

By: Johnson, et al.  
(Wu)

S.B. No. 335

A BILL TO BE ENTITLED

AN ACT

1  
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.