

By: Johnson

S.B. No. 335

A BILL TO BE ENTITLED

AN ACT

relating to retention and preservation of toxicological evidence of certain intoxication offenses.

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

SECTION 1. Article 38.50, Code of Criminal Procedure, is amended by amending Subsections (d) and (e) and adding Subsections (d-1) and (d-2) to read as follows:

(d) For each offense subject to this article, the court shall determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c)(2) or (3), as applicable, [~~(e)~~] and notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence of the period for which the evidence is to be retained and preserved. If an action of the prosecutor or the court changes the applicable period under Subsection (c)(2) or (3) [~~(e)~~], the court shall notify the persons described by this subsection about the change.

(d-1) For each offense subject to this article for which the appropriate retention and preservation period under Subsection (c)(2) or (3) expires before delivery of the notice required by Subsection (d), the court shall, as soon as practicable, notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence that the applicable period under Subsection (c)(2) or (3) has expired.

1 (d-2) Notice to parties under Subsection (d) or (d-1) must
2 be given by:

3 (1) mailing notice by first class mail addressed to
4 the individual or entity at the last known mailing address in the
5 records of the court;

6 (2) sending notice electronically to the last known
7 e-mail address in the records of the court; or

8 (3) hand delivery.

9 (e) The entity or individual charged with storing
10 toxicological evidence may destroy the evidence on expiration of
11 the period:

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

13 (2) provided by the notice most recently issued by the
14 court under Subsection (d) or (d-1).

15 SECTION 2. (a) Except as provided by Subsection (b) of this
16 section, the change in law made by this Act applies only to evidence
17 for which the appropriate retention and preservation period under
18 Article 38.50, Code of Criminal Procedure, as amended by this Act,
19 expires on or after the effective date of this Act. Evidence for
20 which the appropriate retention and preservation period expired
21 before the effective date of this Act is governed by the law in
22 effect on the date of expiration of that period, and the former law
23 is continued in effect for that purpose.

24 (b) If the appropriate retention and preservation period
25 under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as
26 applicable, has expired with respect to evidence held in storage on
27 the effective date of this Act, and notice regarding that evidence

1 has not yet been given under Article 38.50(d), Code of Criminal
2 Procedure, as that subsection existed immediately before the
3 effective date of this Act, the court shall provide the notice
4 required by Article 38.50(d-1), Code of Criminal Procedure, as
5 added by this Act, not later than December 1, 2021.

6 SECTION 3. This Act takes effect September 1, 2021.