S.B. No. 335

AN ACT

relating to the taking of a specimen to test for intoxication and retention and preservation of toxicological evidence of certain intoxication offenses.

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

SECTION 1.  Article 38.50, Code of Criminal Procedure, is amended by amending Subsections (c), (d), and (e) and adding Subsections (g) and (h) to read as follows:

(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 or has been dismissed without prejudice;

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

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

(d)  A person from whom toxicology evidence was collected and, if the person is a minor, the person's parent or guardian, shall be notified [~~For each offense subject to this article, the court shall determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c) and notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence~~] of the periods [~~period~~] for which [~~the~~] evidence may [~~is to~~] be retained and preserved under this article. The notice must be given by:

(1)  an entity or individual described by Subsection (b) that collects the evidence, if the entity or individual collected the evidence directly from the person or collected it from a third party; or

(2)  the court, if the records of the court show that the person was not given the notice described by Subdivision (1) and the toxicological evidence is subject to the retention period under Subsection (c)(2) or (3) [~~If an action of the prosecutor or the court changes the applicable period under Subsection (c), the court shall notify the persons described by this subsection about the change~~].

(e)  The entity or individual charged with storing toxicological evidence may destroy the evidence on expiration of the applicable retention period:

(1)  described by Subsection (c)(1); or

(2)  described by Subsection (c)(2) or (c)(3), provided that:

(A)  notice was given in accordance with this article; and

(B)  if applicable, the prosecutor's office gives written approval for the destruction under Subsection (h) [~~provided by the notice most recently issued by the court under Subsection (d)~~].

(g)  Notice given under this article must be given:

(1)  in writing, as soon as practicable, by hand delivery, e-mail, or first class mail to the person's last known e-mail or mailing address; or

(2)  if applicable, orally and in writing on requesting the specimen under Section 724.015, Transportation Code.

(h)  A prosecutor's office may require that an entity or individual charged with storing toxicological evidence seek written approval from the prosecutor's office before destroying toxicological evidence subject to the retention period under Subsection (c)(2) or (c)(3) for cases in which the prosecutor's office presented the indictment, information, or petition.

SECTION 2.  Section 724.015, Transportation Code, is amended to read as follows:

Sec. 724.015.  INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT.  (a) Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

(1)  if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;

(2)  if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;

(3)  if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;

(4)  if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;

(5)  if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

(6)  if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; [~~and~~]

(7)  the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing; and

(8)  if the person submits to the taking of a blood specimen, the specimen will be retained and preserved in accordance with Article 38.50, Code of Criminal Procedure.

(b)  If a person consents to the request of an officer to submit to the taking of a specimen, the officer shall request the person to sign a statement that:

(1)  the officer requested that the person submit to the taking of a specimen;

(2)  the person was informed of the consequences of not submitting to the taking of a specimen; and

(3)  the person voluntarily consented to the taking of a specimen.

SECTION 3.  (a) Except as provided by Subsections (b) and (c) of this section, the changes in law made by this Act to Article 38.50, Code of Criminal Procedure, apply only to evidence for which the appropriate retention and preservation period under that article expires on or after the effective date of this Act. Evidence for which the appropriate retention and preservation period expired before the effective date of this Act is governed by the law in effect on the date of expiration of that period, and the former law is continued in effect for that purpose.

(b)  If the applicable retention and preservation period under Article 38.50(c)(1), Code of Criminal Procedure, has expired with respect to toxicological evidence held in storage on the effective date of this Act, and notice regarding that evidence has not yet been given under Article 38.50(d), Code of Criminal Procedure, as that subsection existed immediately before the effective date of this Act, the entity or individual charged with storing the evidence may destroy the evidence pursuant to Article 38.50(e), Code of Criminal Procedure, as amended by this Act.

(c)  If the appropriate retention and preservation period under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as applicable, has expired with respect to evidence held in storage on the effective date of this Act, and notice regarding that evidence has not yet been given under Article 38.50(d), Code of Criminal Procedure, as that subsection existed immediately before the effective date of this Act, the court shall provide the notice required by Article 38.50(d), Code of Criminal Procedure, as amended by this Act, not later than September 1, 2022.

(d)  The change in law made by this Act to Section 724.015, Transportation Code, applies only to a request for the taking of a breath or blood specimen to test for intoxication that occurs on or after the effective date of this Act. A request for the taking of a specimen that occurs before the effective date of this Act is governed by the law in effect on the date the specimen was requested, and the former law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_President of the Senate             Speaker of the House

I hereby certify that S.B. No. 335 passed the Senate on April 19, 2021, by the following vote:  Yeas 31, Nays 0.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Secretary of the Senate

I hereby certify that S.B. No. 335 passed the House on May 25, 2021, by the following vote:  Yeas 104, Nays 39, two present not voting.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Chief Clerk of the House

Approved:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_             Date\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_           Governor