

BILL ANALYSIS

Senate Research Center
84R14797 GCB-F

H.B. 1264
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Administration
5/11/2015
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law provides rules for retention and storage of biological material but does not differentiate toxicological evidence from biological evidence.

Unlike biological evidence, toxicological evidence is not used for identification purposes and no longer has any evidentiary value following disposition of a case.

There is no code provision for the disposal of the blood and urine evidence in alcohol-related offenses.

As an example, the Houston Police Department property room is at 97 percent storage capacity because it has stored blood and urine from these offenses since 1988. The facility was built in 2010. There is currently no plan for additional storage.

H.B. 1264 amends current law by creating a new section that provides explicit direction regarding retention and storage of blood and urine evidence collected for use in a DWI/DUI investigation.

The new section would follow Article 38.43 (Evidence Containing Biological Material), Code of Criminal Procedure.

H.B. 1264 is a permissive statute that provides direction regarding retention, storage, and disposal of toxicological evidence.

H.B. 1264 amends current law relating to the preservation of toxicological evidence collected in connection with certain intoxication offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.50, as follows:

Art. 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES. (a) Defines "toxicological evidence" to mean a blood or urine specimen that was collected as part of an investigation of an alleged offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, in this article.

(b) Provides that this article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, or crime laboratory, that is charged with the collection, storage, preservation, analysis, or retrieval of toxicological evidence.

(c) Requires an entity or individual described by Subsection (b) to ensure that toxicological evidence collected pursuant to an investigation or prosecution of an offense under Chapter 49, Penal Code, is retained and preserved, as applicable:

(1) for the greater of two years or the period of the statute of limitations for the offense, if the indictment or information charging the defendant, or the petition in a juvenile proceeding, has not been presented;

(2) for the duration of a defendant's sentence or term of community supervision, as applicable, if the defendant is convicted or placed on community supervision, or for the duration of the commitment or supervision period applicable to the disposition of a juvenile adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) until the defendant is acquitted or the indictment or information is dismissed with prejudice, or, in a juvenile proceeding, until a hearing is held and the court does not find the child engaged in delinquent conduct or conduct indicating a need for supervision.

(d) Requires the court, for each offense subject to this article, to determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c) and notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence of the period for which the evidence is to be retained and preserved. Requires the court, if an action of the prosecutor or the court changes the applicable period under Subsection (c), to notify the persons described by this subsection about the change.

(e) Authorizes the entity or individual charged with storing toxicological evidence to destroy the evidence on expiration of the period provided by the notice most recently issued by the court under Subsection (d).

(f) Provides that to the extent of any conflict between this article and Article 2.21 (Duty of Clerks) or 38.43 (Evidence Containing Biological Material), this article controls.

SECTION 2. Provides that Article 38.50, Code of Criminal Procedure, as added by this Act, applies to all toxicological evidence stored by an entity or individual on or after the effective date of this Act, regardless of whether the evidence was collected before, on, or after the effective date of this Act.

SECTION 3. Effective date: September 1, 2015.