

1-1 By: Davis S.B. No. 1636
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 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1636 By: Huffman

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

1-10 relating to the collection, analysis, and preservation of sexual
1-11 assault or DNA evidence.

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

1-13 SECTION 1. Section 411.151, Government Code, is amended by
1-14 adding Subsection (e) to read as follows:

1-15 (e) The department's failure to expunge a DNA record as
1-16 required by this section may not serve as the sole grounds for a
1-17 court in a criminal proceeding to exclude evidence based on or
1-18 derived from the contents of that record.

1-19 SECTION 2. Section 420.003, Government Code, is amended by
1-20 amending Subdivisions (1) and (6) and adding Subdivisions (1-a),
1-21 (1-b), (1-c), and (1-d) to read as follows:

1-22 (1) "Accredited crime laboratory" means a crime
1-23 laboratory, as that term is defined by Article 38.35, Code of
1-24 Criminal Procedure, that has been accredited under Section
1-25 411.0205.

1-26 (1-a) "Active criminal case" means a case:

1-27 (A) in which:

1-28 (i) a sexual assault has been reported to a
1-29 law enforcement agency; or

1-30 (ii) physical evidence of a sexual assault
1-31 has been submitted to a law enforcement agency or an accredited
1-32 crime laboratory under this chapter for analysis; and

1-33 (B) for which:

1-34 (i) the statute of limitations has not run
1-35 with respect to the prosecution of the sexual assault; or

1-36 (ii) a DNA profile was obtained that is
1-37 eligible under Section 420.043 for comparison with DNA profiles in
1-38 the state database or CODIS DNA database.

1-39 (1-b) "Advocate" means a person who provides advocacy
1-40 services as an employee or volunteer of a sexual assault program.

1-41 (1-c) "Department" means the Department of Public
1-42 Safety of the State of Texas.

1-43 (1-d) "Law enforcement agency" means a state or local
1-44 law enforcement agency in this state with jurisdiction over the
1-45 investigation of a sexual assault.

1-46 (6) "Sexual assault nurse examiner" means a registered
1-47 nurse who has completed a service-approved examiner training course
1-48 described by Section 420.011.

1-49 SECTION 3. Subsection (e), Section 420.031, Government
1-50 Code, is amended to read as follows:

1-51 (e) Evidence collected under this section may not be
1-52 released unless a signed, ~~[the survivor of the offense or a legal~~
1-53 ~~representative of the survivor signs a]~~ written consent to release
1-54 the evidence is obtained as provided by Section 420.0735.

1-55 SECTION 4. Subchapter B, Chapter 420, Government Code, is
1-56 amended by adding Section 420.033 to read as follows:

1-57 Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement,
1-58 department, and laboratory personnel who handle sexual assault
1-59 evidence under this chapter or other law shall maintain the chain of
1-60 custody of the evidence from the time the evidence is collected
1-61 until the time the evidence is destroyed.

1-62 SECTION 5. Chapter 420, Government Code, is amended by
1-63 adding Subchapter B-1 to read as follows:

2-1 SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

2-2 Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter
 2-3 applies only to physical evidence of a sexual assault with respect
 2-4 to an active criminal case.

2-5 Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) A
 2-6 law enforcement agency that receives sexual assault evidence
 2-7 collected under this chapter or other law shall submit that
 2-8 evidence to a public accredited crime laboratory for analysis not
 2-9 later than the 10th day after the date on which that evidence was
 2-10 received.

2-11 (b) A person who submits sexual assault evidence to a public
 2-12 accredited crime laboratory under this chapter or other law shall
 2-13 provide the following signed, written certification with each
 2-14 submission: "This evidence is being submitted by (name of person
 2-15 making submission) in connection with a criminal investigation."

2-16 (c) If sufficient personnel and resources are available, a
 2-17 public accredited crime laboratory shall complete its analysis of
 2-18 sexual assault evidence submitted under this chapter or other law
 2-19 not later than the 90th day after the date on which the laboratory
 2-20 received the evidence.

2-21 (d) To ensure the completion of analyses within the period
 2-22 required by Subsection (c), the department and other applicable
 2-23 public accredited crime laboratories may contract with private
 2-24 accredited crime laboratories as appropriate to perform those
 2-25 analyses, subject to the necessary quality assurance reviews by the
 2-26 public accredited crime laboratories.

2-27 (e) The failure of a law enforcement agency to submit sexual
 2-28 assault evidence within the period required by this section does
 2-29 not affect the authority of:

2-30 (1) the agency to submit the evidence to an accredited
 2-31 crime laboratory for analysis; or

2-32 (2) an accredited crime laboratory to analyze the
 2-33 evidence or provide the results of that analysis to appropriate
 2-34 persons.

2-35 Sec. 420.043. DATABASE COMPARISON REQUIRED. On the request
 2-36 of any appropriate person and after an evidence collection kit
 2-37 containing biological evidence has been analyzed by an accredited
 2-38 crime laboratory and any necessary quality assurance reviews have
 2-39 been performed, the department shall compare the DNA profile
 2-40 obtained from the biological evidence with DNA profiles maintained
 2-41 in:

2-42 (1) state databases, including the DNA database
 2-43 maintained under Subchapter G, Chapter 411, if the amount and
 2-44 quality of the analyzed sample meet the requirements of the state
 2-45 database comparison policies; and

2-46 (2) the CODIS DNA database established by the Federal
 2-47 Bureau of Investigation, if the amount and quality of the analyzed
 2-48 sample meet the requirements of the bureau's CODIS comparison
 2-49 policies.

2-50 SECTION 6. Section 420.072, Government Code, is amended to
 2-51 read as follows:

2-52 Sec. 420.072. EXCEPTIONS. (a) A communication, ~~a~~ [or]
 2-53 record, or evidence that is confidential under this subchapter may
 2-54 be disclosed in court or in an administrative proceeding if:

2-55 (1) the proceeding is brought by the survivor against
 2-56 an advocate or a sexual assault program or is a criminal proceeding
 2-57 or a certification revocation proceeding in which disclosure is
 2-58 relevant to the claims or defense of the advocate or sexual assault
 2-59 program; or

2-60 (2) the survivor or other appropriate person ~~[a person~~
 2-61 ~~authorized to act on behalf of the survivor]~~ consents in writing to
 2-62 the disclosure ~~[release of the confidential information]~~ as
 2-63 provided by Section 420.073 or 420.0735, as applicable.

2-64 (b) A communication, ~~a~~ [or] record, or evidence that is
 2-65 confidential under this subchapter may be disclosed only to:

2-66 (1) medical or law enforcement personnel if the
 2-67 advocate determines that there is a probability of imminent
 2-68 physical danger to any person for whom the communication, ~~[or]~~
 2-69 record, or evidence is relevant or if there is a probability of

3-1 immediate mental or emotional injury to the survivor;
 3-2 (2) a governmental agency if the disclosure is
 3-3 required or authorized by law;
 3-4 (3) a qualified person to the extent necessary for a
 3-5 management audit, financial audit, program evaluation, or
 3-6 research, except that a report of the research, audit, or
 3-7 evaluation may not directly or indirectly identify a survivor;
 3-8 (4) a person authorized to receive the disclosure as a
 3-9 result of [who has the] written consent obtained under [of the
 3-10 survivor or of a person authorized to act on the survivor's behalf
 3-11 as provided by] Section 420.073 or 420.0735; or
 3-12 (5) an advocate or a person under the supervision of a
 3-13 counseling supervisor who is participating in the evaluation or
 3-14 counseling of or advocacy for the survivor.
 3-15 (c) A communication, a [or] record, or evidence that is
 3-16 confidential under this subchapter may not be disclosed to a parent
 3-17 or legal guardian of a survivor who is a minor if an advocate or a
 3-18 sexual assault program knows or has reason to believe that the
 3-19 parent or legal guardian of the survivor is a suspect in the sexual
 3-20 assault of the survivor.
 3-21 SECTION 7. The heading to Section 420.073, Government Code,
 3-22 is amended to read as follows:
 3-23 Sec. 420.073. CONSENT FOR RELEASE OF CERTAIN CONFIDENTIAL
 3-24 INFORMATION.
 3-25 SECTION 8. Subsection (a), Section 420.073, Government
 3-26 Code, is amended to read as follows:
 3-27 (a) Consent for the release of confidential information
 3-28 other than evidence contained in an evidence collection kit must be
 3-29 in writing and signed by the survivor, a parent or legal guardian if
 3-30 the survivor is a minor, a legal guardian if the survivor has been
 3-31 adjudicated incompetent to manage the survivor's personal affairs,
 3-32 an attorney ad litem appointed for the survivor, or a personal
 3-33 representative if the survivor is deceased. The written consent
 3-34 must specify:
 3-35 (1) the information or records covered by the release;
 3-36 (2) the reason or purpose for the release; and
 3-37 (3) the person to whom the information is to be
 3-38 released.
 3-39 SECTION 9. Subchapter D, Chapter 420, Government Code, is
 3-40 amended by adding Section 420.0735 to read as follows:
 3-41 Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE.
 3-42 (a) Consent for the release of evidence contained in an evidence
 3-43 collection kit must be in writing and signed by:
 3-44 (1) the survivor, if the survivor is 14 years of age or
 3-45 older;
 3-46 (2) the survivor's parent or guardian or an employee of
 3-47 the Department of Family and Protective Services, if the survivor
 3-48 is younger than 14 years of age; or
 3-49 (3) the survivor's personal representative, if the
 3-50 survivor is deceased.
 3-51 (b) For purposes of Subsection (a)(1), a written consent
 3-52 signed by an incapacitated person, as that term is defined by
 3-53 Section 601, Texas Probate Code, is effective regardless of whether
 3-54 the incapacitated person's guardian, guardian ad litem, or other
 3-55 legal agent signs the release. If the incapacitated person is
 3-56 unable to provide a signature and the guardian, guardian ad litem,
 3-57 or other legal agent is unavailable to sign the release, then the
 3-58 investigating law enforcement officer may sign the release.
 3-59 (c) Consent for release under Subsection (a) applies only to
 3-60 evidence contained in an evidence collection kit and does not
 3-61 affect the confidentiality of any other confidential information
 3-62 under this chapter.
 3-63 (d) The written consent must specify:
 3-64 (1) the evidence covered by the release;
 3-65 (2) the reason or purpose for the release; and
 3-66 (3) the person to whom the evidence is to be released.
 3-67 (e) A survivor or other person authorized to consent may
 3-68 withdraw consent to the release of evidence by submitting a written
 3-69 notice of withdrawal to the person or program to which consent was

4-1 provided. Withdrawal of consent does not affect evidence disclosed
4-2 before the date written notice of the withdrawal was received.

4-3 (f) A person who receives evidence made confidential by this
4-4 chapter may not disclose the evidence except to the extent that
4-5 disclosure is consistent with the authorized purposes for which the
4-6 person obtained the evidence.

4-7 SECTION 10. Section 420.074, Government Code, is amended to
4-8 read as follows:

4-9 Sec. 420.074. CRIMINAL SUBPOENA. Notwithstanding any other
4-10 provision of this chapter, a person shall disclose a communication,
4-11 a [✗] record, or evidence that is confidential under this chapter
4-12 for use in a criminal investigation or proceeding in response to a
4-13 subpoena issued in accordance with law.

4-14 SECTION 11. Section 420.075, Government Code, is amended to
4-15 read as follows:

4-16 Sec. 420.075. OFFENSE. A person commits an offense if the
4-17 person intentionally or knowingly discloses a communication, a [✗]
4-18 record, or evidence that is confidential under this chapter, except
4-19 as provided by this chapter. An offense under this section is a
4-20 Class C misdemeanor.

4-21 SECTION 12. Subsections (f) and (g), Article 56.065, Code
4-22 of Criminal Procedure, are amended to read as follows:

4-23 (f) The department, consistent with Chapter 420, Government
4-24 Code, may develop procedures regarding the submission or collection
4-25 of additional evidence of the alleged sexual assault other than
4-26 through an examination as described by this article.

4-27 (g) The department, consistent with Chapter 420, Government
4-28 Code, shall develop procedures for the transfer and preservation of
4-29 evidence collected under this article to a crime laboratory or
4-30 other suitable location designated by the public safety director of
4-31 the department. The receiving entity shall preserve the evidence
4-32 until the earlier of:

4-33 (1) the second anniversary of the date the evidence
4-34 was collected; or

4-35 (2) the date on which [the victim or a legal
4-36 representative of the victim signs a] written consent to release
4-37 the evidence is obtained as provided by Section 420.0735,
4-38 Government Code.

4-39 SECTION 13. On or after the effective date of this Act, the
4-40 Department of Public Safety of the State of Texas shall ensure that
4-41 any unanalyzed sexual assault evidence that is in the possession of
4-42 a law enforcement agency and that is collected:

4-43 (1) on or after August 1, 2011, is analyzed in
4-44 accordance with Chapter 420, Government Code, as amended by this
4-45 Act; and

4-46 (2) before August 1, 2011, is analyzed as nearly as
4-47 possible to the time provided by Chapter 420, Government Code, as
4-48 amended by this Act.

4-49 SECTION 14. (a) A law enforcement agency in possession of
4-50 sexual assault evidence that has not been submitted for laboratory
4-51 analysis shall:

4-52 (1) not later than October 15, 2011, submit to the
4-53 Department of Public Safety of the State of Texas a list of the
4-54 agency's active criminal cases for which sexual assault evidence
4-55 has not yet been submitted for laboratory analysis; and

4-56 (2) not later than April 1, 2012, submit to the
4-57 Department of Public Safety of the State of Texas all sexual assault
4-58 evidence pertaining to those active criminal cases that has not yet
4-59 been submitted for laboratory analysis.

4-60 (b) Not later than February 15, 2013, the Department of
4-61 Public Safety of the State of Texas shall submit to the governor and
4-62 the appropriate standing committees of the senate and the house of
4-63 representatives a report containing:

4-64 (1) a projected timeline for the completion of
4-65 laboratory analyses, in accordance with Chapter 420, Government
4-66 Code, as amended by this Act, of all unanalyzed sexual assault
4-67 evidence submitted to the department under Subdivision (2),
4-68 Subsection (a) of this section;

4-69 (2) a request for any necessary funding to accomplish

5-1 the analyses under Subdivision (1) of this subsection; and
5-2 (3) if the department determines that outsourcing of a
5-3 portion of the submitted evidence is necessary for timely analyses
5-4 of the evidence:

5-5 (A) a proposal for determining which evidence
5-6 should be outsourced; and

5-7 (B) a list of laboratories the department
5-8 determines are capable of completing the outsourced analyses.

5-9 (c) Not later than September 1, 2014, and to the extent that
5-10 funding is available, the Department of Public Safety of the State
5-11 of Texas shall, as provided by Sections 420.042 and 420.043,
5-12 Government Code, as added by this Act, analyze or contract for the
5-13 analysis of, and complete the required database comparison
5-14 regarding, all sexual assault evidence submitted to the department
5-15 under Subdivision (2), Subsection (a) of this section.

5-16 SECTION 15. Notwithstanding Chapter 420, Government Code,
5-17 as amended by this Act, and Section 13 of this Act, this Act does not
5-18 apply to sexual assault evidence collected before September 1,
5-19 1996.

5-20 SECTION 16. This Act takes effect September 1, 2011.

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