

1-1 By: Johnson S.B. No. 335
1-2 (In the Senate - Filed January 13, 2021; March 9, 2021, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 12, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 12, 2021,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			

1-14 COMMITTEE SUBSTITUTE FOR S.B. No. 335 By: Johnson

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the taking of a specimen to test for intoxication and
1-18 retention and preservation of toxicological evidence of certain
1-19 intoxication offenses.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Article 38.50, Code of Criminal Procedure, is
1-22 amended by amending Subsections (c), (d), and (e) and adding
1-23 Subsections (g) and (h) to read as follows:

1-24 (c) An entity or individual described by Subsection (b)
1-25 shall ensure that toxicological evidence collected pursuant to an
1-26 investigation or prosecution of an offense under Chapter 49, Penal
1-27 Code, is retained and preserved, as applicable:

1-28 (1) for the greater of two years or the period of the
1-29 statute of limitations for the offense, if the indictment or
1-30 information charging the defendant, or the petition in a juvenile
1-31 proceeding, has not been presented or has been dismissed without
1-32 prejudice;

1-33 (2) for the duration of a defendant's sentence or term
1-34 of community supervision, as applicable, if the defendant is
1-35 convicted or placed on community supervision, or for the duration
1-36 of the commitment or supervision period applicable to the
1-37 disposition of a juvenile adjudicated as having engaged in
1-38 delinquent conduct or conduct indicating a need for supervision; or

1-39 (3) until the defendant is acquitted or the indictment
1-40 or information is dismissed with prejudice, or, in a juvenile
1-41 proceeding, until a hearing is held and the court does not find the
1-42 child engaged in delinquent conduct or conduct indicating a need
1-43 for supervision.

1-44 (d) A person from whom toxicology evidence was collected
1-45 and, if the person is a minor, the person's parent or guardian,
1-46 shall be notified [For each offense subject to this article, the
1-47 court shall determine as soon as practicable the appropriate
1-48 retention and preservation period for the toxicological evidence
1-49 under Subsection (c) and notify the defendant or the child or
1-50 child's guardian and the entity or individual charged with storage
1-51 of the toxicological evidence] of the periods [period] for which
1-52 [the] evidence may [is to] be retained and preserved under this
1-53 article. The notice must be given by:

1-54 (1) an entity or individual described by Subsection
1-55 (b) that collects the evidence, if the entity or individual
1-56 collected the evidence directly from the person or collected it
1-57 from a third party; or

1-58 (2) the court, if the records of the court show that
1-59 the person was not given the notice described by Subdivision (1) and
1-60 the toxicological evidence is subject to the retention period under

2-1 ~~Subsection (c)(2) or (3) [If an action of the prosecutor or the~~
2-2 ~~court changes the applicable period under Subsection (c), the court~~
2-3 ~~shall notify the persons described by this subsection about the~~
2-4 ~~change].~~

2-5 (e) The entity or individual charged with storing
2-6 toxicological evidence may destroy the evidence on expiration of
2-7 the applicable retention period:

2-8 (1) described by Subsection (c)(1); or
2-9 (2) described by Subsection (c)(2) or (c)(3), provided
2-10 that:

2-11 (A) notice was given in accordance with this
2-12 article; and

2-13 (B) if applicable, the prosecutor's office gives
2-14 written approval for the destruction under Subsection (h) [provided
2-15 by the notice most recently issued by the court under Subsection
2-16 (d)].

2-17 (g) Notice given under this article must be given:

2-18 (1) in writing, as soon as practicable, by hand
2-19 delivery, e-mail, or first class mail to the person's last known
2-20 e-mail or mailing address; or

2-21 (2) if applicable, orally and in writing on requesting
2-22 the specimen under Section 724.015, Transportation Code.

2-23 (h) A prosecutor's office may require that an entity or
2-24 individual charged with storing toxicological evidence seek
2-25 written approval from the prosecutor's office before destroying
2-26 toxicological evidence subject to the retention period under
2-27 Subsection (c)(2) or (c)(3) for cases in which the prosecutor's
2-28 office presented the indictment, information, or petition.

2-29 SECTION 2. Section 724.015, Transportation Code, is amended
2-30 to read as follows:

2-31 Sec. 724.015. INFORMATION PROVIDED BY OFFICER BEFORE
2-32 REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Before requesting
2-33 a person to submit to the taking of a specimen, the officer shall
2-34 inform the person orally and in writing that:

2-35 (1) if the person refuses to submit to the taking of
2-36 the specimen, that refusal may be admissible in a subsequent
2-37 prosecution;

2-38 (2) if the person refuses to submit to the taking of
2-39 the specimen, the person's license to operate a motor vehicle will
2-40 be automatically suspended, whether or not the person is
2-41 subsequently prosecuted as a result of the arrest, for not less than
2-42 180 days;

2-43 (3) if the person refuses to submit to the taking of a
2-44 specimen, the officer may apply for a warrant authorizing a
2-45 specimen to be taken from the person;

2-46 (4) if the person is 21 years of age or older and
2-47 submits to the taking of a specimen designated by the officer and an
2-48 analysis of the specimen shows the person had an alcohol
2-49 concentration of a level specified by Chapter 49, Penal Code, the
2-50 person's license to operate a motor vehicle will be automatically
2-51 suspended for not less than 90 days, whether or not the person is
2-52 subsequently prosecuted as a result of the arrest;

2-53 (5) if the person is younger than 21 years of age and
2-54 has any detectable amount of alcohol in the person's system, the
2-55 person's license to operate a motor vehicle will be automatically
2-56 suspended for not less than 60 days even if the person submits to
2-57 the taking of the specimen, but that if the person submits to the
2-58 taking of the specimen and an analysis of the specimen shows that
2-59 the person had an alcohol concentration less than the level
2-60 specified by Chapter 49, Penal Code, the person may be subject to
2-61 criminal penalties less severe than those provided under that
2-62 chapter;

2-63 (6) if the officer determines that the person is a
2-64 resident without a license to operate a motor vehicle in this state,
2-65 the department will deny to the person the issuance of a license,
2-66 whether or not the person is subsequently prosecuted as a result of
2-67 the arrest, under the same conditions and for the same periods that
2-68 would have applied to a revocation of the person's driver's license
2-69 if the person had held a driver's license issued by this state;

3-1 [~~and~~]
3-2 (7) the person has a right to a hearing on the
3-3 suspension or denial if, not later than the 15th day after the date
3-4 on which the person receives the notice of suspension or denial or
3-5 on which the person is considered to have received the notice by
3-6 mail as provided by law, the department receives, at its
3-7 headquarters in Austin, a written demand, including a facsimile
3-8 transmission, or a request in another form prescribed by the
3-9 department for the hearing; and

3-10 (8) if the person submits to the taking of a blood
3-11 specimen, the specimen will be retained and preserved in accordance
3-12 with Article 38.50, Code of Criminal Procedure.

3-13 (b) If a person consents to the request of an officer to
3-14 submit to the taking of a specimen, the officer shall request the
3-15 person to sign a statement that:

3-16 (1) the officer requested that the person submit to
3-17 the taking of a specimen;

3-18 (2) the person was informed of the consequences of not
3-19 submitting to the taking of a specimen; and

3-20 (3) the person voluntarily consented to the taking of
3-21 a specimen.

3-22 SECTION 3. (a) Except as provided by Subsections (b) and
3-23 (c) of this section, the changes in law made by this Act to Article
3-24 38.50, Code of Criminal Procedure, apply only to evidence for which
3-25 the appropriate retention and preservation period under that
3-26 article expires on or after the effective date of this Act.
3-27 Evidence for which the appropriate retention and preservation
3-28 period expired before the effective date of this Act is governed by
3-29 the law in effect on the date of expiration of that period, and the
3-30 former law is continued in effect for that purpose.

3-31 (b) If the applicable retention and preservation period
3-32 under Article 38.50(c)(1), Code of Criminal Procedure, has expired
3-33 with respect to toxicological evidence held in storage on the
3-34 effective date of this Act, and notice regarding that evidence has
3-35 not yet been given under Article 38.50(d), Code of Criminal
3-36 Procedure, as that subsection existed immediately before the
3-37 effective date of this Act, the entity or individual charged with
3-38 storing the evidence may destroy the evidence pursuant to Article
3-39 38.50(e), Code of Criminal Procedure, as amended by this Act.

3-40 (c) If the appropriate retention and preservation period
3-41 under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as
3-42 applicable, has expired with respect to evidence held in storage on
3-43 the effective date of this Act, and notice regarding that evidence
3-44 has not yet been given under Article 38.50(d), Code of Criminal
3-45 Procedure, as that subsection existed immediately before the
3-46 effective date of this Act, the court shall provide the notice
3-47 required by Article 38.50(d), Code of Criminal Procedure, as
3-48 amended by this Act, not later than September 1, 2022.

3-49 (d) The change in law made by this Act to Section 724.015,
3-50 Transportation Code, applies only to a request for the taking of a
3-51 breath or blood specimen to test for intoxication that occurs on or
3-52 after the effective date of this Act. A request for the taking of a
3-53 specimen that occurs before the effective date of this Act is
3-54 governed by the law in effect on the date the specimen was
3-55 requested, and the former law is continued in effect for that
3-56 purpose.

3-57 SECTION 4. This Act takes effect September 1, 2021.

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