

## **BILL ANALYSIS**

C.S.S.B. 1636

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Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Some observers report that a very low percentage of individuals who commit rape will serve jail time in this country. According to recent FBI crime data, arrest rates for rape recently have been around 25 percent, reportedly the lowest recorded arrest rates for that crime in nearly 40 years. The use of rape testing kits is a means to gather significant evidence in the investigation and prosecution of sexual assault cases. Highlighting the significance of this evidence, interested parties point to cases in which rape convictions have been overturned after a defendant's DNA profile did not match the collected sexual assault evidence.

The interested parties report that various law enforcement authorities in certain large municipalities across Texas have recently identified rape kits dating back to the 1990s that would meet testing criteria, have submitted old rape kits for testing, or have processed old rape kits. Some of the processed rape kits have yielded numerous hits in the FBI's Combined DNA Index System, which has allowed the authorities to solve several cases as well as identify and file cases on a few serial rapists. In furtherance of the effort to solve cases and correctly identify offenders through DNA evidence, C.S.S.B. 1636 establishes a timeline and procedures relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1636 amends the Government Code to prohibit a failure of the Department of Public Safety (DPS) to expunge a DNA record from a DNA database when required from serving as the sole grounds for a court in a criminal proceeding to exclude evidence based on or derived from the contents of that record.

C.S.S.B. 1636 prohibits evidence collected under the Sexual Assault Prevention and Crisis Services Act using the evidence collection protocol and kit from being released unless a signed, written consent to release the evidence is obtained as provided by the bill's provisions and makes a conforming change. The bill requires medical, law enforcement, DPS, and laboratory personnel who handle sexual assault evidence collected in accordance with law to maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

C.S.S.B. 1636 requires a law enforcement agency that receives sexual assault evidence collected in accordance with law to submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received and requires a signed, written certification to be provided with each submission. The bill makes its provisions relating to the analysis of sexual assault evidence apply only to physical evidence of a sexual assault with respect to an active criminal case. The bill requires a public accredited crime

laboratory to complete its analysis of submitted sexual assault evidence as soon as practicable, if sufficient personnel and resources are available.

C.S.S.B. 1636 authorizes DPS and other applicable public accredited crime laboratories, in order to ensure the expeditious completion of analyses, to contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories. The bill establishes that the failure of a law enforcement agency to submit sexual assault evidence within the period required does not affect the authority of the agency to submit the evidence to an accredited crime laboratory for analysis or the authority of an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

C.S.S.B. 1636 requires DPS, on the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, to compare the DNA profile obtained from the biological evidence with DNA profiles maintained in state databases, including the DNA database serving as the central depository in the state maintained by DPS, and the CODIS DNA database established by the FBI, if the amount and quality of the analyzed sample meet the requirements of the respective database's comparison policies.

C.S.S.B. 1636 requires consent for the release of evidence contained in an evidence collection kit to be in writing and signed by the survivor, if the survivor is 14 years of age or older; the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 14 years of age; or the survivor's personal representative, if the survivor is deceased. The bill establishes that consent for the release of such evidence does not affect the confidentiality of any other confidential information under the Sexual Assault Prevention and Crisis Services Act and requires the consent to specify the evidence covered by the release, the reason or purpose for the release, and the person to whom the evidence is to be released. The bill authorizes a survivor or other person authorized to consent to withdraw consent to the release of evidence by submitting a written notice of withdrawal to the person or program to which consent was provided and establishes that such withdrawal does not affect evidence disclosed before the date written notice of the withdrawal was received.

C.S.S.B. 1636 specifies that a written consent signed by an incapacitated person who is the survivor of 14 years of age or older is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release and makes conforming changes. The bill authorizes the investigating law enforcement officer to sign the release if the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable to sign the release. The bill prohibits a person who receives evidence made confidential by the Sexual Assault Prevention and Crisis Services Act from disclosing the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence. The bill makes conforming changes in provisions of law relating to consent for the release of confidential information under the act, provisions of law setting out the circumstances under which confidential communications and records under the act may be disclosed and under which such disclosure is an offense, and provisions of law relating to disclosures for use in a criminal investigation or proceeding in response to a subpoena.

C.S.S.B. 1636 defines "accredited crime laboratory," "active criminal case," "department," and "law enforcement agency" and redefines "sexual assault nurse examiner" to make a clarifying change relating to the training course required of such a professional. The bill makes nonsubstantive changes.

C.S.S.B. 1636 amends the Code of Criminal Procedure to require DPS procedures regarding the submission or collection of additional evidence of an alleged sexual assault and the transfer and

preservation of evidence collected by a health care facility from a sexual assault victim who has not reported assault to a law enforcement agency to a crime laboratory or other suitable location designated by the public safety director of DPS to be consistent with the Sexual Assault Prevention and Crisis Services Act. The bill makes conforming changes.

C.S.S.B. 1636 requires the legislature to determine and appropriate necessary amounts from the criminal justice planning account to the criminal justice division of the governor's office for reimbursement in the form of grants to DPS and other law enforcement agencies, rather than only to local law enforcement agencies, and expands the duties for which expenses are to be reimbursed in that manner to include the bill's provisions relating to the analysis of sexual assault evidence.

C.S.S.B. 1636 requires DPS, on or after the bill's effective date, to ensure that any unanalyzed sexual assault evidence that is in the possession of a law enforcement agency and collected on or after August 1, 2011, is analyzed in accordance with the Sexual Assault Prevention and Crisis Services Act, as amended by the bill, and that any such unanalyzed evidence collected before August 1, 2011, is analyzed as nearly as possible to the time provided by that act, as amended by the bill.

C.S.S.B. 1636 requires a law enforcement agency in possession of sexual assault evidence that has not been submitted for laboratory analysis to, not later than October 15, 2011, submit to DPS a list of the agency's active criminal cases for which sexual assault evidence has not yet been submitted for laboratory analysis; not later than April 1, 2012, and subject to the availability of laboratory storage space, submit, as appropriate, to DPS or a public accredited crime laboratory, all sexual assault evidence pertaining to those active criminal cases that has not yet been submitted for laboratory analysis; and, if the law enforcement agency submits such unsubmitted evidence to a laboratory other than a DPS laboratory, notify DPS of the laboratory to which the evidence was sent and any analysis completed by the laboratory to which the evidence was sent and the date on which the analysis was completed.

C.S.S.B. 1636 requires DPS, not later than February 15, 2013, to submit to the governor and the appropriate standing committees of the senate and the house of representatives a report containing a projected timeline for the completion of laboratory analyses, in accordance with the Sexual Assault Prevention and Crisis Act, as amended by the bill, of all unanalyzed sexual assault evidence relating to active criminal cases submitted by law enforcement agencies not yet submitted for laboratory analysis; a request for any necessary funding to accomplish the analyses for such unanalyzed evidence, including a request for a grant of money from the criminal justice planning fund, if money is available; as appropriate, application materials for the required requests made by DPS; and, if DPS determines that outsourcing of a portion of the submitted evidence is necessary for timely analyses of the evidence, a proposal for determining which evidence should be outsourced and a list of laboratories DPS determines are capable of completing the outsourced analyses.

C.S.S.B. 1636 requires DPS, not later than September 1, 2014, and to the extent that funding is available, to analyze or contract for the analysis of, and complete the required database comparison regarding, all sexual assault evidence that has not yet been submitted for laboratory analysis submitted to the department by law enforcement agencies. The bill exempts DPS from a requirement to use in a state fiscal year any amount of money from the state highway fund that exceeds the amount DPS has historically used in a state fiscal year to fund laboratory analyses of sexual assault evidence. The bill authorizes DPS, in order to supplement funding of laboratory analyses of sexual assault evidence, to solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by the Sexual Assault Prevention and Crisis Services Act.

C.S.S.B. 1636 makes its provisions inapplicable to sexual assault evidence collected before September 1, 1996. The bill prohibits state funds from being appropriated for the purpose of

implementing the bill's provisions except as provided by its provisions relating to grants from the criminal justice planning account and money from the state highway fund and by provisions of law authorizing the attorney general to receive federal, state, and private funding to finance the grant program created under the Sexual Assault Prevention and Crisis Services Act. The bill prohibits DPS from using legislative appropriations to discharge any additional duties imposed by the bill's provisions on the department.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1636 differs from the original by requiring a public accredited crime laboratory to complete its analysis of submitted sexual assault evidence as soon as practicable, whereas the original requires such a laboratory to complete its analysis not later than the 90th day after the date on which the laboratory received the evidence. The substitute contains a provision not included in the original requiring the legislature to determine and appropriate necessary amounts from the criminal justice planning account to the criminal justice division of the governor's office for reimbursement in the form of grants to the Department of Public Safety (DPS) and other law enforcement agencies and expanding the duties for which expenses are to be reimbursed in that manner to include the analysis of sexual assault evidence.

C.S.S.B. 1636 differs from the original, in the provision requiring DPS to submit to the governor and certain legislative committees a report containing a request for any necessary money to accomplish the analyses of unanalyzed sexual assault evidence relating to active criminal cases submitted by law enforcement agencies and not yet submitted for laboratory analysis, by specifying that such request includes a request for a grant of money from the criminal justice planning fund, if money is available, whereas the original does not include such a specification. The substitute contains a provision not included in the original requiring such a DPS report to contain application materials for the required funding requests made by DPS.

C.S.S.B. 1636 differs from the original by authorizing DPS to solicit and receive grants, gifts, or donations of money from the federal government or private sources to supplement funding of sexual assault evidence laboratory analyses, whereas the original also includes appropriations from the state legislature as a funding source.

C.S.S.B. 1636 differs from the original by prohibiting state funds from being appropriated for the purpose of implementing the bill's provisions except as provided by certain specified bill provisions and provisions of law, whereas the original requires DPS to implement the bill's provisions only if the legislature appropriates money specifically for that purpose and authorizes the department to implement the bill's provisions with other appropriations if the legislature does not appropriate money specifically for that purpose.

C.S.S.B. 1636 contains a provision not included in the original prohibiting DPS from using legislative appropriations to discharge any additional duties imposed by the bill's provisions on the department. The substitute differs from the original in nonsubstantive ways.