

## **BILL ANALYSIS**

Senate Research Center  
87R2350 JSC-F

S.B. 335  
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Jurisprudence  
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As Filed

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

H.B. 1264 (2015) created Article 38.50, Code of Criminal Procedure, in order to differentiate toxicological evidence (blood and urine samples from alcohol-related offenses) from other biological evidence. The bill addressed concerns from local law enforcement that, under prior law, evidence rooms were filling up with blood and urine samples that no longer had any evidentiary value but could not be legally disposed of.

Article 38.50 provides for the retention period for toxicological evidence with Subsection (c) and a mechanism under Subsection (d) for a court to provide notice to defendants and entities storing evidence as to when the retention period will end. After receipt of the notice and the end of the retention period, toxicological evidence may be disposed of under Subsection (e).

Since implementation of H.B. 1264, problems have emerged with the notice provision in Subsection (d). In practice, provision of the notice has occurred at the request of the entity storing the evidence, rather than unprompted by the court. The statute is ambiguous as to if the court may issue the notice if the retention period has already expired—meaning if the entity does not request the notice before the retention period expires, it may be stuck storing toxicological evidence indefinitely.

As a result of this ambiguity, entities storing evidence have disposed of samples under legally ambiguous circumstances or have continued to store samples with no evidentiary value, incurring significant expenses maintaining and expanding freezer space.

S.B. 335 attempts to eliminate remaining ambiguity regarding the disposal of toxicological evidence with no evidentiary value, per the original intent of H.B. 1264.

First, the bill allows an entity storing toxicological evidence to dispose of samples after the greater of two years or the statute of limitations for the offense without the court needing to send notice. Second, an explicit mechanism is created with Subsection (d-1) for a court to provide notice when the retention period has already expired.

These changes will allow laboratories, police departments, and prosecutors that handle toxicological evidence to dispose of blood and urine samples from intoxication offenses that have no conceivable evidentiary value—ultimately preserving valuable space in evidence rooms.

As proposed, S.B. 335 amends current law relating to retention and preservation of toxicological evidence of certain intoxication offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 38.50, Code of Criminal Procedure, by amending Subsections (d) and (e) and adding Subsections (d-1) and (d-2), as follows:

(d) Requires the court, for each offense subject to this article, to determine as soon as practicable the appropriate retention and preservation period for the toxicological evidence under Subsection (c)(2) (relating to the retention and preservation of toxicological evidence for the duration of a defendant's sentence or term of community supervision) or (3) (relating to the retention and preservation of toxicological evidence until a certain acquittal or dismissal with prejudice, or a hearing in a juvenile proceeding in which the court makes certain findings), rather than under Subsection (c) (relating to the requirement for certain individuals to retain toxicological evidence pursuant to certain investigations and prosecutions), as applicable, and to notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence of the period for which the evidence is to be retained and preserved. Requires the court, if an action of the prosecutor or the court changes the applicable period under Subsection (c)(2) or (3), rather than under Subsection (c), to notify the persons described by this subsection about the change.

(d-1) Requires the court, for each offense subject to this article for which the appropriate retention and preservation period under Subsection (c)(2) or (3) expires before delivery of the notice required by Subsection (d), to, as soon as practicable, notify the defendant or the child or child's guardian and the entity or individual charged with storage of the toxicological evidence that the applicable period under Subsection (c)(2) or (3) has expired.

(d-2) Requires that notice to parties under Subsection (d) or (d-1) be given by mailing notice by first class mail addressed to the individual or entity at the last known mailing address in the records of the court, sending notice electronically to the last known e-mail address in the records of the court, or hand delivery.

(e) Authorizes the entity or individual charged with storing toxicological evidence to destroy the evidence on expiration of the period described by Subsection (c)(1) (relating to the retention and preservation of toxicological evidence for the greater of two years or the period of the statute of limitations), or provided by the notice most recently issued by the court under Subsection (d) or (d-1).

SECTION 2. (a) Provides that, except as provided by Subsection (b) of this section, the change in law made by this Act applies only to evidence for which the appropriate retention and preservation period under Article 38.50, Code of Criminal Procedure, as amended by this Act, expires on or after the effective date of this Act. Provides that 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) Requires the court, 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, to provide the notice required by Article 38.50(d-1), Code of Criminal Procedure, as added by this Act, not later than December 1, 2021.

SECTION 3. Effective date: September 1, 2021.