill 727?

<http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/SB00727F.pdf>

Who can I contact if I have additional questions?

If you have any additional questions, please contact Rebecca Vieh at DPS at (512) 424-2387 or rebecca.vieh@txdps.state.tx.us or the Commission's Legal Help Desk at (512) 424-6721 or legalinfo@tjpc.state.tx.us.