

By: Davis, et al.  
(McClendon)

S.B. No. 1636

Substitute the following for S.B. No. 1636:

By: Beck

C.S.S.B. No. 1636

A BILL TO BE ENTITLED

AN ACT

relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

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

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

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

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

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

(1-a) "Active criminal case" means a case:

(A) in which:

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

(ii) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory 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 as soon as practicable shall  
22 complete its analysis of sexual assault evidence submitted under  
23 this chapter or other law.

24 (d) To ensure the expeditious completion of analyses, the  
25 department and other applicable public accredited crime  
26 laboratories may contract with private accredited crime  
27 laboratories as appropriate to perform those analyses, subject to

1 the necessary quality assurance reviews by the public accredited  
2 crime laboratories.

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

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

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

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

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

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

26 SECTION 6. Section 420.072, Government Code, is amended to  
27 read as follows:

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

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

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

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

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

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

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

26           (4) a person authorized to receive the disclosure as a  
27 result of [~~who has the~~] written consent obtained under [~~of the~~]

1 ~~survivor or of a person authorized to act on the survivor's behalf~~  
2 ~~as provided by]~~ Section 420.073 or 420.0735; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27           (d) The written consent must specify:

- 1           (1) the evidence covered by the release;
- 2           (2) the reason or purpose for the release; and
- 3           (3) the person to whom the evidence is to be released.

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

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

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

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

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

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

27           SECTION 12. Subsections (f) and (g), Article 56.065, Code



1 of Criminal Procedure, are amended to read as follows:

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

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

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

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

18 SECTION 13. Subsection (e), Article 102.056, Code of  
19 Criminal Procedure, is amended to read as follows:

20 (e) The legislature shall determine and appropriate the  
21 necessary amount from the criminal justice planning account to the  
22 criminal justice division of the governor's office for  
23 reimbursement in the form of grants to the Department of Public  
24 Safety of the State of Texas and other ~~[local]~~ law enforcement  
25 agencies for expenses incurred in performing duties imposed on  
26 those agencies under Section ~~[Sections]~~ 411.1471 or Subchapter B-1,  
27 Chapter 420 ~~[and 411.1472]~~, Government Code, as applicable. On the

1 first day after the end of a calendar quarter, a law enforcement  
2 agency incurring expenses described by this subsection in the  
3 previous calendar quarter shall send a certified statement of the  
4 costs incurred to the criminal justice division. The criminal  
5 justice division through a grant shall reimburse the law  
6 enforcement agency for the costs not later than the 30th day after  
7 the date the certified statement is received. If the criminal  
8 justice division does not reimburse the law enforcement agency  
9 before the 90th day after the date the certified statement is  
10 received, the agency is not required to perform duties imposed  
11 under Section [~~Sections~~] 411.1471 or Subchapter B-1, Chapter 420  
12 [~~and 411.1472~~], Government Code, as applicable, until the agency  
13 has been compensated for all costs for which the [~~local law~~  
14 ~~enforcement~~] agency has submitted a certified statement under this  
15 subsection.

16 SECTION 14. On or after the effective date of this Act, the  
17 Department of Public Safety of the State of Texas shall ensure that  
18 any unanalyzed sexual assault evidence that is in the possession of  
19 a law enforcement agency and that is collected:

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

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

26 SECTION 15. (a) A law enforcement agency in possession of  
27 sexual assault evidence that has not been submitted for laboratory

1 analysis shall:

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

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

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

17 (A) the laboratory to which the evidence was  
18 sent; and

19 (B) any analysis completed by the laboratory to  
20 which the evidence was sent and the date on which the analysis was  
21 completed.

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

26 (1) a projected timeline for the completion of  
27 laboratory analyses, in accordance with Chapter 420, Government

1 Code, as amended by this Act, of all unanalyzed sexual assault  
2 evidence submitted under Subdivision (2), Subsection (a) of this  
3 section;

4 (2) a request for any necessary funding to accomplish  
5 the analyses under Subdivision (1) of this subsection, including a  
6 request for a grant of money under Subsection (e), Article 102.056,  
7 Code of Criminal Procedure, as amended by this Act, if money is  
8 available under that subsection;

9 (3) as appropriate, application materials for  
10 requests made as required by Subdivision (2) of this subsection;  
11 and

12 (4) if the department determines that outsourcing of a  
13 portion of the submitted evidence is necessary for timely analyses  
14 of the evidence:

15 (A) a proposal for determining which evidence  
16 should be outsourced; and

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

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

26 (d) Notwithstanding Subsection (c) of this section, the  
27 Department of Public Safety of the State of Texas is not required to

1 use under this section in a state fiscal year any amount of money  
2 from the state highway fund that exceeds the amount the department  
3 has historically used in a state fiscal year to fund laboratory  
4 analyses of sexual assault evidence under Chapter 420, Government  
5 Code, as amended by this Act.

6 (e) To supplement funding of laboratory analyses under this  
7 section, the department may solicit and receive grants, gifts, or  
8 donations of money from the federal government or private sources  
9 as described by Chapter 420, Government Code.

10 SECTION 16. Notwithstanding Chapter 420, Government Code,  
11 as amended by this Act, and Section 14 of this Act, this Act does not  
12 apply to sexual assault evidence collected before September 1,  
13 1996.

14 SECTION 17. (a) Except as provided by Article 102.056(e),  
15 Code of Criminal Procedure, as amended by this Act, Section  
16 420.007, Government Code, and Section 15(d) of this Act, state  
17 funds may not be appropriated for the purpose of implementing this  
18 Act.

19 (b) Notwithstanding any other law, the Department of Public  
20 Safety of the State of Texas may not use legislative appropriations  
21 to discharge any additional duties imposed by this Act on the  
22 department.

23 SECTION 18. This Act takes effect September 1, 2011.