

BILL ANALYSIS

C.S.H.B. 1171
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties stress the need for timely analysis of rape kits, which can provide a survivor with essential knowledge of the perpetrator and help improve the accuracy of convictions. C.S.H.B. 1171 seeks to ensure the timely analysis of evidence of a sexual assault or other sex offense.

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. 1171 amends the Government Code to require a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense and that receives the requisite signed written consent to release the evidence to notify either the law enforcement agency investigating the alleged sexual assault or other sex offense, if known, or the local law enforcement agency not later than 24 hours after receiving consent. The bill requires a law enforcement agency that receives such notice to take possession of the evidence not later than the 14th day after the date the law enforcement agency receives notice. The bill requires a law enforcement agency that takes possession of the evidence and determines that the agency does not have jurisdiction over the investigation of the alleged sexual assault or other sex offense to notify the law enforcement agency with jurisdiction over the investigation not later than 14 days after making that determination and requires the agency that receives this notice to take possession of the evidence not later than the 14th day after the date the agency receives the notice.

C.S.H.B. 1171 requires a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense and has not obtained the requisite consent for releasing the evidence to provide the survivor with information relating to the facility's or entity's evidence storage policy for evidence of such an offense, including a statement of the period for which the evidence will be stored before the evidence is destroyed, and relating to the ways in which the survivor can release the evidence to a law enforcement agency. The bill requires a health care facility or other entity that performs a medical examination to store evidence of a sexual assault or other sex offense that is not released to a law enforcement agency until at least the first anniversary of the date the evidence was collected. The bill establishes that the failure of a health care facility or other entity or a law enforcement agency to comply with the bill's requirements relating to the release and storage of evidence of a

sexual assault or other sex offense does not constitute grounds in a criminal proceeding for a defendant to challenge the validity of a DNA match obtained by comparison with certain state and federal DNA databases or for a court to exclude DNA evidence. The bill establishes that a person accused or convicted of committing a sexual assault or other sex offense against the survivor does not have standing to object to the failure of a health care facility or other entity or a law enforcement agency to comply with those requirements and that failure does not constitute grounds for setting aside the conviction of a person convicted of committing such an offense against the survivor.

C.S.H.B. 1171 extends to evidence of any sex offense the requirement for a law enforcement agency that receives sexual assault evidence to submit that evidence to a public accredited crime laboratory for analysis and requires the applicable agency to also assign a unique number to the evidence. The bill changes the deadline by which an agency is required to submit the evidence to such a laboratory for analysis from not later than the 30th day after the date on which the evidence was received to not later than the 14th day after that date. The bill requires evidence so submitted to a laboratory to include the unique number assigned to the evidence by the applicable agency. These provisions apply only to evidence received by a law enforcement agency not earlier than 14 days before the bill's effective date.

C.S.H.B. 1171 establishes the deadline by which a public accredited crime laboratory, if sufficient personnel and resources are available, is required to complete analysis of the evidence as not later than the 60th day after the date on which the laboratory received the evidence. The bill expands the scope of provisions limiting the powers of an entity that are affected by the failure of a law enforcement agency to submit sexual assault evidence within the required period by applying those limitations to the failure of a law enforcement agency to submit evidence of another sex offense within the required period and to the failure of a law enforcement agency to take possession of sexual assault evidence or evidence of another sex offense within the required period. The bill includes among the powers of an entity that are not affected by such failures the authority of the agency to take possession of the evidence and the authority of the Department of Public Safety (DPS) to compare the DNA profile obtained from the biological evidence with DNA profiles in certain state and federal databases.

C.S.H.B. 1171 establishes that the failure of a law enforcement agency or public accredited crime laboratory to comply with requirements relating to the analysis of evidence of a sexual assault or other sex offense does not constitute grounds in a criminal proceeding for a defendant to challenge the validity of a DNA match obtained by comparison with certain state and federal DNA databases or for a court to exclude DNA evidence. The bill establishes that a person accused or convicted of committing a sexual assault or other sex offense against the survivor does not have standing to object to the failure of a law enforcement agency or public accredited crime laboratory to comply with those requirements and that failure does not constitute grounds for setting aside the conviction of a person convicted of committing such an offense against the survivor. The bill removes any appropriate person making a request from the conditions that trigger the requirement that DPS compare the DNA profile obtained from applicable biological evidence with DNA profiles maintained in certain state and federal databases.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1171 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.

No equivalent provision.

SECTION 1. Subchapter B, Chapter 420, Government Code, is amended by adding Section 420.034 to read as follows:

Sec. 420.034. EVIDENCE RELEASE AND STORAGE. (a) If a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense receives signed, written consent to release the evidence as provided by Section 420.0735, the facility or entity shall notify either the law enforcement agency investigating the alleged sexual assault or other sex offense, if known, or the local law enforcement agency not later than 24 hours after receiving consent.

(b) A law enforcement agency that receives notice from a health care facility or other entity under Subsection (a) shall take possession of the evidence not later than the 14th day after the date the law enforcement agency receives notice.

(c) If a law enforcement agency that takes possession of evidence under Subsection (b) determines that the agency does not have jurisdiction over the investigation of the alleged sexual assault or other sex offense, the law enforcement agency shall notify the law enforcement agency with jurisdiction over the investigation not later than 14 days after making that determination.

(d) A law enforcement agency that receives notice under Subsection (c) shall take possession of the evidence not later than the 14th day after the date the law enforcement agency receives notice.

(e) A health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense that has not obtained signed, written consent as provided by Section 420.0735 shall provide the survivor with information relating to:

(1) the facility's or entity's evidence storage policy for evidence of a sexual assault or other sex offense, including a statement of the period for which the evidence will be stored before the evidence is destroyed; and
(2) the ways in which the survivor can release the evidence to a law enforcement agency.

(f) A health care facility or other entity that performs a medical examination must store evidence of a sexual assault or other sex

offense that is not released to a law enforcement agency until at least the first anniversary of the date the evidence was collected.

(g) The failure of a health care facility or other entity or a law enforcement agency to comply with the requirements of this section does not constitute grounds in a criminal proceeding for:

(1) a defendant to challenge the validity of a DNA match obtained by comparison under Section 420.043; or

(2) a court to exclude DNA evidence.

(h) A person accused or convicted of committing a sexual assault or other sex offense against the survivor does not have standing to object to the failure of a health care facility or other entity or a law enforcement agency to comply with the requirements of this section. Failure of a facility, entity, or agency to comply with the requirements of this section does not constitute grounds for setting aside the conviction of a person convicted of committing a sexual assault or other sex offense against the survivor.

SECTION 1. Section 420.042(c), Government Code, is amended to read as follows:

(c) A [If sufficient personnel and resources are available, a] public accredited crime laboratory [as soon as practicable] shall complete its analysis of sexual assault evidence submitted to the laboratory under this chapter or other law, as soon as practicable but not later than the 60th day after the date on which the evidence was received by the laboratory.

SECTION 2. Section 420.042, Government Code, is amended by amending Subsections (a), (c), and (e) and adding Subsections (f) and (g) to read as follows:

(a) A law enforcement agency that receives sexual assault evidence or evidence of another sex offense collected under this chapter or other law shall assign a unique number to the evidence and shall submit that evidence to a public accredited crime laboratory for analysis not later than the 14th [30th] day after the date on which that evidence was received. Evidence submitted to a public accredited crime laboratory under this subsection must include the unique number assigned to the evidence by the agency.

(c) If sufficient personnel and resources are available, a public accredited crime laboratory, as soon as practicable but not later than the 60th day after the date on which the laboratory received the evidence, shall complete its analysis of [sexual assault] evidence submitted under this chapter or other law.

(e) The failure of a law enforcement agency

to take possession of sexual assault evidence or evidence of another sex offense within the period required by Section 420.034 or to submit that ~~sexual assault~~ evidence within the period required by this section does not affect the authority of:

(1) the agency to take possession of the evidence;

(2) the agency to submit the evidence to an accredited crime laboratory for analysis; ~~or~~

(3) ~~(2)~~ an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons; or

(4) the department to compare the DNA profile obtained from the biological evidence with DNA profiles in a database under Section 420.043.

(f) The failure of a law enforcement agency or public accredited crime laboratory to comply with the requirements of this section does not constitute grounds in a criminal proceeding for:

(1) the defendant to challenge the validity of a DNA match obtained by comparison under Section 420.043; or

(2) a court to exclude DNA evidence.

(g) A person accused or convicted of committing a sexual assault or other sex offense against the survivor does not have standing to object to the failure of a law enforcement agency or public accredited crime laboratory to comply with the requirements of this section. Failure of an agency or laboratory to comply with the requirements of this section does not constitute grounds for setting aside the conviction of a person convicted of committing a sexual assault or other sex offense against the survivor.

No equivalent provision.

SECTION 3. Section 420.043, Government Code, is amended to read as follows:

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

(1) state databases, including the DNA database maintained under Subchapter G,

Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and
(2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

SECTION 2.

The change in law made by this Act applies only to sexual assault evidence received by a public accredited crime laboratory on or after the effective date of this Act. Sexual assault evidence received by a public accredited crime laboratory before the effective date of this Act is governed by the law in effect on the date the evidence was received, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2017.

SECTION 4. (a) Except as provided by Subsections (b) and (c) of this section, the changes in law made by this Act apply only to sexual assault evidence and evidence of other sex offenses collected on or after the effective date of this Act. Evidence collected before the effective date of this Act is governed by the law in effect on the date the evidence was collected, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Section 420.042(a), Government Code, applies only to sexual assault evidence and evidence of other sex offenses received by a law enforcement agency not earlier than 14 days before the effective date of this Act. Evidence received by a law enforcement agency earlier than 14 days before the effective date of this Act is governed by the law in effect on the date the evidence was received, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act by adding Section 420.034(c), Government Code, applies only to sexual assault evidence and evidence of other sex offenses received by a public accredited crime laboratory on or after the effective date of this Act. Evidence received by a public accredited crime laboratory before the effective date of this Act is governed by the law in effect on the date the evidence was received, and the former law is continued in effect for that purpose.

SECTION 5. Same as introduced version.