

By: Davis, et al.

S.B. No. 1636

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), (1-c), and (1-d) 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) "Active criminal case" means a case:

19 (A) in which:

20 (i) a sexual assault has been reported to a
21 law enforcement agency; and

22 (ii) physical evidence of the assault has
23 been submitted to the agency or an accredited crime laboratory
24 under this chapter for analysis; and

1 (B) for which:

2 (i) the statute of limitations has not run
3 with respect to the prosecution of the sexual assault; or

4 (ii) a DNA profile was obtained that is
5 eligible under Section 420.043 for comparison with DNA profiles in
6 the state database or CODIS DNA database.

7 (1-b) "Advocate" means a person who provides advocacy
8 services as an employee or volunteer of a sexual assault program.

9 (1-c) "Department" means the Department of Public
10 Safety of the State of Texas.

11 (1-d) "Law enforcement agency" means a state or local
12 law enforcement agency in this state with jurisdiction over the
13 investigation of a sexual assault.

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

17 SECTION 3. Subsection (e), Section 420.031, Government
18 Code, is amended to read as follows:

19 (e) Evidence collected under this section may not be
20 released unless a signed, [~~the survivor of the offense or a legal~~
21 ~~representative of the survivor signs a~~] written consent to release
22 the evidence is obtained as provided by Section 420.0735.

23 SECTION 4. Subchapter B, Chapter 420, Government Code, is
24 amended by adding Section 420.033 to read as follows:

25 Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement,
26 department, and laboratory personnel who handle sexual assault
27 evidence under this chapter or other law shall maintain the chain of

1 custody of the evidence from the time the evidence is collected
2 until the time the evidence is destroyed.

3 SECTION 5. Chapter 420, Government Code, is amended by
4 adding Subchapter B-1 to read as follows:

5 SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

6 Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter
7 applies only to physical evidence of a sexual assault with respect
8 to an active criminal case.

9 Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) A
10 law enforcement agency that receives sexual assault evidence
11 collected under this chapter or other law shall submit that
12 evidence to a public accredited crime laboratory for analysis not
13 later than the 30th day after the date on which that evidence was
14 received.

15 (b) A person who submits sexual assault evidence to a public
16 accredited crime laboratory under this chapter or other law shall
17 provide the following signed, written certification with each
18 submission: "This evidence is being submitted by (name of person
19 making submission) in connection with a criminal investigation."

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

25 (d) To ensure the completion of analyses within the period
26 required by Subsection (c), the department and other applicable
27 public accredited crime laboratories may contract with private

1 accredited crime laboratories as appropriate to perform those
2 analyses, subject to the necessary quality assurance reviews by the
3 public accredited crime laboratories.

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

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

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

12 Sec. 420.043. DATABASE COMPARISON REQUIRED. On the request
13 of any appropriate person and after an evidence collection kit
14 containing biological evidence has been analyzed by an accredited
15 crime laboratory and any necessary quality assurance reviews have
16 been performed, the department shall compare the DNA profile
17 obtained from the biological evidence with DNA profiles maintained
18 in:

19 (1) state databases, including the DNA database
20 maintained under Subchapter G, Chapter 411, if the amount and
21 quality of the analyzed sample meet the requirements of the state
22 database comparison policies; and

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

27 SECTION 6. Section 420.072, Government Code, is amended to

1 read as follows:

2 Sec. 420.072. EXCEPTIONS. (a) A communication, a [~~or~~]
3 record, or evidence that is confidential under this subchapter may
4 be disclosed in court or in an administrative proceeding if:

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

10 (2) the survivor or other appropriate person [~~a person~~
11 ~~authorized to act on behalf of the survivor~~] consents in writing to
12 the disclosure [~~release of the confidential information~~] as
13 provided by Section 420.073 or 420.0735, as applicable.

14 (b) A communication, a [~~or~~] record, or evidence that is
15 confidential under this subchapter may be disclosed only to:

16 (1) medical or law enforcement personnel if the
17 advocate determines that there is a probability of imminent
18 physical danger to any person for whom the communication, [~~or~~]
19 record, or evidence is relevant or if there is a probability of
20 immediate mental or emotional injury to the survivor;

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

23 (3) a qualified person to the extent necessary for a
24 management audit, financial audit, program evaluation, or
25 research, except that a report of the research, audit, or
26 evaluation may not directly or indirectly identify a survivor;

27 (4) a person authorized to receive the disclosure as a

1 result of [~~who has the~~] written consent obtained under [~~of the~~
2 ~~survivor or of a person authorized to act on the survivor's behalf~~
3 ~~as provided by~~] Section 420.073 or 420.0735; or

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

7 (c) A communication, a [~~or~~] record, or evidence that is
8 confidential under this subchapter may not be disclosed to a parent
9 or legal guardian of a survivor who is a minor if an advocate or a
10 sexual assault program knows or has reason to believe that the
11 parent or legal guardian of the survivor is a suspect in the sexual
12 assault of the survivor.

13 SECTION 7. The heading to Section 420.073, Government Code,
14 is amended to read as follows:

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

17 SECTION 8. Subsection (a), Section 420.073, Government
18 Code, is amended to read as follows:

19 (a) Consent for the release of confidential information
20 other than evidence contained in an evidence collection kit must be
21 in writing and signed by the survivor, a parent or legal guardian if
22 the survivor is a minor, a legal guardian if the survivor has been
23 adjudicated incompetent to manage the survivor's personal affairs,
24 an attorney ad litem appointed for the survivor, or a personal
25 representative if the survivor is deceased. The written consent
26 must specify:

27 (1) the information or records covered by the release;

1 (2) the reason or purpose for the release; and

2 (3) the person to whom the information is to be
3 released.

4 SECTION 9. Subchapter D, Chapter 420, Government Code, is
5 amended by adding Section 420.0735 to read as follows:

6 Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE.

7 (a) Consent for the release of evidence contained in an evidence
8 collection kit must be in writing and signed by:

9 (1) the survivor, if the survivor is 14 years of age or
10 older;

11 (2) the survivor's parent or guardian or an employee of
12 the Department of Family and Protective Services, if the survivor
13 is younger than 14 years of age; or

14 (3) the survivor's personal representative, if the
15 survivor is deceased.

16 (b) For purposes of Subsection (a)(1), a written consent
17 signed by an incapacitated person, as that term is defined by
18 Section 601, Texas Probate Code, is effective regardless of whether
19 the incapacitated person's guardian, guardian ad litem, or other
20 legal agent signs the release. If the incapacitated person is
21 unable to provide a signature and the guardian, guardian ad litem,
22 or other legal agent is unavailable to sign the release, then the
23 investigating law enforcement officer may sign the release.

24 (c) Consent for release under Subsection (a) applies only to
25 evidence contained in an evidence collection kit and does not
26 affect the confidentiality of any other confidential information
27 under this chapter.

1 (d) The written consent must specify:

2 (1) the evidence covered by the release;

3 (2) the reason or purpose for the release; and

4 (3) the person to whom the evidence is to be released.

5 (e) A survivor or other person authorized to consent may
6 withdraw consent to the release of evidence by submitting a written
7 notice of withdrawal to the person or program to which consent was
8 provided. Withdrawal of consent does not affect evidence disclosed
9 before the date written notice of the withdrawal was received.

10 (f) A person who receives evidence made confidential by this
11 chapter may not disclose the evidence except to the extent that
12 disclosure is consistent with the authorized purposes for which the
13 person obtained the evidence.

14 SECTION 10. Section 420.074, Government Code, is amended to
15 read as follows:

16 Sec. 420.074. CRIMINAL SUBPOENA. Notwithstanding any other
17 provision of this chapter, a person shall disclose a communication,
18 a [ex] record, or evidence that is confidential under this chapter
19 for use in a criminal investigation or proceeding in response to a
20 subpoena issued in accordance with law.

21 SECTION 11. Section 420.075, Government Code, is amended to
22 read as follows:

23 Sec. 420.075. OFFENSE. A person commits an offense if the
24 person intentionally or knowingly discloses a communication, a [ex]
25 record, or evidence that is confidential under this chapter, except
26 as provided by this chapter. An offense under this section is a
27 Class C misdemeanor.

1 SECTION 12. Subsections (f) and (g), Article 56.065, Code
2 of Criminal Procedure, are amended to read as follows:

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

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

13 (1) the second anniversary of the date the evidence
14 was collected; or

15 (2) the date on which [~~the victim or a legal~~
16 ~~representative of the victim signs a~~] written consent to release
17 the evidence is obtained as provided by Section 420.0735,
18 Government Code.

19 SECTION 13. On or after the effective date of this Act, the
20 Department of Public Safety of the State of Texas shall ensure that
21 any unanalyzed sexual assault evidence that is in the possession of
22 a law enforcement agency and that is collected:

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

26 (2) before August 1, 2011, is analyzed as nearly as
27 possible to the time provided by Chapter 420, Government Code, as

1 amended by this Act.

2 SECTION 14. (a) A law enforcement agency in possession of
3 sexual assault evidence that has not been submitted for laboratory
4 analysis shall:

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

9 (2) not later than April 1, 2012, and subject to the
10 availability of laboratory storage space, submit, as appropriate,
11 to the Department of Public Safety of the State of Texas or a public
12 accredited crime laboratory, as defined by Section 420.003,
13 Government Code, as amended by this Act, all sexual assault
14 evidence pertaining to those active criminal cases that has not yet
15 been submitted for laboratory analysis; and

16 (3) if the law enforcement agency submits evidence
17 under Subdivision (2) of this subsection to a laboratory other than
18 a Department of Public Safety of the State of Texas laboratory,
19 notify the department of:

20 (A) the laboratory to which the evidence was
21 sent; and

22 (B) any analysis completed by the laboratory to
23 which the evidence was sent and the date on which the analysis was
24 completed.

25 (b) Not later than February 15, 2013, the Department of
26 Public Safety of the State of Texas shall submit to the governor and
27 the appropriate standing committees of the senate and the house of

1 representatives a report containing:

2 (1) a projected timeline for the completion of
3 laboratory analyses, in accordance with Chapter 420, Government
4 Code, as amended by this Act, of all unanalyzed sexual assault
5 evidence submitted under Subdivision (2), Subsection (a) of this
6 section;

7 (2) a request for any necessary funding to accomplish
8 the analyses under Subdivision (1) of this subsection; and

9 (3) if the department determines that outsourcing of a
10 portion of the submitted evidence is necessary for timely analyses
11 of the evidence:

12 (A) a proposal for determining which evidence
13 should be outsourced; and

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

16 (c) Not later than September 1, 2014, and to the extent that
17 funding is available, the Department of Public Safety of the State
18 of Texas shall, as provided by Sections 420.042 and 420.043,
19 Government Code, as added by this Act, analyze or contract for the
20 analysis of, and complete the required database comparison
21 regarding, all sexual assault evidence submitted to the department
22 under Subdivision (2), Subsection (a) of this section.

23 (d) Notwithstanding Subsection (c) of this section, the
24 Department of Public Safety of the State of Texas is not required to
25 use under this section in a state fiscal year any amount of money
26 from the state highway fund that exceeds the amount the department
27 has historically used in a state fiscal year to fund laboratory

1 analyses of sexual assault evidence under Chapter 420, Government
2 Code, as amended by this Act. To supplement funding of those
3 analyses, the department may solicit and receive grants, gifts, or
4 appropriations of money from the federal government, the state
5 legislature, or private sources as described by that chapter.

6 SECTION 15. Notwithstanding Chapter 420, Government Code,
7 as amended by this Act, and Section 13 of this Act, this Act does not
8 apply to sexual assault evidence collected before September 1,
9 1996.

10 SECTION 16. The Department of Public Safety of the State of
11 Texas is required to implement this Act only if the legislature
12 appropriates money specifically for that purpose. If the
13 legislature does not appropriate money specifically for that
14 purpose, the department may, but is not required to, implement this
15 Act using other appropriations for that purpose.

16 SECTION 17. This Act takes effect September 1, 2011.