

By: West
(Gallego, Anchia, Hartnett, Christian, Zedler)

S.B. No. 1616

A BILL TO BE ENTITLED

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 (b)~~] may destroy the evidence after expiration of the
22 retention period specified by Subsection (c) [~~, but only~~] if the
23 attorney, clerk, or officer by mail notifies the defendant, the
24 last attorney of record for the defendant, and the convicting court
25 of the decision to destroy the evidence and a written objection is
26 not received by the attorney, clerk, or officer from the defendant,
27 attorney of record, or court before the 91st day after the later of

1 the following dates:

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

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

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

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

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

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

27 (h) A person described by Subsection (b) may solicit and

1 accept gifts, grants, donations, and contributions to support the
2 collection, storage, preservation, retrieval, and destruction of
3 biological evidence.

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

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

9 (2) law enforcement associations;

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

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

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

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

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

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

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

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

1 September 1, 2012.

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

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

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

COMMITTEE AMENDMENT NO. 1

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2 SECTION _____. Amend S.B. 1616 (Engrossed Version) with the
3 following:

4 (1) Section 1 Article 38.43, Code of Criminal Procedure
5 (page 3, line 20 and 21) unstrike "~~described by Subsection (b)~~"

6 (2) On page 3, line 21, replace "~~(b)~~" with "(a)".

7 (3) On page 3, line 21 and 22, strike "after expiration of
8 the retention period specified by Subsection (c)".

9 (4) On page 3, line 22, unstrike "~~, but only~~".

10 Hartnett