

## **BILL ANALYSIS**

Senate Research Center  
82R23799 JSC-D

C.S.S.B. 1616  
By: West  
Criminal Justice  
4/21/2011  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

While Texas leads the nation in the number of persons found to have been wrongfully convicted, imprisoned, and later exonerated of crimes, mostly based on biological evidence, the state is largely without uniform standards or established best practices regarding the collection, retention, and storage of these materials. More than half of persons exonerated in Texas were convicted of offenses in Dallas County. This was possible because Dallas County had reliable, established policies and practices regarding the collection and storage of biological evidence.

The goal of C.S.S.B. 1616 is to establish statewide, uniform guidelines to be used in the collection, retention, and storage of evidence that could be used in a criminal investigation. Justice is best served when law enforcement and the court system have the tools and procedures at their disposal to be certain that persons found factually responsible for the commission of a crime are the ones prosecuted for the offense.

C.S.S.B. 1616 amends current law relating to the collection, storage, preservation, retrieval, and destruction of biological evidence.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 1 (Article 38.43, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 38.43, Code of Criminal Procedure, as follows:

Art. 38.43. New heading: EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (a) Defines, in this article, "biological evidence." Deletes existing text requiring the attorney representing the state, a clerk, or any other officer in possession of evidence described by Subsection (b), in a criminal case in which a defendant is convicted, to ensure the preservation of the evidence. Deletes existing text of Subsection (b) providing that this article applies to evidence that was in the possession of the state during the prosecution of the case, and at the time of conviction was known to contain biological material that if subjected to scientific testing would more likely than not establish the identity of the person committing the offense or exclude a person from the group of persons who could have committed the offense.

(b) Provides that this article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, or retrieval of biological evidence.

(c) Requires the Texas Department of Public Safety (DPS) to adopt rules relating to a person that collects, stores, preserves, or retrieves any biological evidence in relation to an investigation or prosecution of a felony offense or conduct constituting a felony offense. Requires that the rules adopted under this subsection:

(1) require biological evidence to be retained for a felony offense or conduct constituting a felony offense under Chapter 19 (Criminal Homicide), 21 (Sexual Offenses), or 22 (Assaultive Offenses), Penal Code;

(2) require biological evidence to be preserved:

(A) for not less than 60 years if there is an unapprehended actor associated with the offense; or

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

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

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

(iii) until the defendant completes the defendant's term of community supervision, including deferred adjudication community supervision, if the defendant is placed on community supervision;

(iv) until the defendant dies, completes the defendant's sentence, or is released on parole, mandatory supervision, or juvenile probation, if the defendant is committed to the Texas Youth Commission; or

(v) until the defendant completes the defendant's term of juvenile probation, including a term of community supervision upon transfer of supervision to a criminal court, if the defendant is placed on juvenile probation; and

(3) specify procedures for the collection, storage, preservation, and retrieval of evidence.

Deletes existing text relating to an exception to this subsection as provided by Subsection (d).

(d) Authorizes the attorney representing the state, clerk, or other officer in possession of biological evidence, rather than of evidence described by Subsection (b), to destroy the evidence after expiration of the retention period specified by the rules adopted under Subsection (c)(2), if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of either the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence or the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

(e) Makes no changes to this subsection.

(f) Creates this subsection from existing text. Requires DPS to adopt rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to DPS for storage in accordance with Section 411.052 (Preservation of Evidence Containing Biological Material), Government Code, and DPS rules. Makes nonsubstantive changes.

Deletes existing Subsection (f)(1) providing that this subsection applies only to evidence described by Subsection (b) that was used to prosecute and convict a defendant of an offense under Chapter 19, 21, or 22, Penal Code, if on conviction of the offense the defendant was sentenced to a term of imprisonment of 10 years or more.

(g) Authorizes a person described by Subsection (b) to solicit and accept gifts, grants, donations, and contributions to support the collection, storage, preservation, retrieval, and destruction of biological evidence.

SECTION 2. (a) Requires DPS, in adopting the initial rules required by Article 38.43, Code of Criminal Procedure, as amended by this Act, to consult with certain entities and organizations.

(b) Requires DPS to adopt the rules required by Article 38.43, Code of Criminal Procedure, as amended by this Act, not later than September 1, 2012.

(c) Makes application of Article 38.43, Code of Criminal Procedure, as amended by this Act, prospective to January 1, 2013.

SECTION 3. Effective date: upon passage or September 1, 2011.