

1-1 By: West S.B. No. 1616
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 27, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 27, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1616 By: Patrick

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the collection, storage, preservation, retrieval, and
1-11 destruction of biological evidence.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 38.43, Code of Criminal Procedure, is
1-14 amended to read as follows:

1-15 Art. 38.43. [~~PRESERVATION~~ ~~OF~~] EVIDENCE CONTAINING
1-16 BIOLOGICAL MATERIAL. (a) In this article, "biological evidence"
1-17 means:

1-18 (1) the contents of a sexual assault examination kit;
1-19 or

1-20 (2) any item that contains blood, semen, hair, saliva,
1-21 skin tissue, fingernail scrapings, bone, bodily fluids, or any
1-22 other identifiable biological material that was collected as part
1-23 of an investigation of an alleged felony offense or conduct
1-24 constituting a felony offense that might reasonably be used to [In a
1-25 criminal case in which a defendant is convicted, the attorney
1-26 representing the state, a clerk, or any other officer in possession
1-27 of evidence described by Subsection (b) shall ensure the
1-28 preservation of the evidence.

1-29 [~~(b) This article applies to evidence that:~~

1-30 [~~(1) was in the possession of the state during the~~
1-31 ~~prosecution of the case; and~~

1-32 [~~(2) at the time of conviction was known to contain~~
1-33 ~~biological material that if subjected to scientific testing would~~
1-34 ~~more likely than not]:~~

1-35 (A) establish the identity of the person
1-36 committing the offense or engaging in the conduct constituting the
1-37 offense; or

1-38 (B) exclude a person from the group of persons
1-39 who could have committed the offense or engaged in the conduct
1-40 constituting the offense.

1-41 (b) This article applies to a governmental or public entity
1-42 or an individual, including a law enforcement agency, prosecutor's
1-43 office, court, public hospital, or crime laboratory, that is
1-44 charged with the collection, storage, preservation, or retrieval of
1-45 biological evidence.

1-46 (c) The Department of Public Safety shall adopt rules
1-47 relating to a person that collects, stores, preserves, or retrieves
1-48 any biological evidence in relation to an investigation or
1-49 prosecution of a felony offense or conduct constituting a felony
1-50 offense. The rules adopted under this subsection must:

1-51 (1) require biological evidence to be retained for a
1-52 felony offense or conduct constituting a felony offense under
1-53 Chapter 19, 21, or 22, Penal Code;

1-54 (2) require biological evidence [Except as provided by
1-55 Subsection (d), material required] to be preserved [under this
1-56 article must be preserved]:

1-57 (A) for not less than 60 years if there is an
1-58 unapprehended actor associated with the offense; or

1-59 (B) in a case in which a defendant has been
1-60 convicted, placed on deferred adjudication community supervision,
1-61 or adjudicated as having engaged in delinquent conduct and there
1-62 are no additional unapprehended actors associated with the offense:

1-63 (i) [~~(1)~~] until the inmate is executed,

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

2-3 (ii) [(2)] until the defendant dies,
2-4 completes the defendant's sentence, or is released on parole or
2-5 mandatory supervision, if the defendant is sentenced to a term of
2-6 confinement or imprisonment in the Texas Department of Criminal
2-7 Justice;

2-8 (iii) until the defendant completes the
2-9 defendant's term of community supervision, including deferred
2-10 adjudication community supervision, if the defendant is placed on
2-11 community supervision;

2-12 (iv) until the defendant dies, completes
2-13 the defendant's sentence, or is released on parole, mandatory
2-14 supervision, or juvenile probation, if the defendant is committed
2-15 to the Texas Youth Commission; or

2-16 (v) until the defendant completes the
2-17 defendant's term of juvenile probation, including a term of
2-18 community supervision upon transfer of supervision to a criminal
2-19 court, if the defendant is placed on juvenile probation; and

2-20 (3) specify procedures for the collection, storage,
2-21 preservation, and retrieval of evidence.

2-22 (d) The attorney representing the state, clerk, or other
2-23 officer in possession of biological evidence ~~[described by~~
2-24 ~~Subsection (b)]~~ may destroy the evidence after expiration of the
2-25 retention period specified by the rules adopted under Subsection
2-26 (c)(2) [, but only] if the attorney, clerk, or officer by mail
2-27 notifies the defendant, the last attorney of record for the
2-28 defendant, and the convicting court of the decision to destroy the
2-29 evidence and a written objection is not received by the attorney,
2-30 clerk, or officer from the defendant, attorney of record, or court
2-31 before the 91st day after the later of the following dates:

2-32 (1) the date on which the attorney representing the
2-33 state, clerk, or other officer receives proof that the defendant
2-34 received notice of the planned destruction of evidence; or

2-35 (2) the date on which notice of the planned
2-36 destruction of evidence is mailed to the last attorney of record for
2-37 the defendant.

2-38 (e) To the extent of any conflict, this article controls
2-39 over Article 2.21.

2-40 (f) The Department of Public Safety shall adopt rules
2-41 authorizing ~~[(f)(1) This subsection applies only to evidence~~
2-42 ~~described by Subsection (b) that was used to prosecute and convict a~~
2-43 ~~defendant of an offense under Chapter 19, 21, or 22, Penal Code, if~~
2-44 ~~on conviction of the offense the defendant was sentenced to a term~~
2-45 ~~of imprisonment of 10 years or more.~~

2-46 ~~[(2) In] a county with a population less than 100,000~~
2-47 ~~to [, the attorney representing the state, clerk, or other officer~~
2-48 ~~in possession of any evidence to which this subsection applies~~
2-49 ~~shall] ensure the preservation of biological [the] evidence by~~
2-50 promptly delivering the evidence to the Department of Public Safety
2-51 for storage in accordance with Section 411.052, Government Code,
2-52 and department rules.

2-53 (g) A person described by Subsection (b) may solicit and
2-54 accept gifts, grants, donations, and contributions to support the
2-55 collection, storage, preservation, retrieval, and destruction of
2-56 biological evidence.

2-57 SECTION 2. (a) The Department of Public Safety of the
2-58 State of Texas, in adopting the initial rules required by Article
2-59 38.43, Code of Criminal Procedure, as amended by this Act, shall
2-60 consult with:

2-61 (1) large, medium, and small law enforcement agencies;

2-62 (2) law enforcement associations;

2-63 (3) scientific experts in the collection,
2-64 preservation, storage, and retrieval of biological evidence; and

2-65 (4) organizations engaged in the development of law
2-66 enforcement policy, such as:

2-67 (A) the National Institute of Standards and
2-68 Technology of the United States Commerce Department;

2-69 (B) the Texas District and County Attorneys

3-1 Association;
3-2 (C) the Texas Criminal Defense Lawyers
3-3 Association;
3-4 (D) the Texas Association of Property and
3-5 Evidence Inventory Technicians; and
3-6 (E) other organizations in this state that
3-7 represent clients pursuing claims of innocence based on
3-8 post-conviction biological evidence.

3-9 (b) The Department of Public Safety of the State of Texas
3-10 shall adopt the rules required by Article 38.43, Code of Criminal
3-11 Procedure, as amended by this Act, not later than September 1, 2012.

3-12 (c) The change in law made by Article 38.43, Code of
3-13 Criminal Procedure, as amended by this Act, applies only to
3-14 biological evidence collected, stored, preserved, retrieved, or
3-15 destroyed on or after January 1, 2013. Biological evidence
3-16 collected, stored, preserved, retrieved, or destroyed before
3-17 January 1, 2013, is covered by the law that was in effect
3-18 immediately before the effective date of this Act, and the former
3-19 law is continued in effect for that purpose.

3-20 SECTION 3. This Act takes effect immediately if it receives
3-21 a vote of two-thirds of all the members elected to each house, as
3-22 provided by Section 39, Article III, Texas Constitution. If this
3-23 Act does not receive the vote necessary for immediate effect, this
3-24 Act takes effect September 1, 2011.

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