

BILL ANALYSIS

S.B. 1616
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Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Texas leads the nation in the number of persons found to have been wrongfully convicted, imprisoned, and later exonerated of crimes, mostly based on biological evidence. However, the state does not have uniform standards or established best practices regarding the collection, retention, and storage of these biological materials. Justice is best served when law enforcement and the court system have the tools and procedures at their disposal to be certain that persons found factually responsible for the commission of a crime are the ones prosecuted for the offense.

S.B. 1616 seeks to address matters relating to the collection, storage, preservation, analysis, retrieval, and destruction of biological evidence.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTIONS 1 and 2 of this bill.

ANALYSIS

S.B. 1616 amends the Code of Criminal Procedure to require a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence to ensure that biological evidence collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved. The bill removes provisions of law requiring the attorney representing the state, a clerk, or any other officer in possession of evidence to ensure that evidence is preserved, relating to the applicability of provisions of law relating to the preservation of evidence containing biological material to certain evidence and relating to the preservation of evidence that was used to prosecute and convict a defendant of certain offenses.

S.B. 1616 requires the biological evidence to be retained and preserved for not less than 40 years, or until the applicable statute of limitations has expired, if there is an unapprehended actor associated with the offense. The bill requires the biological evidence to be retained and preserved, in a case in which a defendant has been convicted, placed on deferred adjudication community supervision, or adjudicated as having engaged in delinquent conduct and there are no additional unapprehended actors associated with the offense, for the following periods depending on the situation, in addition to certain other periods:

- until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;
- until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Youth Commission; or

- until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation.

The bill, in a provision of law describing a period for which biological evidence is to be retained and preserved until a defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment, clarifies that the imprisonment is in the Texas Department of Criminal Justice.

S.B. 1616 requires the Department of Public Safety (DPS) to adopt, not later than September 1, 2012, standards and rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence. The bill requires DPS to adopt, not later than September 1, 2012, standards and rules, consistent with best practices, relating to an entity to which the provisions are applicable, that specify the manner of collection, storage, preservation, and retrieval of biological evidence and authorizes such an entity to solicit and accept gifts, grants, donations, and contributions to support the collection, storage, preservation, retrieval, and destruction of biological evidence. The bill requires DPS to consult with specified entities in adopting the initial standards and rules required by the bill's provisions.

S.B. 1616 makes the changes in law made by its provisions applicable to biological evidence in the possession of a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence, regardless of whether the evidence was collected before, on, or after the bill's effective date.

S.B. 1616 specifies that a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of biological evidence is not required to comply with the standards and rules adopted by DPS before January 1, 2013.

S.B. 1616 defines "biological evidence" for the purposes relating to evidence containing biological material and makes conforming and nonsubstantive changes.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1

Committee Amendment No. 1 authorizes the attorney representing the state, a clerk, or other officer in possession of biological evidence described by the bill's provisions to destroy the evidence but only under certain specified conditions.