

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1636  
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Criminal Justice  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

One in six women will be sexually assaulted in her lifetime. Every two minutes, someone in the United States is sexually assaulted, and only six percent of rapists will ever spend a day in jail.

In 2009, CBS News investigated and reported on the backlog of untested rape kits sitting in police evidence vaults and crime labs. The five-month investigation of 24 cities and states found more than 20,000 untested kits.

Recently, Houston identified 4,200 old rape kits that would meet testing criteria. In Dallas, of the estimated 7,000 to 9,000 rape kits collected from 1996 to 2010, about 40 percent have been or will be submitted for testing.

According to the latest crime data from the Federal Bureau of Investigation (FBI), the crime of rape has a 24 percent arrest rate, which is the lowest recorded arrest rate for rape in nearly 40 years of tracking this type of information. When New York City eliminated its rape kit backlog, its arrest rate for rape jumped from 40 percent to 70 percent. Testing its backlog resulted in over 200 prosecutions of cold cases.

In 2003, the Fort Worth Police Department received a grant to process rape kits dating back to 1994. The tested kits yielded 214 hits in the FBI's combined DNA Index System (CODIS), which has allowed them to solve numerous cases, as well as identify and file cases on three serial rapists.

The testing of rape kits is important for sexual assault victims, but the evidence can play a greater role too. Earlier this year, a Texas man who spent 30 years in prison had his conviction in a rape and robbery case overturned after his DNA profile did not match the sexual assault evidence collected.

C.S.S.B. 1636 creates a timeline and structure for the collection and testing of sexual assault evidence. This includes requiring a law enforcement agency to report a list of the agency's active criminal cases for which sexual assault evidence for the completion of the laboratory analyses.

C.S.S.B. 1636 amends current law relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 411.151, Government Code, by adding Subsection (e) to prohibit the Department of Public Safety of the State of Texas's (DPS) failure to expunge a DNA record as required by this section 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.

SECTION 2. Amends Section 420.003, Government Code, by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (1-b), (1-c), and (1-d) to define "accredited crime laboratory," "active criminal case," "department," and "law enforcement agency" and to redefine "advocate" and "sexual assault nurse examiner."

SECTION 3. Amends Section 420.031(e), Government Code, to prohibit evidence collected under this section from being released unless a signed, written consent to release the evidence is obtained as provided by Section 420.0735 (Consent), rather than unless the survivor of the offense or a legal representative of the survivor signs a written consent to release the evidence.

SECTION 4. Amends Subchapter B, Chapter 420, Government Code by adding Section 420.033, as follows:

Sec. 420.033. CHAIN OF CUSTODY. Requires medical, law enforcement, DPS, and laboratory personnel who handle sexual assault evidence under this chapter or other law to maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

SECTION 5. Amends Chapter 420, Government Code, by adding Subchapter B-1, as follows:

#### SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

Sec. 420.041. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to physical evidence of a sexual assault with respect to an active criminal case.

Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) Requires a law enforcement agency that receives sexual assault evidence collected under this chapter or other law to submit that evidence to a public accredited crime laboratory for analysis not later than the 10th day after the date on which that evidence was received.

(b) Requires a person who submits sexual assault evidence to an accredited crime laboratory under this chapter or other law to provide a certain signed, written certification with each submission. Sets forth the required language.

(c) Requires a public accredited crime laboratory, if sufficient personnel and resources are available, to complete its analysis of sexual assault evidence submitted under this chapter or other law not later than the 90th day after the date on which the laboratory received the evidence.

(d) Authorizes DPS and other applicable public accredited crime laboratories, to ensure the completion of analyses within the period required by Subsection (c), 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.

(e) Provides that the failure of a law enforcement agency to submit sexual assault evidence within the period required by this section does not affect the authority of:

(1) the agency to submit the evidence to an accredited crime laboratory for analysis; or

(2) an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

Sec. 420.043. DATABASE COMPARISON REQUIRED. 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:

(1) state databases, including the DNA database maintained under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and

(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

SECTION 6. Amends Section 420.072, Government Code, as follows:

Sec. 420.072. EXCEPTIONS. (a) Provides that a communication, a record, or evidence that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or other appropriate person, rather than a person authorized to act on behalf of the survivor, consents in writing to the disclosure, rather than the release of the confidential information, as provided by Section 420.073 or Section 420.0735, as applicable.

Makes nonsubstantive changes.

(b) Provides that a communication, record, or evidence that is confidential under this subchapter may be disclosed only to certain individuals, including medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication, record, or evidence is relevant or if there is a probability of immediate mental or emotional injury to the survivor; and a person authorized to receive the disclosure as a result of written consent obtained under Section 420.073, rather than a person who has the written consent of the survivor or of a person authorized to act on the survivor's behalf as provided by Section 420.073 or 420.0735. Makes nonsubstantive changes.

(c) Makes conforming changes.

SECTION 7. Amends the heading to Section 420.073, Government Code, to read as follows:

Sec. 420.073. CONSENT FOR RELEASE OF CERTAIN CONFIDENTIAL INFORMATION.

SECTION 8. Amends Section 420.073(a), Government Code, as follows:

(a) Requires that consent for the release of confidential information other than evidence contained in an evidence collection kit be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased. Requires the written consent to specify certain information. Sets forth the information.

SECTION 9. Amends Subchapter D, Chapter 420, Government Code, by adding Section 420.0735, as follows:

Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE. (a) Requires that consent for the release of evidence contained in an evidence collection kit be in writing and signed by:

- (1) the survivor, if the survivor is 14 years of age or older;
- (2) 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
- (3) the survivor's personal representative, if the survivor is deceased.

(b) Provides that, for purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other legal agent signs the release. Authorizes the investigating law enforcement officer, 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, then to sign the release.

(c) Provides that consent under Subsection (a) applies only to evidence contained in an evidence collection kit and does not affect the confidentiality of any other confidential information under this chapter.

(d) Requires that the written consent 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.

(e) 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. Provides that withdrawal of consent does not affect the evidence disclosed before the date written notice of the withdrawal was received.

(f) Prohibits a person who receives evidence made confidential by this chapter from disclosing the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence.

SECTION 10. Amends Section 420.074, Government Code, to make conforming changes.

SECTION 11. Amends Section 420.075, Government Code, to make conforming changes.

SECTION 12. Amends Articles 56.065(f) and (g), Code of Criminal Procedure, as follows:

(f) Authorizes DPS, consistent with Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, to develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through an examination as described by this article.

(g) Requires DPS, consistent with Chapter 420, Government Code, to develop procedures for the transfer and preservation of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of the department. Requires the receiving entity to preserve the evidence until the earlier of:

- (1) the second anniversary of the date the evidence was collected; or
- (2) the date on which written consent to release the evidence is obtained as provided by Section 420.0735, Government Code, rather than the date the victim or a legal representative of the victim signs a written consent to release the evidence.

SECTION 13. Requires DPS, on or after the effective date of this Act, to ensure that any unanalyzed sexual assault evidence collected:

- (1) on or after August 1, 2011, is analyzed in accordance with Chapter 420, Government Code, as amended by this Act; and
- (2) before August 1, 2011, is analyzed as nearly as possible to the time provided by Chapter 420, Government Code, as amended by this Act.

SECTION 14. (a) Requires a law enforcement agency in possession of sexual assault evidence that has not been submitted for laboratory analysis to:

- (1) 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; and
- (2) not later than April 1, 2012, submit to DPS all sexual assault evidence pertaining to those active cases that has not yet been submitted for laboratory analysis.

(b) 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:

- (1) a projected timeline for the completion of laboratory analyses, in accordance with Chapter 420, Government Code, as amended by this Act, of all unanalyzed sexual assault evidence submitted to DPS under Subsection (a)(2);
- (2) a request for any necessary funding to accomplish the analyses under Subdivision (1); and
- (3) if DPS determines that outsourcing of a portion of the submitted evidence is necessary for timely analyses of the evidence:
  - (A) a proposal for determining which evidence should be outsourced; and
  - (B) a list of laboratories DPS determines are capable of completing the outsourced analyses.

(c) Requires DPS, not later than September 1, 2014, and to the extent that funding is available, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, to analyze or contract for the analysis of, and complete the required database comparison regarding, all sexual assault evidence submitted to DPS under Subsection (a)(2) of this section.

SECTION 15. Provides that, notwithstanding Chapter 420, Government Code, as amended by this Act, and Section 13 of this Act, this Act does not apply to sexual assault evidence collected before September 1, 1996.

SECTION 16. Effective date: September 1, 2011.