

By: Wu

H.B. No. 1264

A BILL TO BE ENTITLED

AN ACT

relating to the preservation of toxicological evidence collected in connection with certain intoxication offenses.

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

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;

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

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

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

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

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

27 SECTION 2. Article 38.50, Code of Criminal Procedure, as

1 added by this Act, applies to all toxicological evidence stored by
2 an entity or individual on or after the effective date of this Act,
3 regardless of whether the evidence was collected before, on, or
4 after the effective date of this Act.

5 SECTION 3. This Act takes effect September 1, 2015.