

AN ACT

relating to the collection, storage, preservation, analysis, retrieval, and destruction of biological evidence.

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

SECTION 1. Article 38.43, Code of Criminal Procedure, is amended to read as follows:

Art. 38.43. [~~PRESERVATION~~ ~~OF~~] EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (a) In this article, "biological evidence" means:

(1) the contents of a sexual assault examination kit;

or

(2) any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or any other identifiable biological material that was collected as part of an investigation of an alleged felony offense or conduct constituting a felony offense that might reasonably be used to [~~In a criminal case in which a defendant is convicted, the attorney representing the state, a clerk, or any other officer in possession of evidence described by Subsection (b) shall ensure the preservation of the evidence.~~

~~[(b) This article applies to evidence that:~~

~~[(1) was in the possession of the state during the prosecution of the case; and~~

~~[(2) at the time of conviction was known to contain~~

1 ~~biological material that if subjected to scientific testing would~~  
2 ~~more likely than not]:~~

3 (A) establish the identity of the person  
4 committing the offense or engaging in the conduct constituting the  
5 offense; or

6 (B) exclude a person from the group of persons  
7 who could have committed the offense or engaged in the conduct  
8 constituting the offense.

9 (b) This article applies to a governmental or public entity  
10 or an individual, including a law enforcement agency, prosecutor's  
11 office, court, public hospital, or crime laboratory, that is  
12 charged with the collection, storage, preservation, analysis, or  
13 retrieval of biological evidence.

14 (c) An entity or individual described by Subsection (b)  
15 shall ensure that biological evidence collected pursuant to an  
16 investigation or prosecution of a felony offense or conduct  
17 constituting a felony offense is retained and [~~Except as provided~~  
18 ~~by Subsection (d), material required to be preserved under this~~  
19 ~~article must be]~~ preserved:

20 (1) for not less than 40 years, or until the applicable  
21 statute of limitations has expired, if there is an unapprehended  
22 actor associated with the offense; or

23 (2) in a case in which a defendant has been convicted,  
24 placed on deferred adjudication community supervision, or  
25 adjudicated as having engaged in delinquent conduct and there are  
26 no additional unapprehended actors associated with the offense:

27 (A) until the inmate is executed, dies, or is

1 released on parole, if the defendant is [~~was~~] convicted of a capital  
2 felony; [~~or~~]

3 (B) [~~(2)~~] until the defendant dies, completes  
4 the defendant's sentence, or is released on parole or mandatory  
5 supervision, if the defendant is sentenced to a term of confinement  
6 or imprisonment in the Texas Department of Criminal Justice;

7 (C) until the defendant completes the  
8 defendant's term of community supervision, including deferred  
9 adjudication community supervision, if the defendant is placed on  
10 community supervision;

11 (D) until the defendant dies, completes the  
12 defendant's sentence, or is released on parole, mandatory  
13 supervision, or juvenile probation, if the defendant is committed  
14 to the Texas Youth Commission; or

15 (E) until the defendant completes the  
16 defendant's term of juvenile probation, including a term of  
17 community supervision upon transfer of supervision to a criminal  
18 court, if the defendant is placed on juvenile probation.

19 (d) The attorney representing the state, clerk, or other  
20 officer in possession of biological evidence described by  
21 Subsection (a) [~~(b)~~] may destroy the evidence, but only if the  
22 attorney, clerk, or officer by mail notifies the defendant, the  
23 last attorney of record for the defendant, and the convicting court  
24 of the decision to destroy the evidence and a written objection is  
25 not received by the attorney, clerk, or officer from the defendant,  
26 attorney of record, or court before the 91st day after the later of  
27 the following dates:

1           (1) the date on which the attorney representing the  
2 state, clerk, or other officer receives proof that the defendant  
3 received notice of the planned destruction of evidence; or

4           (2) the date on which notice of the planned  
5 destruction of evidence is mailed to the last attorney of record for  
6 the defendant.

7           (e) To the extent of any conflict, this article controls  
8 over Article 2.21.

9           (f) The Department of Public Safety shall adopt standards  
10 and rules authorizing [~~(f)(1) This subsection applies only to~~  
11 ~~evidence described by Subsection (b) that was used to prosecute and~~  
12 ~~convict a defendant of an offense under Chapter 19, 21, or 22, Penal~~  
13 ~~Code, if on conviction of the offense the defendant was sentenced to~~  
14 ~~a term of imprisonment of 10 years or more.~~

15           [~~(2) In~~] a county with a population less than 100,000  
16 ~~to[, the attorney representing the state, clerk, or other officer~~  
17 ~~in possession of any evidence to which this subsection applies~~  
18 ~~shall]~~ ensure the preservation of biological [~~the~~] evidence by  
19 promptly delivering the evidence to the Department of Public Safety  
20 for storage in accordance with Section 411.052, Government Code,  
21 and department rules.

22           (g) The Department of Public Safety shall adopt standards  
23 and rules, consistent with best practices, relating to a person  
24 described by Subsection (b), that specify the manner of collection,  
25 storage, preservation, and retrieval of biological evidence.

26           (h) A person described by Subsection (b) may solicit and  
27 accept gifts, grants, donations, and contributions to support the

1 collection, storage, preservation, retrieval, and destruction of  
2 biological evidence.

3 SECTION 2. (a) The Department of Public Safety of the  
4 State of Texas, in adopting the initial standards and rules  
5 required by Article 38.43, Code of Criminal Procedure, as amended  
6 by this Act, shall consult with:

7 (1) large, medium, and small law enforcement agencies;

8 (2) law enforcement associations;

9 (3) scientific experts in the collection,  
10 preservation, storage, and retrieval of biological evidence; and

11 (4) organizations engaged in the development of law  
12 enforcement policy, such as:

13 (A) the National Institute of Standards and  
14 Technology of the United States Commerce Department;

15 (B) the Texas District and County Attorneys  
16 Association;

17 (C) the Texas Criminal Defense Lawyers  
18 Association;

19 (D) the Texas Association of Property and  
20 Evidence Inventory Technicians; and

21 (E) other organizations in this state that  
22 represent clients pursuing claims of innocence based on  
23 post-conviction biological evidence.

24 (b) The Department of Public Safety of the State of Texas  
25 shall adopt the standards and rules required by Article 38.43, Code  
26 of Criminal Procedure, as amended by this Act, not later than  
27 September 1, 2012.

1           (c) The change in law made by Article 38.43, Code of  
2 Criminal Procedure, as amended by this Act, applies to biological  
3 evidence in the possession of an entity or individual described by  
4 Subsection (b), Article 38.43, Code of Criminal Procedure, as  
5 amended by this Act, on the effective date of this Act, regardless  
6 of whether the evidence was collected before, on, or after the  
7 effective date of this Act.

8           (d) Notwithstanding Subsection (c) of this section, an  
9 entity or individual described by Subsection (b), Article 38.43,  
10 Code of Criminal Procedure, as amended by this Act, is not required  
11 to comply with the standards and rules adopted under Subsection  
12 (g), Article 38.43, Code of Criminal Procedure, as added by this  
13 Act, before January 1, 2013.

14           SECTION 3. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2011.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1616 passed the Senate on May 9, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1616 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor