

By: Wu

H.B. No. 2852

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the taking of a specimen to test for intoxication and  
3 retention and preservation of toxicological evidence of certain  
4 intoxication offenses.

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

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

9 (c) An entity or individual described by Subsection (b)  
10 shall ensure that toxicological evidence collected pursuant to an  
11 investigation or prosecution of an offense under Chapter 49, Penal  
12 Code, is retained and preserved, as applicable:

13 (1) for the greater of two years or the period of the  
14 statute of limitations for the offense, if the indictment or  
15 information charging the defendant, or the petition in a juvenile  
16 proceeding, has not been presented or has been dismissed without  
17 prejudice;

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

24 (3) until the defendant is acquitted or the indictment

1 or information is dismissed with prejudice, or, in a juvenile  
2 proceeding, until a hearing is held and the court does not find the  
3 child engaged in delinquent conduct or conduct indicating a need  
4 for supervision.

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

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

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

25 (e) Subject to Subsection (h), if notice is given in  
26 accordance with this article, the [~~The~~] entity or individual  
27 charged with storing toxicological evidence may destroy the

1 evidence on expiration of the applicable retention period provided  
2 by Subsection (c) [~~the notice most recently issued by the court~~  
3 ~~under Subsection (d)~~].

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

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

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

10 (h) If the toxicological evidence is subject to the  
11 retention period under Subsection (c)(2) or (3), the entity or  
12 individual charged with storing toxicological evidence may not  
13 destroy the evidence without written approval of the prosecutor's  
14 office that presented the indictment, information, or petition.

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

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

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

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

1 180 days;

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

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

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

22 (6) if the officer determines that the person is a  
23 resident without a license to operate a motor vehicle in this state,  
24 the department will deny to the person the issuance of a license,  
25 whether or not the person is subsequently prosecuted as a result of  
26 the arrest, under the same conditions and for the same periods that  
27 would have applied to a revocation of the person's driver's license

1 if the person had held a driver's license issued by this state;  
2 [~~and~~]

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

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

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

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

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

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

23           SECTION 3. (a) Except as provided by Subsection (b) of this  
24 section, the changes in law made by this Act to Article 38.50, Code  
25 of Criminal Procedure, apply only to evidence for which the  
26 appropriate retention and preservation period under that article  
27 expires on or after the effective date of this Act. Evidence for

1 which the appropriate retention and preservation period expired  
2 before the effective date of this Act is governed by the law in  
3 effect on the date of expiration of that period, and the former law  
4 is continued in effect for that purpose.

5 (b) If the appropriate retention and preservation period  
6 under Article 38.50(c)(2) or (3), Code of Criminal Procedure, as  
7 applicable, has expired with respect to evidence held in storage on  
8 the effective date of this Act, and notice regarding that evidence  
9 has not yet been given under Article 38.50(d), Code of Criminal  
10 Procedure, as that subsection existed immediately before the  
11 effective date of this Act, the court shall provide the notice  
12 required by Article 38.50(d), Code of Criminal Procedure, as  
13 amended by this Act, not later than December 1, 2021.

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

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