

By: McClendon

H.B. No. 3147

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the collection, analysis, and preservation of sexual
3 assault or DNA evidence.

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

5 SECTION 1. Section 411.151, Government Code, is amended by
6 adding Subsection (e) to read as follows:

7 (e) The department's failure to expunge a DNA record as
8 required by this section may not serve as the sole grounds for a
9 court in a criminal proceeding to exclude evidence based on or
10 derived from the contents of that record.

11 SECTION 2. Section 420.003, Government Code, is amended by
12 amending Subdivisions (1) and (6) and adding Subdivisions (1-a),
13 (1-b), and (1-c) to read as follows:

14 (1) "Accredited crime laboratory" means a crime
15 laboratory, as that term is defined by Article 38.35, Code of
16 Criminal Procedure, that has been accredited under Section
17 411.0205.

18 (1-a) "Advocate" means a person who provides advocacy
19 services as an employee or volunteer of a sexual assault program.

20 (1-b) "Department" means the Department of Public
21 Safety of the State of Texas.

22 (1-c) "Law enforcement agency" means a state or local
23 law enforcement agency in this state with jurisdiction over the
24 investigation of a sexual assault.

1 (6) "Sexual assault nurse examiner" means a registered
2 nurse who has completed a service-approved examiner training course
3 described by Section 420.011.

4 SECTION 3. Section 420.031(e), Government Code, is amended
5 to read as follows:

6 (e) Evidence collected under this section may not be
7 released unless a signed, [the survivor of the offense or a legal
8 representative of the survivor signs a] written consent to release
9 the evidence is obtained as provided by Section 420.073.

10 SECTION 4. Subchapter B, Chapter 420, Government Code, is
11 amended by adding Sections 420.033, 420.034, 420.035, and 420.036
12 to read as follows:

13 Sec. 420.033. PRESENCE OF PHYSICIAN NOT REQUIRED FOR
14 FORENSIC MEDICAL EXAMINATION. A sexual assault nurse examiner may
15 conduct a forensic medical examination without the presence or
16 participation of a physician.

17 Sec. 420.034. COLLECTION AND ANALYSIS OF SEXUAL ASSAULT
18 EVIDENCE. (a) A law enforcement agency that receives sexual
19 assault evidence collected under this chapter or other law shall
20 submit that evidence to an accredited crime laboratory for analysis
21 not later than the 10th day after the date on which that evidence
22 was received.

23 (b) A person who submits sexual assault evidence to an
24 accredited crime laboratory under this chapter or other law shall
25 provide the following signed, written certification with each
26 submission: "This evidence is being submitted by (name of person
27 making submission) in connection with a criminal investigation."

1 (c) If sufficient personnel and resources are available, an
2 accredited crime laboratory shall complete its analysis of sexual
3 assault evidence submitted under this chapter or other law not
4 later than the 90th day after the date on which the laboratory
5 received the evidence.

6 (d) To ensure the completion of analyses within the period
7 required by Subsection (c), the department and other applicable
8 public accredited crime laboratories may contract with private
9 accredited crime laboratories as appropriate to perform those
10 analyses, subject to the necessary quality assurance reviews by the
11 public accredited crime laboratories.

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

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

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

20 Sec. 420.035. DATABASE COMPARISON REQUIRED. On the request
21 of any appropriate person and after an evidence collection kit
22 containing biological evidence has been analyzed by an accredited
23 crime laboratory and any necessary quality assurance reviews have
24 been performed, the department shall compare the biological
25 evidence with DNA profiles maintained in:

26 (1) state databases, including the DNA database
27 maintained under Subchapter G, Chapter 411, if the amount and

1 quality of the analyzed sample meet the requirements of the state
2 database comparison policies; and

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

7 Sec. 420.036. CHAIN OF CUSTODY. Medical, law enforcement,
8 department, and laboratory personnel who handle sexual assault
9 evidence under this chapter or other law shall maintain the chain
10 of custody of the evidence from the time the evidence is collected
11 until the time the evidence is destroyed.

12 SECTION 5. Sections 420.072(a) and (b), Government Code,
13 are amended to read as follows:

14 (a) A communication or record that is confidential under
15 this subchapter may be disclosed in court or in an administrative
16 proceeding if:

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

22 (2) the survivor or other appropriate person [~~a person~~
23 ~~authorized to act on behalf of the survivor~~] consents in writing to
24 the release of the confidential information as provided by Section
25 420.073.

26 (b) A communication or record that is confidential under
27 this subchapter may be disclosed only to:

1 (1) medical or law enforcement personnel if the
2 advocate determines that there is a probability of imminent
3 physical danger to any person for whom the communication or record
4 is relevant or if there is a probability of immediate mental or
5 emotional injury to the survivor;

6 (2) a governmental agency if the disclosure is
7 required or authorized by law;

8 (3) a qualified person to the extent necessary for a
9 management audit, financial audit, program evaluation, or
10 research, except that a report of the research, audit, or
11 evaluation may not directly or indirectly identify a survivor;

12 (4) a person authorized to receive the disclosure as a
13 result of [who has the] written consent obtained under [of the
14 survivor or of a person authorized to act on the survivor's behalf
15 as provided by] Section 420.073; or

16 (5) an advocate or a person under the supervision of a
17 counseling supervisor who is participating in the evaluation or
18 counseling of or advocacy for the survivor.

19 SECTION 6. Section 420.073, Government Code, is amended by
20 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
21 read as follows:

22 (a) Consent for the release of confidential information
23 must be in writing and signed by:

24 (1) the survivor, if the survivor is 13 years of age or
25 older;

26 (2) the survivor's parent or guardian or an employee of
27 the Department of Family and Protective Services, if the survivor

1 is younger than 13 years of age; or

2 (3) the survivor's [~~the survivor, a parent or legal~~
3 ~~guardian if the survivor is a minor, a legal guardian if the~~
4 ~~survivor has been adjudicated incompetent to manage the survivor's~~
5 ~~personal affairs, an attorney ad litem appointed for the survivor,~~
6 ~~or a]~~ personal representative, if the survivor is deceased.

7 (a-1) For purposes of Subsection (a)(1), a written consent
8 signed by an incapacitated person, as that term is defined by
9 Section 601, Texas Probate Code, is effective regardless of whether
10 the incapacitated person's guardian, guardian ad litem, or other
11 legal agent signs the release. If the incapacitated person is
12 unable to provide a signature and the guardian, guardian ad litem,
13 or other legal agent is unavailable or unwilling to sign the
14 release, then the investigating law enforcement officer may sign
15 the release.

16 (a-2) The written consent must specify:

- 17 (1) the information or records covered by the release;
18 (2) the reason or purpose for the release; and
19 (3) the person to whom the information is to be
20 released.

21 SECTION 7. Articles 56.065(f) and (g), Code of Criminal
22 Procedure, are amended to read as follows:

23 (f) The department, consistent with Chapter 420, Government
24 Code, may develop procedures regarding the submission or collection
25 of additional evidence of the alleged sexual assault other than
26 through an examination as described by this article.

27 (g) The department, consistent with Chapter 420, Government

1 Code, shall develop procedures for the transfer and preservation of
2 evidence collected under this article to a crime laboratory or
3 other suitable location designated by the public safety director of
4 the department. The receiving entity shall preserve the evidence
5 until the earlier of:

6 (1) the second anniversary of the date the evidence
7 was collected; or

8 (2) the date on which [~~the victim or a legal~~
9 ~~representative of the victim signs a~~] written consent to release
10 the evidence is obtained as provided by Section 420.073, Government
11 Code.

12 SECTION 8. On or after the effective date of this Act, the
13 Department of Public Safety of the State of Texas shall ensure that
14 any unanalyzed sexual assault evidence collected:

15 (1) on or after August 1, 2011, is analyzed in
16 accordance with Chapter 420, Government Code, as amended by this
17 Act; and

18 (2) before August 1, 2011, is analyzed as nearly as
19 possible to the time provided by Chapter 420, Government Code, as
20 amended by this Act.

21 SECTION 9. (a) A law enforcement agency in possession of
22 sexual assault evidence that has not been submitted for laboratory
23 analysis shall:

24 (1) not later than October 15, 2011, submit to the
25 Department of Public Safety of the State of Texas a list of the
26 agency's active criminal cases for which sexual assault evidence
27 has not yet been submitted for laboratory analysis; and

1 (2) not later than April 1, 2012, submit to the
2 Department of Public Safety of the State of Texas all sexual assault
3 evidence pertaining to those active cases that has not yet been
4 submitted for laboratory analysis.

5 (b) Not later than February 15, 2013, the Department of
6 Public Safety of the State of Texas shall submit to the governor and
7 the appropriate standing committees of the senate and the house of
8 representatives a report containing:

9 (1) a projected timeline for the completion of
10 laboratory analyses, in accordance with Chapter 420, Government
11 Code, as amended by this Act, of all unanalyzed sexual assault
12 evidence submitted to the department under Subsection (a)(2);

13 (2) a request for any necessary funding to accomplish
14 the analyses under Subdivision (1); and

15 (3) if the department determines that outsourcing of a
16 portion of the submitted evidence is necessary for timely analyses
17 of the evidence:

18 (A) a proposal for determining which evidence
19 should be outsourced; and

20 (B) a list of laboratories the department
21 determines are capable of completing the outsourced analyses.

22 (c) Not later than September 1, 2014, and to the extent that
23 funding is available, the Department of Public Safety of the State
24 of Texas shall, as provided by Sections 420.034 and 420.035,
25 Government Code, as added by this Act, analyze or contract for the
26 analysis of, and complete the required database comparison
27 regarding, all sexual assault evidence submitted to the department

1 under Subsection (a)(2) of this section.

2 SECTION 10. Notwithstanding Chapter 420, Government Code,
3 as amended by this Act, and Section 8 of this Act, this Act does not
4 apply to sexual assault evidence collected before September 1,
5 1996.

6 SECTION 11. This Act takes effect September 1, 2011.