

By: Neave

H.B. No. 8

A BILL TO BE ENTITLED

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

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

6 SECTION 1. Article 12.01, Code of Criminal Procedure, is
7 amended to read as follows:

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

11 (1) no limitation:

12 (A) murder and manslaughter;

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

16 (C) sexual assault, if:

17 (i) during the investigation of the offense
18 biological matter is collected and the matter:

19 (a) has not yet been subjected to
20 forensic DNA testing; or

21 (b) has been subjected to forensic DNA
22 testing and the testing results show that the matter does not match
23 the victim or any other person whose identity is readily
24 ascertained; or

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

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

6 (E) indecency with a child under Section 21.11,
7 Penal Code;

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

11 (G) trafficking of persons under Section
12 20A.02(a)(7) or (8), Penal Code;

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

15 (I) compelling prostitution under Section
16 43.05(a)(2), Penal Code;

17 (2) ten years from the date of the commission of the
18 offense:

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

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

25 (C) forgery or the uttering, using or passing of
26 forged instruments;

27 (D) injury to an elderly or disabled individual

1 punishable as a felony of the first degree under Section 22.04,
2 Penal Code;

3 (E) sexual assault, except as provided by
4 Subdivision (1);

5 (F) arson;

6 (G) trafficking of persons under Section
7 20A.02(a)(1), (2), (3), or (4), Penal Code; or

8 (H) compelling prostitution under Section
9 43.05(a)(1), Penal Code;

10 (3) seven years from the date of the commission of the
11 offense:

12 (A) misapplication of fiduciary property or
13 property of a financial institution;

14 (B) securing execution of document by deception;

15 (C) a felony violation under Chapter 162, Tax
16 Code;

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

19 (E) money laundering;

20 (F) credit card or debit card abuse under Section
21 32.31, Penal Code;

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

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

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

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

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

5 (A) theft or robbery;

6 (B) except as provided by Subdivision (5),
7 kidnapping or burglary;

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

11 (D) abandoning or endangering a child; or

12 (E) insurance fraud;

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

17 (A) sexual performance by a child under Section
18 43.25, Penal Code;

19 (B) aggravated kidnapping under Section
20 20.04(a)(4), Penal Code, if the defendant committed the offense
21 with the intent to violate or abuse the victim sexually; or

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

27 (6) ten years from the 18th birthday of the victim of

1 the offense:

2 (A) trafficking of persons under Section
3 20A.02(a)(5) or (6), Penal Code;

4 (B) injury to a child under Section 22.04, Penal
5 Code; or

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

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

14 SECTION 2. Article 38.43, Code of Criminal Procedure, is
15 amended by amending Subsection (c) and adding Subsection (c-1) to
16 read as follows:

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

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

26 (2) in a case in which a defendant has been convicted,
27 placed on deferred adjudication community supervision, or

1 adjudicated as having engaged in delinquent conduct and there are
2 no additional unapprehended actors associated with the offense:

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

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

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

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

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

22 (c-1) An entity or individual described by Subsection (b)
23 shall ensure that the contents of a sexual assault examination kit
24 collected pursuant to an investigation or prosecution of a felony
25 offense or conduct constituting a felony offense is retained and
26 preserved for not less than 50 years, or until any applicable
27 statute of limitations has expired, whichever period is longer.

1 This subsection applies regardless of whether a person has been
2 apprehended for or charged with committing the offense.

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

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

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

12 (2) the preservation of the evidence by the receiving
13 entity.

14 (g-1) An [The receiving] entity receiving evidence
15 described by Subsection (g) shall preserve the evidence until the
16 earlier of:

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

19 (2) the date on which written consent to release the
20 evidence is obtained as provided by Section 420.0735, Government
21 Code.

22 SECTION 4. Sections 420.003(1-a), (1-d), (7), and (8),
23 Government Code, are amended to read as follows:

24 (1-a) "Active criminal case" means a case:

25 (A) in which:

26 (i) a sexual assault or other sex offense

27 has been reported to a law enforcement agency; and

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

4 (B) for which:

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

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

10 (1-d) "Law enforcement agency" means a state or local
11 law enforcement agency in this state with jurisdiction over the
12 investigation of a sexual assault or other sex offense.

13 (7) "Sexual assault program" means any local public or
14 private nonprofit corporation, independent of a law enforcement
15 agency or prosecutor's office, that is operated as an independent
16 program or as part of a municipal, county, or state agency and that
17 provides the minimum services to adult survivors of stranger and
18 non-stranger sex offenses [~~sexual assault~~].

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

22 SECTION 5. Section 420.033, Government Code, is amended to
23 read as follows:

24 Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement,
25 department, and laboratory personnel who handle [~~sexual assault~~]
26 evidence of a sexual assault or other sex offense under this chapter
27 or other law shall maintain the chain of custody of the evidence

1 from the time the evidence is collected until the time the evidence
2 is destroyed.

3 SECTION 6. Subchapter B, Chapter 420, Government Code, is
4 amended by adding Section 420.035 to read as follows:

5 Sec. 420.035. EVIDENCE RELEASE. (a) If a health care
6 facility or other entity that performs a medical examination to
7 collect evidence of a sexual assault or other sex offense receives
8 signed, written consent to release the evidence as provided by
9 Section 420.0735, the facility or entity shall promptly notify the
10 law enforcement agency investigating the alleged offense.

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

15 (c) Failure to comply with evidence collection procedures
16 or requirements under this section does not affect the
17 admissibility of the evidence in a trial of the offense.

18 SECTION 7. Subchapter B-1, Chapter 420, Government Code, is
19 amended to read as follows:

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

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

25 Sec. 420.042. ANALYSIS OF [~~SEXUAL ASSAULT~~] EVIDENCE. (a) A
26 law enforcement agency that receives [~~sexual assault~~] evidence of a
27 sexual assault or other sex offense that is collected under this

1 chapter or other law shall submit that evidence to a public
2 accredited crime laboratory for analysis not later than the 30th
3 day after the date on which that evidence was received.

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

10 (c) If sufficient personnel and resources are available, a
11 public accredited crime laboratory, as soon as practicable but not
12 later than the 90th day after the date on which the laboratory
13 received the evidence, shall complete its analysis of any [~~sexual~~
14 ~~assault~~] evidence of a sexual assault or other sex offense that is
15 submitted under this chapter or other law.

16 (d) To ensure the expeditious completion of analyses, the
17 department and other applicable public accredited crime
18 laboratories may contract with private accredited crime
19 laboratories as appropriate to perform those analyses, subject to
20 the necessary quality assurance reviews by the public accredited
21 crime laboratories.

22 (e) The failure of a law enforcement agency to take
23 possession of evidence of a sexual assault or other sex offense
24 within the period required by Section 420.035 or to submit that
25 [~~sexual assault~~] evidence within the period required by this
26 section does not affect the authority of:

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

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

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

6 (4) the department or a public accredited crime
7 laboratory authorized under Section 420.043(b) to compare the DNA
8 profile obtained from the biological evidence with DNA profiles in
9 the databases described by Section 420.043(a).

10 (f) Failure to comply with the requirements under this
11 section does not affect the admissibility of the evidence in a trial
12 of the offense.

13 Sec. 420.043. DATABASE COMPARISON REQUIRED. (a) Not later
14 than the 30th day after the date ~~[On the request of any appropriate~~
15 ~~person and after]~~ an evidence collection kit containing biological
16 evidence has been analyzed by an accredited crime laboratory and
17 any necessary quality assurance reviews have been performed, except
18 as provided by Subsection (b), the department shall compare the DNA
19 profile obtained from the biological evidence with DNA profiles
20 maintained in:

21 (1) state databases, including the DNA database
22 maintained under Subchapter G, Chapter 411, if the amount and
23 quality of the analyzed sample meet the requirements of the state
24 database comparison policies; and

25 (2) the CODIS DNA database established by the Federal
26 Bureau of Investigation, if the amount and quality of the analyzed
27 sample meet the requirements of the bureau's CODIS comparison

1 policies.

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

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

9 (2) the law enforcement agency that submitted the
10 evidence collection kit containing biological evidence gives
11 permission; and

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

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

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

22 Sec. 420.045. AUDIT OF UNANALYZED EVIDENCE OF SEXUAL
23 ASSAULT OR OTHER SEX OFFENSE. (a) A law enforcement agency in
24 possession of evidence of a sexual assault or other sex offense that
25 has not been submitted for laboratory analysis shall:

26 (1) not later than October 15, 2019, submit to the
27 department a list of the agency's active criminal cases for which

1 evidence of a sexual assault or other sex offense has not yet been
2 submitted for laboratory analysis;

3 (2) not later than April 1, 2020, and subject to the
4 availability of laboratory storage space, submit, as appropriate,
5 to the department or a public accredited crime laboratory all
6 evidence of a sexual assault or other sex offense pertaining to
7 those active criminal cases that has not yet been submitted for
8 laboratory analysis; and

9 (3) if the law enforcement agency submits evidence
10 under Subdivision (2) to a laboratory other than a department
11 laboratory, notify the department of:

12 (A) the laboratory to which the evidence was
13 sent; and

14 (B) any analysis completed by the laboratory to
15 which the evidence was sent and the date on which the analysis was
16 completed.

17 (b) Not later than February 15, 2021, the department shall
18 submit to the governor and the appropriate standing committees of
19 the senate and the house of representatives a report containing:

20 (1) a projected timeline for the completion of
21 laboratory analyses, in accordance with this chapter, of all
22 unanalyzed evidence of a sexual assault or other sex offense
23 submitted under Subsection (a)(2);

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

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

3 (4) if the department determines that outsourcing of a
4 portion of the submitted evidence is necessary for timely analyses
5 of the evidence:

6 (A) a proposal for determining which evidence
7 should be outsourced; and

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

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

17 (d) Notwithstanding Subsection (c), the department is not
18 required to use under this section in a state fiscal year any amount
19 of money from the state highway fund that exceeds the amount the
20 department has historically used in a state fiscal year to fund
21 laboratory analyses of evidence of a sexual assault or other sex
22 offense under this chapter.

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

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

1 SECTION 8. The change in law made by this Act to Article
2 [12.01](#), Code of Criminal Procedure, does not apply to an offense if
3 the prosecution of that offense becomes barred by limitation before
4 the effective date of this Act. The prosecution of that offense
5 remains barred as if this Act had not taken effect.

6 SECTION 9. The change in law made by this Act to Article
7 [38.43](#), Code of Criminal Procedure, applies only to biological
8 evidence destroyed on or after the effective date of this Act.
9 Biological evidence destroyed before the effective date of this Act
10 is governed by the law that was in effect immediately before the
11 effective date of this Act, and the former law is continued in
12 effect for that purpose.

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

21 (b) The change in law made by this Act to Section
22 [420.042\(c\)](#), Government Code, applies only to sexual assault
23 evidence and evidence of other sex offenses received by a public
24 accredited crime laboratory on or after the effective date of this
25 Act. Evidence received by a public accredited crime laboratory
26 before the effective date of this Act is governed by the law in
27 effect on the date the evidence was received, and the former law is

1 continued in effect for that purpose.

2 (c) Section 420.045, Government Code, as added by this Act,
3 applies to evidence of a sexual assault or other sex offense in
4 possession of a law enforcement agency on September 1, 2019.

5 SECTION 11. This Act takes effect September 1, 2019.