

By: Neave, Howard, Minjarez, Button, Lang,
et al.

H.B. No. 8

Substitute the following for H.B. No. 8:

By: Burns

C.S.H.B. No. 8

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the criminal statute of limitations for certain sexual
3 offenses and the collection, analysis, and preservation of evidence
4 of sexual assault and other sex offenses.

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

6 SECTION 1. This Act shall be known as the Lavinia Masters
7 Act.

8 SECTION 2. Article 12.01, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 12.01. FELONIES. Except as provided in Article 12.03,
11 felony indictments may be presented within these limits, and not
12 afterward:

13 (1) no limitation:

14 (A) murder and manslaughter;

15 (B) sexual assault under Section 22.011(a)(2),
16 Penal Code, or aggravated sexual assault under Section
17 22.021(a)(1)(B), Penal Code;

18 (C) sexual assault, if:

19 (i) during the investigation of the offense
20 biological matter is collected and the matter:

21 (a) has not yet been subjected to
22 forensic DNA testing; or

23 (b) has been subjected to forensic DNA
24 testing and the testing results show that the matter does not match

1 the victim or any other person whose identity is readily
2 ascertained; or

3 (ii) probable cause exists to believe that
4 the defendant has committed the same or a similar sexual offense
5 against five or more victims;

6 (D) continuous sexual abuse of young child or
7 children under Section 21.02, Penal Code;

8 (E) indecency with a child under Section 21.11,
9 Penal Code;

10 (F) an offense involving leaving the scene of an
11 accident under Section 550.021, Transportation Code, if the
12 accident resulted in the death of a person;

13 (G) trafficking of persons under Section
14 20A.02(a)(7) or (8), Penal Code;

15 (H) continuous trafficking of persons under
16 Section 20A.03, Penal Code; or

17 (I) compelling prostitution under Section
18 43.05(a)(2), Penal Code;

19 (2) ten years from the date of the commission of the
20 offense:

21 (A) theft of any estate, real, personal or mixed,
22 by an executor, administrator, guardian or trustee, with intent to
23 defraud any creditor, heir, legatee, ward, distributee,
24 beneficiary or settlor of a trust interested in such estate;

25 (B) theft by a public servant of government
26 property over which he exercises control in his official capacity;

27 (C) forgery or the uttering, using or passing of

1 forged instruments;

2 (D) injury to an elderly or disabled individual
3 punishable as a felony of the first degree under Section 22.04,
4 Penal Code;

5 (E) sexual assault, except as provided by
6 Subdivision (1);

7 (F) arson;

8 (G) trafficking of persons under Section
9 20A.02(a)(1), (2), (3), or (4), Penal Code; or

10 (H) compelling prostitution under Section
11 43.05(a)(1), Penal Code;

12 (3) seven years from the date of the commission of the
13 offense:

14 (A) misapplication of fiduciary property or
15 property of a financial institution;

16 (B) securing execution of document by deception;

17 (C) a felony violation under Chapter 162, Tax
18 Code;

19 (D) false statement to obtain property or credit
20 under Section 32.32, Penal Code;

21 (E) money laundering;

22 (F) credit card or debit card abuse under Section
23 32.31, Penal Code;

24 (G) fraudulent use or possession of identifying
25 information under Section 32.51, Penal Code;

26 (H) exploitation of a child, elderly individual,
27 or disabled individual under Section 32.53, Penal Code;

1 (I) Medicaid fraud under Section 35A.02, Penal
2 Code; or

3 (J) bigamy under Section 25.01, Penal Code,
4 except as provided by Subdivision (6);

5 (4) five years from the date of the commission of the
6 offense:

7 (A) theft or robbery;

8 (B) except as provided by Subdivision (5),
9 kidnapping or burglary;

10 (C) injury to an elderly or disabled individual
11 that is not punishable as a felony of the first degree under Section
12 22.04, Penal Code;

13 (D) abandoning or endangering a child; or

14 (E) insurance fraud;

15 (5) if the investigation of the offense shows that the
16 victim is younger than 17 years of age at the time the offense is
17 committed, 20 years from the 18th birthday of the victim of one of
18 the following offenses:

19 (A) sexual performance by a child under Section
20 43.25, Penal Code;

21 (B) aggravated kidnapping under Section
22 20.04(a)(4), Penal Code, if the defendant committed the offense
23 with the intent to violate or abuse the victim sexually; or

24 (C) burglary under Section 30.02, Penal Code, if
25 the offense is punishable under Subsection (d) of that section and
26 the defendant committed the offense with the intent to commit an
27 offense described by Subdivision (1)(B) or (D) of this article or

1 Paragraph (B) of this subdivision;

2 (6) ten years from the 18th birthday of the victim of
3 the offense:

4 (A) trafficking of persons under Section
5 20A.02(a)(5) or (6), Penal Code;

6 (B) injury to a child under Section 22.04, Penal
7 Code; or

8 (C) bigamy under Section 25.01, Penal Code, if
9 the investigation of the offense shows that the person, other than
10 the legal spouse of the defendant, whom the defendant marries or
11 purports to marry or with whom the defendant lives under the
12 appearance of being married is younger than 18 years of age at the
13 time the offense is committed; or

14 (7) three years from the date of the commission of the
15 offense: all other felonies.

16 SECTION 3. Article 38.43, Code of Criminal Procedure, is
17 amended by amending Subsection (c) and adding Subsection (c-1) to
18 read as follows:

19 (c) An entity or individual described by Subsection (b)
20 shall ensure that biological evidence, other than the contents of a
21 sexual assault examination kit subject to Subsection (c-1),
22 collected pursuant to an investigation or prosecution of a felony
23 offense or conduct constituting a felony offense is retained and
24 preserved:

25 (1) for not less than 40 years, or until any ~~the~~
26 applicable statute of limitations has expired, if there is an
27 unapprehended actor associated with the offense; or

1 (2) in a case in which a defendant has been convicted,
2 placed on deferred adjudication community supervision, or
3 adjudicated as having engaged in delinquent conduct and there are
4 no additional unapprehended actors associated with the offense:

5 (A) until the inmate is executed, dies, or is
6 released on parole, if the defendant is convicted of a capital
7 felony;

8 (B) until the defendant dies, completes the
9 defendant's sentence, or is released on parole or mandatory
10 supervision, if the defendant is sentenced to a term of confinement
11 or imprisonment in the Texas Department of Criminal Justice;

12 (C) until the defendant completes the
13 defendant's term of community supervision, including deferred
14 adjudication community supervision, if the defendant is placed on
15 community supervision;

16 (D) until the defendant dies, completes the
17 defendant's sentence, or is released on parole, mandatory
18 supervision, or juvenile probation, if the defendant is committed
19 to the Texas Juvenile Justice Department; or

20 (E) until the defendant completes the
21 defendant's term of juvenile probation, including a term of
22 community supervision upon transfer of supervision to a criminal
23 court, if the defendant is placed on juvenile probation.

24 (c-1) An entity or individual described by Subsection (b)
25 shall ensure that the contents of a sexual assault examination kit
26 collected pursuant to an investigation or prosecution of a felony
27 offense or conduct constituting a felony offense is retained and

1 preserved for not less than 40 years, or until any applicable
2 statute of limitations has expired, whichever period is longer.
3 This subsection applies regardless of whether a person has been
4 apprehended for or charged with committing the offense.

5 SECTION 4. Article 56.065, Code of Criminal Procedure, is
6 amended by amending Subsection (g) and adding Subsections (g-1),
7 (g-2), and (g-3) to read as follows:

8 (g) The department, consistent with Chapter 420, Government
9 Code, shall develop procedures for:

10 (1) the transfer [and preservation] of evidence
11 collected under this article to a crime laboratory or other
12 suitable location designated by the public safety director of the
13 department;

14 (2) the preservation of the evidence by the receiving
15 entity; and

16 (3) the notification of the victim of the offense
17 before a planned destruction of evidence under this article.

18 (g-1) Subject to Subsection (g-2), an [The receiving]
19 entity receiving evidence described by Subsection (g) shall
20 preserve the evidence until the earlier of:

21 (1) the fifth [second] anniversary of the date on
22 which [the] evidence was collected; or

23 (2) the date on which written consent to release the
24 evidence is obtained as provided by Section 420.0735, Government
25 Code.

26 (g-2) An entity receiving evidence described by Subsection
27 (g) may destroy the evidence on the expiration of the entity's duty

1 to preserve the evidence under Subsection (g-1)(1) only if:

2 (1) the entity notifies the victim of the offense, in a
3 trauma-informed manner, of the decision to destroy the evidence;
4 and

5 (2) a written objection is not received by the entity
6 from the victim before the 91st day after the date on which the
7 entity notifies the victim of the planned destruction of the
8 evidence.

9 (g-3) The entity shall document the entity's attempt to
10 notify the victim under Subsection (g-2).

11 SECTION 5. Section 420.003, Government Code, is amended by
12 amending Subdivisions (1-a), (1-d), and (8) and adding Subdivision
13 (3) to read as follows:

14 (1-a) "Active criminal case" means a case:

15 (A) in which:

16 (i) a sexual assault or other sex offense
17 has been reported to a law enforcement agency; and

18 (ii) physical evidence of the offense
19 [~~assault~~] has been submitted to the agency or an accredited crime
20 laboratory under this chapter for analysis; and

21 (B) for which:

22 (i) the statute of limitations has not run
23 with respect to the prosecution of the offense [~~sexual assault~~]; or

24 (ii) a DNA profile was obtained that is
25 eligible under Section 420.043 for comparison with DNA profiles in
26 the state database or CODIS DNA database.

27 (1-d) "Law enforcement agency" means a state or local

1 law enforcement agency in this state with jurisdiction over the
2 investigation of a sexual assault or other sex offense.

3 (3) "Sex offense" means an offense under Chapter 21,
4 Penal Code, for which biological evidence is collected in an
5 evidence collection kit.

6 (8) "Survivor" means an individual who is a victim of a
7 sexual assault or other sex offense, regardless of whether a report
8 or conviction is made in the incident.

9 SECTION 6. Section 420.033, Government Code, is amended to
10 read as follows:

11 Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement,
12 department, and laboratory personnel who handle [~~sexual assault~~]
13 evidence of a sexual assault or other sex offense under this chapter
14 or other law shall maintain the chain of custody of the evidence
15 from the time the evidence is collected until the time the evidence
16 is destroyed.

17 SECTION 7. Subchapter B, Chapter 420, Government Code, is
18 amended by adding Section 420.035 to read as follows:

19 Sec. 420.035. EVIDENCE RELEASE. (a) If a health care
20 facility or other entity that performs a medical examination to
21 collect evidence of a sexual assault or other sex offense receives
22 signed, written consent to release the evidence as provided by
23 Section 420.0735, the facility or entity shall promptly notify any
24 law enforcement agency investigating the alleged offense.

25 (b) Except as provided by Subsection (c), a law enforcement
26 agency that receives notice from a health care facility or other
27 entity under Subsection (a) shall take possession of the evidence

1 not later than the seventh day after the date the law enforcement
2 agency receives notice.

3 (c) A law enforcement agency that receives notice from a
4 health care facility or other entity that is located more than 100
5 miles from the law enforcement agency shall take possession of the
6 evidence not later than the 14th day after the date the law
7 enforcement agency receives notice.

8 (d) A health care facility or other entity that performs a
9 medical examination to collect evidence of a sexual assault or
10 other sex offense that has not obtained signed, written consent to
11 release the evidence as provided by Section 420.0735 shall, before
12 the survivor is released from the facility, provide a written
13 notice to the survivor with the following information:

14 (1) the department's policy regarding storage of
15 evidence of a sexual assault or other sex offense that is collected
16 under Article 56.065, Code of Criminal Procedure, including:

17 (A) a statement that the evidence will be stored
18 until the fifth anniversary of the date on which the evidence was
19 collected before the evidence becomes eligible for destruction; and

20 (B) the department's policy for notifying the
21 survivor before a planned destruction of the evidence;

22 (2) a statement that the survivor may request the
23 release of the evidence to a law enforcement agency and report a
24 sexual assault or other sex offense to the agency at any time;

25 (3) the name, phone number, and e-mail address of the
26 law enforcement agency with jurisdiction over the offense; and

27 (4) the name and phone number of a local rape crisis

1 center.

2 (e) Failure to comply with evidence collection procedures
3 or requirements under this section does not affect the
4 admissibility of the evidence in a trial of the offense.

5 SECTION 8. Subchapter B-1, Chapter 420, Government Code, is
6 amended to read as follows:

7 SUBCHAPTER B-1. ANALYSIS OF [~~SEXUAL ASSAULT~~] EVIDENCE OF SEXUAL
8 ASSAULT OR OTHER SEX OFFENSE

9 Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter
10 applies only to physical evidence of a sexual assault or other sex
11 offense that is collected with respect to an active criminal case.

12 Sec. 420.042. ANALYSIS OF [~~SEXUAL ASSAULT~~] EVIDENCE. (a) A
13 law enforcement agency that receives [~~sexual assault~~] evidence of a
14 sexual assault or other sex offense that is collected under this
15 chapter or other law shall submit that evidence to a public
16 accredited crime laboratory for analysis not later than the 30th
17 day after the date on which that evidence was received.

18 (b) A person who submits [~~sexual assault~~] evidence of a
19 sexual assault or other sex offense to a public accredited crime
20 laboratory under this chapter or other law shall provide the
21 following signed, written certification with each submission:
22 "This evidence is being submitted by (name of person making
23 submission) in connection with a criminal investigation."

24 (c) If sufficient personnel and resources are available, a
25 public accredited crime laboratory, as soon as practicable but not
26 later than the 90th day after the date on which the laboratory
27 received the evidence, shall complete its analysis of any [~~sexual~~

1 ~~assault~~] evidence of a sexual assault or other sex offense that is
2 submitted under this chapter or other law.

3 (d) To ensure the expeditious completion of analyses, the
4 department and other applicable public accredited crime
5 laboratories may contract with private accredited crime
6 laboratories as appropriate to perform those analyses, subject to
7 the necessary quality assurance reviews by the public accredited
8 crime laboratories.

9 (e) The failure of a law enforcement agency to take
10 possession of evidence of a sexual assault or other sex offense
11 within the period required by Section 420.035 or to submit that
12 ~~[sexual assault]~~ evidence within the period required by this
13 section does not affect the authority of:

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

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

17 (3) [~~(2)~~] an accredited crime laboratory to analyze
18 the evidence or provide the results of that analysis to appropriate
19 persons; or

20 (4) the department or a public accredited crime
21 laboratory authorized under Section 420.043(b) to compare the DNA
22 profile obtained from the biological evidence with DNA profiles in
23 the databases described by Section 420.043(a).

24 (f) Failure to comply with the requirements under this
25 section does not affect the admissibility of the evidence in a trial
26 of the offense.

27 Sec. 420.043. DATABASE COMPARISON REQUIRED. (a) Not later

1 than the 30th day after the date [~~On the request of any appropriate~~
2 ~~person and after~~] an evidence collection kit containing biological
3 evidence has been analyzed by an accredited crime laboratory and
4 any necessary quality assurance reviews have been performed, except
5 as provided by Subsection (b), the department shall compare the DNA
6 profile obtained from the biological evidence with DNA profiles
7 maintained in:

8 (1) state databases, including the DNA database
9 maintained under Subchapter G, Chapter 411, if the amount and
10 quality of the analyzed sample meet the requirements of the state
11 database comparison policies; and

12 (2) the CODIS DNA database established by the Federal
13 Bureau of Investigation, if the amount and quality of the analyzed
14 sample meet the requirements of the bureau's CODIS comparison
15 policies.

16 (b) If the evidence kit containing biological evidence is
17 analyzed by a public accredited crime laboratory, the laboratory,
18 instead of the department, may perform the comparison of DNA
19 profiles required under Subsection (a) provided that:

20 (1) the laboratory performs the comparison not later
21 than the 30th day after the date the analysis is complete and any
22 necessary quality assurance reviews have been performed;

23 (2) the law enforcement agency that submitted the
24 evidence collection kit containing biological evidence gives
25 permission; and

26 (3) the laboratory meets applicable federal and state
27 requirements to access the databases described by Subsection (a).

1 (c) The department may use appropriated funds to employ
2 personnel and purchase equipment and technology necessary to comply
3 with the requirements of this section.

4 Sec. 420.044. GRANT FUNDS. The department shall apply for
5 any available federal grant funds applicable to the analysis of
6 evidence collection kits containing biological evidence, including
7 grant money available under the National Institute of Justice's DNA
8 Capacity Enhancement and Backlog Reduction Program.

9 Sec. 420.045. REPORT OF UNANALYZED EVIDENCE OF SEXUAL
10 ASSAULT OR OTHER SEX OFFENSE. Each law enforcement agency and
11 public accredited crime laboratory shall submit a quarterly report
12 to the department identifying the number of evidence collection
13 kits that the law enforcement agency has not yet submitted for
14 laboratory analysis or for which the crime laboratory has not yet
15 completed an analysis, as applicable.

16 Sec. 420.046. NONCOMPLIANCE. Failure to comply with the
17 requirements of this subchapter may be used to determine
18 eligibility for receiving grant funds from the department, the
19 office of the governor, or another state agency.

20 Sec. 420.047. AUDIT OF UNANALYZED EVIDENCE OF SEXUAL
21 ASSAULT OR OTHER SEX OFFENSE. (a) A law enforcement agency in
22 possession of an evidence collection kit that has not been
23 submitted for laboratory analysis shall:

24 (1) not later than December 15, 2019, submit to the
25 department a list of the agency's active criminal cases for which an
26 evidence collection kit collected on or before September 1, 2019,
27 has not yet been submitted for laboratory analysis;

1 (2) not later than January 15, 2020, and subject to the
2 availability of laboratory storage space, submit to the department
3 or a public accredited crime laboratory, as appropriate, all
4 evidence collection kits pertaining to those active criminal cases
5 that have not yet been submitted for laboratory analysis; and

6 (3) if the law enforcement agency submits an evidence
7 collection kit under Subdivision (2) to a laboratory other than a
8 department laboratory, notify the department of:

9 (A) the laboratory to which the evidence
10 collection kit was sent; and

11 (B) any analysis completed by the laboratory to
12 which the evidence collection kit was sent and the date on which the
13 analysis was completed.

14 (b) Not later than September 1, 2020, the department shall
15 submit to the governor and the appropriate standing committees of
16 the senate and the house of representatives a report containing:

17 (1) a projected timeline for the completion of
18 laboratory analyses, in accordance with this chapter, of all
19 unanalyzed evidence collection kits submitted under Subsection
20 (a)(2);

21 (2) a request for any necessary funding to accomplish
22 the analyses under Subdivision (1), including a request for a grant
23 of money under Article 102.056(e), Code of Criminal Procedure, if
24 money is available under that subsection;

25 (3) as appropriate, application materials for
26 requests made as required by Subdivision (2); and

27 (4) if the department determines that outsourcing

1 certain evidence collection kits is necessary for timely analyses
2 of the kits:

3 (A) a proposal for determining which evidence
4 collection kits should be outsourced; and

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

7 (c) Not later than September 1, 2022, and to the extent that
8 funding is available, the department shall, as provided by Sections
9 420.042 and 420.043, analyze or contract for the analysis of, and
10 complete the required database comparison, or ensure that a public
11 accredited laboratory completed the comparison, regarding all
12 evidence collection kits submitted to the department under
13 Subsection (a)(2).

14 (d) Notwithstanding Subsection (c), the department is not
15 required to use under this section in a state fiscal year any amount
16 of money from the state highway fund that exceeds the amount the
17 department has historically used in a state fiscal year to fund
18 laboratory analyses of evidence collection kits under this chapter.

19 (e) To supplement funding of laboratory analyses under this
20 section, the department may solicit and receive grants, gifts, or
21 donations of money from the federal government or private sources
22 as described by this chapter.

23 (f) This section expires September 1, 2023.

24 SECTION 9. The change in law made by this Act to Article
25 12.01, Code of Criminal Procedure, does not apply to an offense if
26 the prosecution of that offense becomes barred by limitation before
27 the effective date of this Act. The prosecution of that offense

1 remains barred as if this Act had not taken effect.

2 SECTION 10. The change in law made by this Act to Article
3 38.43, Code of Criminal Procedure, applies only to biological
4 evidence destroyed on or after the effective date of this Act.
5 Biological evidence destroyed before the effective date of this Act
6 is governed by the law that was in effect immediately before the
7 effective date of this Act, and the former law is continued in
8 effect for that purpose.

9 SECTION 11. (a) Except as provided by this section, the
10 changes in law made by this Act to Article 56.065, Code of Criminal
11 Procedure, and Chapter 420, Government Code, apply only to sexual
12 assault evidence and evidence of other sex offenses collected on or
13 after the effective date of this Act. Evidence collected before the
14 effective date of this Act is governed by the law in effect on the
15 date the evidence was collected, and the former law is continued in
16 effect for that purpose.

17 (b) The change in law made by this Act to Section
18 420.042(c), Government Code, applies only to sexual assault
19 evidence and evidence of other sex offenses received by a public
20 accredited crime laboratory on or after January 1, 2021. Evidence
21 received by a public accredited crime laboratory before January 1,
22 2021, is governed by the law in effect immediately before the
23 effective date of this Act, and the former law is continued in
24 effect for that purpose.

25 (c) Notwithstanding Section 420.046, Government Code, as
26 added by this Act, a law enforcement agency's or public accredited
27 crime laboratory's failure to comply with the requirements of

1 Subchapter B-1, Chapter 420, Government Code, as amended by this
2 Act, before January 15, 2020, does not affect the agency's or
3 laboratory's eligibility for grants if the agency or laboratory is
4 in compliance with Subchapter B-1, Chapter 420, Government Code, as
5 amended by this Act, beginning on that date.

6 (d) Section 420.047, Government Code, as added by this Act,
7 applies to an evidence collection kit in possession of a law
8 enforcement agency on September 1, 2019.

9 SECTION 12. This Act takes effect September 1, 2019.