

By: Johnson, Huffman

S.B. No. 335

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the taking of a specimen to test for intoxication and
3 retention and preservation of toxicological evidence of certain
4 intoxication offenses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 38.50, Code of Criminal Procedure, is
7 amended by amending Subsections (c), (d), and (e) and adding
8 Subsections (g) and (h) to read as follows:

9 (c) An entity or individual described by Subsection (b)
10 shall ensure that toxicological evidence collected pursuant to an
11 investigation or prosecution of an offense under Chapter 49, Penal
12 Code, is retained and preserved, as applicable:

13 (1) for the greater of two years or the period of the
14 statute of limitations for the offense, if the indictment or
15 information charging the defendant, or the petition in a juvenile
16 proceeding, has not been presented or has been dismissed without
17 prejudice;

18 (2) for the duration of a defendant's sentence or term
19 of community supervision, as applicable, if the defendant is
20 convicted or placed on community supervision, or for the duration
21 of the commitment or supervision period applicable to the
22 disposition of a juvenile adjudicated as having engaged in
23 delinquent conduct or conduct indicating a need for supervision; or

24 (3) until the defendant is acquitted or the indictment

1 or information is dismissed with prejudice, or, in a juvenile
2 proceeding, until a hearing is held and the court does not find the
3 child engaged in delinquent conduct or conduct indicating a need
4 for supervision.

5 (d) A person from whom toxicology evidence was collected
6 and, if the person is a minor, the person's parent or guardian,
7 shall be notified [~~For each offense subject to this article, the~~
8 ~~court shall determine as soon as practicable the appropriate~~
9 ~~retention and preservation period for the toxicological evidence~~
10 ~~under Subsection (c) and notify the defendant or the child or~~
11 ~~child's guardian and the entity or individual charged with storage~~
12 ~~of the toxicological evidence] of the periods [~~period~~] for which
13 [~~the~~] evidence may [~~is to~~] be retained and preserved under this
14 article. The notice must be given by:~~

15 (1) an entity or individual described by Subsection
16 (b) that collects the evidence, if the entity or individual
17 collected the evidence directly from the person or collected it
18 from a third party; or

19 (2) the court, if the records of the court show that
20 the person was not given the notice described by Subdivision (1) and
21 the toxicological evidence is subject to the retention period under
22 Subsection (c)(2) or (3) [~~If an action of the prosecutor or the~~
23 ~~court changes the applicable period under Subsection (c), the court~~
24 ~~shall notify the persons described by this subsection about the~~
25 ~~change~~].

26 (e) The entity or individual charged with storing
27 toxicological evidence may destroy the evidence on expiration of

1 the applicable retention period:

2 (1) described by Subsection (c)(1); or

3 (2) described by Subsection (c)(2) or (c)(3), provided

4 that:

5 (A) notice was given in accordance with this
6 article; and

7 (B) if applicable, the prosecutor's office gives
8 written approval for the destruction under Subsection (h) [~~provided~~
9 by the notice most recently issued by the court under Subsection
10 (d)].

11 (g) Notice given under this article must be given:

12 (1) in writing, as soon as practicable, by hand
13 delivery, e-mail, or first class mail to the person's last known
14 e-mail or mailing address; or

15 (2) if applicable, orally and in writing on requesting
16 the specimen under Section 724.015, Transportation Code.

17 (h) A prosecutor's office may require that an entity or
18 individual charged with storing toxicological evidence seek
19 written approval from the prosecutor's office before destroying
20 toxicological evidence subject to the retention period under
21 Subsection (c)(2) or (c)(3) for cases in which the prosecutor's
22 office presented the indictment, information, or petition.

23 SECTION 2. Section 724.015, Transportation Code, is amended
24 to read as follows:

25 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE
26 REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting
27 a person to submit to the taking of a specimen, the officer shall

1 inform the person orally and in writing that:

2 (1) if the person refuses to submit to the taking of
3 the specimen, that refusal may be admissible in a subsequent
4 prosecution;

5 (2) if the person refuses to submit to the taking of
6 the specimen, the person's license to operate a motor vehicle will
7 be automatically suspended, whether or not the person is
8 subsequently prosecuted as a result of the arrest, for not less than
9 180 days;

10 (3) if the person refuses to submit to the taking of a
11 specimen, the officer may apply for a warrant authorizing a
12 specimen to be taken from the person;

13 (4) if the person is 21 years of age or older and
14 submits to the taking of a specimen designated by the officer and an
15 analysis of the specimen shows the person had an alcohol
16 concentration of a level specified by Chapter 49, Penal Code, the
17 person's license to operate a motor vehicle will be automatically
18 suspended for not less than 90 days, whether or not the person is
19 subsequently prosecuted as a result of the arrest;

20 (5) if the person is younger than 21 years of age and
21 has any detectable amount of alcohol in the person's system, the
22 person's license to operate a motor vehicle will be automatically
23 suspended for not less than 60 days even if the person submits to
24 the taking of the specimen, but that if the person submits to the
25 taking of the specimen and an analysis of the specimen shows that
26 the person had an alcohol concentration less than the level
27 specified by Chapter 49, Penal Code, the person may be subject to

1 criminal penalties less severe than those provided under that
2 chapter;

3 (6) if the officer determines that the person is a
4 resident without a license to operate a motor vehicle in this state,
5 the department will deny to the person the issuance of a license,
6 whether or not the person is subsequently prosecuted as a result of
7 the arrest, under the same conditions and for the same periods that
8 would have applied to a revocation of the person's driver's license
9 if the person had held a driver's license issued by this state;
10 ~~and~~

11 (7) the person has a right to a hearing on the
12 suspension or denial if, not later than the 15th day after the date
13 on which the person receives the notice of suspension or denial or
14 on which the person is considered to have received the notice by
15 mail as provided by law, the department receives, at its
16 headquarters in Austin, a written demand, including a facsimile
17 transmission, or a request in another form prescribed by the
18 department for the hearing; and

19 (8) if the person submits to the taking of a blood
20 specimen, the specimen will be retained and preserved in accordance
21 with Article 38.50, Code of Criminal Procedure.

22 (b) If a person consents to the request of an officer to
23 submit to the taking of a specimen, the officer shall request the
24 person to sign a statement that:

25 (1) the officer requested that the person submit to
26 the taking of a specimen;

27 (2) the person was informed of the consequences of not

1 submitting to the taking of a specimen; and

2 (3) the person voluntarily consented to the taking of
3 a specimen.

4 SECTION 3. (a) Except as provided by Subsections (b) and
5 (c) of this section, the changes in law made by this Act to Article
6 38.50, Code of Criminal Procedure, apply only to evidence for which
7 the appropriate retention and preservation period under that
8 article expires on or after the effective date of this Act.
9 Evidence for which the appropriate retention and preservation
10 period expired before the effective date of this Act is governed by
11 the law in effect on the date of expiration of that period, and the
12 former law is continued in effect for that purpose.

13 (b) If the applicable retention and preservation period
14 under Article 38.50(c)(1), Code of Criminal Procedure, has expired
15 with respect to toxicological evidence held in storage on the
16 effective date of this Act, and notice regarding that evidence has
17 not yet been given under Article 38.50(d), Code of Criminal
18 Procedure, as that subsection existed immediately before the
19 effective date of this Act, the entity or individual charged with
20 storing the evidence may destroy the evidence pursuant to Article
21 38.50(e), Code of Criminal Procedure, as amended by this Act.

22 (c) If the appropriate retention and preservation period
23 under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as
24 applicable, has expired with respect to evidence held in storage on
25 the effective date of this Act, and notice regarding that evidence
26 has not yet been given under Article 38.50(d), Code of Criminal
27 Procedure, as that subsection existed immediately before the

1 effective date of this Act, the court shall provide the notice
2 required by Article 38.50(d), Code of Criminal Procedure, as
3 amended by this Act, not later than September 1, 2022.

4 (d) The change in law made by this Act to Section 724.015,
5 Transportation Code, applies only to a request for the taking of a
6 breath or blood specimen to test for intoxication that occurs on or
7 after the effective date of this Act. A request for the taking of a
8 specimen that occurs before the effective date of this Act is
9 governed by the law in effect on the date the specimen was
10 requested, and the former law is continued in effect for that
11 purpose.

12 SECTION 4. This Act takes effect September 1, 2021.