

BILL ANALYSIS

C.S.H.B. 1264
By: Wu
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Law enforcement agencies collect biological samples such as urine or blood for identification purposes in DWI and DUI cases. Interested parties contend that because these entities have no statutory mechanism for disposal of this type of evidence, the storage of these samples has become a burden to the agencies responsible for the material. C.S.H.B. 1264 seeks to remedy this situation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1264 amends the Code of Criminal Procedure to require 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 to ensure that toxicological evidence collected pursuant to an investigation or prosecution of an intoxication or alcoholic beverage offense is retained and preserved, as applicable, in the manner provided by the bill. The bill specifies that such toxicological evidence be retained and preserved, as applicable, 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; 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 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. The bill defines "toxicological evidence" as a blood or urine specimen that was collected as part of an investigation of an alleged intoxication or alcoholic beverage offense.

C.S.H.B. 1264 requires a court, for each offense subject to the bill's provisions, to determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence and to notify the defendant or the child or child's guardian and the entity or individual charged with storage of the evidence of the period for which the evidence is to be retained and preserved. The bill requires the court, if an action of the prosecutor or the court changes the

applicable period, to notify the defendant or the child or child's guardian and the entity or individual charged with storage of the evidence about the change. The bill authorizes the entity or individual charged with storing the evidence to destroy the evidence on expiration of the period provided by the notice most recently issued by the court. The bill's provisions expressly control to the extent of any conflict between the bill's provisions and statutory provisions relating to duties of clerks in criminal proceedings and to the preservation of evidence containing biological material.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1264 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.50 to read as follows:

Art. 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES. (a) In this article, "toxicological evidence" means a blood or urine specimen that was collected as part of an investigation of an alleged offense under Chapter 49, Penal Code.

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

(c) An entity or individual described by Subsection (b) shall 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.50 to read as follows:

Art. 38.50. RETENTION AND PRESERVATION OF TOXICOLOGICAL EVIDENCE OF CERTAIN INTOXICATION OFFENSES. (a) In this article, "toxicological evidence" means a blood or urine specimen that was collected as part of an investigation of an alleged offense under Chapter 49, Penal Code.

(b) 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) An entity or individual described by Subsection (b) shall 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) For each offense subject to this article, the court shall 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. If an action of the prosecutor or the court changes the applicable period under Subsection (c), the court shall notify the persons described by this subsection about the change.

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

(f) To the extent of any conflict between this article and Article 2.21 or 38.43, this article controls.

SECTION 2. 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. This Act takes effect September 1, 2015.

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) For each offense subject to this article, the court shall 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. If an action of the prosecutor or the court changes the applicable period under Subsection (c), the court shall notify the persons described by this subsection about the change.

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

(f) To the extent of any conflict between this article and Article 2.21 or 38.43, this article controls.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.