

By: Minjarez

H.B. No. 152

A BILL TO BE ENTITLED

AN ACT

relating to the collection, storage, and analysis of sexual assault evidence and evidence of other sex offenses.

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

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

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

(A) in which:

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

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

(B) for which:

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

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

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

(7) "Sexual assault program" means any local public or private nonprofit corporation, independent of a law enforcement

1 agency or prosecutor's office, that is operated as an independent
2 program or as part of a municipal, county, or state agency and that
3 provides the minimum services to adult survivors of stranger and
4 non-stranger sex offenses [~~sexual assault~~].

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

8 SECTION 2. Section 420.033, Government Code, is amended to
9 read as follows:

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

16 SECTION 3. Section 420.034(c), Government Code, is amended
17 to read as follows:

18 (c) The tracking system must:

19 (1) track the location and status of each item of
20 evidence through the criminal justice process, including the
21 initial collection of the item of evidence in a forensic medical
22 examination, assignment of a unique number to the item of evidence,
23 receipt and storage of the item of evidence at a law enforcement
24 agency, receipt and analysis of the item of evidence at an
25 accredited crime laboratory, and storage and destruction of the
26 item of evidence after the item is analyzed;

27 (2) allow a facility or entity performing a forensic

1 medical examination of a survivor, law enforcement agency,
2 accredited crime laboratory, prosecutor, or other entity providing
3 a chain of custody for an item of evidence to update and track the
4 status and location of the item; and

5 (3) allow a survivor to anonymously track or receive
6 updates regarding the status and location of each item of evidence
7 collected in relation to the offense.

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

10 Sec. 420.035. EVIDENCE RELEASE AND STORAGE. (a) If a
11 health care facility or other entity that performs a medical
12 examination to collect evidence of a sexual assault or other sex
13 offense receives signed, written consent to release the evidence as
14 provided by Section 420.0735, the facility or entity shall notify
15 either the law enforcement agency investigating the alleged
16 offense, if known, or the local law enforcement agency not later
17 than 24 hours after receiving consent.

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

22 (c) If a law enforcement agency that takes possession of
23 evidence under Subsection (b) determines that the agency does not
24 have jurisdiction over the investigation of the alleged sexual
25 assault or other sex offense, the law enforcement agency shall
26 notify the law enforcement agency with jurisdiction over the
27 investigation not later than the 14th day after the date that

1 determination is made.

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

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

11 (1) the facility's or entity's policy regarding
12 storage of evidence of a sexual assault or other sex offense,
13 including a statement of the period for which the evidence will be
14 stored before the evidence is destroyed; and

15 (2) the ways in which the survivor can request the
16 release of the evidence to a law enforcement agency.

17 (f) A health care facility or other entity that performs a
18 medical examination to collect evidence as described by this
19 section must store until at least the first anniversary of the date
20 of collection any evidence that is not released to a law enforcement
21 agency.

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

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

27 (2) a court to exclude evidence based on a DNA profile.

1 submission) in connection with a criminal investigation."

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

8 (d) To ensure the expeditious completion of analyses, the
9 department and other applicable public accredited crime
10 laboratories may contract with private accredited crime
11 laboratories as appropriate to perform those analyses, subject to
12 the necessary quality assurance reviews by the public accredited
13 crime laboratories.

14 (e) The failure of a law enforcement agency to take
15 possession of evidence of a sexual assault or other sex offense
16 within the period required by Section 420.035 or to submit that
17 [~~sexual assault~~] evidence within the period required by this
18 section does not affect the authority of:

19 (1) the agency to take possession of the evidence;
20 (2) the agency to submit the evidence to an accredited
21 crime laboratory for analysis; [or]

22 (3) [~~(2)~~] an accredited crime laboratory to analyze
23 the evidence or provide the results of that analysis to appropriate
24 persons; or

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

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

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

6 (2) a court to exclude DNA evidence.

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

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

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

26 (2) the CODIS DNA database established by the Federal
27 Bureau of Investigation, if the amount and quality of the analyzed

1 sample meet the requirements of the bureau's CODIS comparison
2 policies.

3 SECTION 6. (a) Except as provided by Subsections (b) and
4 (c) of this section, the changes in law made by this Act apply only
5 to sexual assault evidence and evidence of other sex offenses
6 collected on or after the effective date of this Act. Evidence
7 collected before the effective date of this Act is governed by the
8 law in effect on the date the evidence was collected, and the former
9 law is continued in effect for that purpose.

10 (b) The change in law made by this Act to Section
11 [420.042\(a\)](#), Government Code, applies only to sexual assault
12 evidence and evidence of other sex offenses received by a law
13 enforcement agency not earlier than the 14th day before the
14 effective date of this Act. Evidence received by a law enforcement
15 agency earlier than the 14th day before the effective date of this
16 Act is governed by the law in effect on the date the evidence was
17 received, and the former law is continued in effect for that
18 purpose.

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

27 SECTION 7. This Act takes effect September 1, 2019.