

- SUBJECT:** Revising procedures for retention of certain toxicological evidence
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
0 nays
- SENATE VOTE:** On final passage, April 19 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** No public hearing.
- BACKGROUND:** Penal Code sec. 38.50 governs the retention and preservation of toxicological evidence of certain intoxication offenses. It specifies timeframes for which such evidence must be retained or preserved and grants entities the authority to destroy the evidence when the retention period ends as long as notice has been given to certain parties.
- Concerns have been raised about the handling of certain toxicological evidence after a retention period has expired, and interested parties have proposed that statute be revised to clear up ambiguities about the disposal of such evidence in intoxication cases.
- DIGEST:** SB 335 would revise several provisions dealing with the retention, preservation, and collection of toxicological evidence in certain intoxication offenses.
- Schedule for retention.** The bill would make the current requirement that toxicological evidence be kept for the greater of two years or the period of the statute of limitations in cases in which charges have not been presented applicable to cases that have been dismissed without prejudice.
- Notification to defendants.** SB 335 would revise current provisions requiring courts to determine the appropriate retention schedule and notify defendants and the entity storing the evidence of the retention

requirements. Under the bill, the person from whom evidence was collected would have to be notified of the evidence retention period by either:

- the entity that collected the evidence from the person or from a third party; or
- the court, if the person had not been given notice by the entity and the evidence was subject to certain retention periods for those convicted and given sentences or community supervision or those acquitted or who had an indictment dismissed with prejudice.

The bill would establish two additional criteria for the destruction of evidence in cases in which the evidence was subject to the retention schedules for individuals given sentences or community supervision or those acquitted or who had an indictment dismissed with prejudice. In these cases, evidence could be destroyed only if notice had been given as required by the bill and, if applicable, if a prosecutor had invoked a provision in SB 335 to have approval for the destruction.

If a prosecutor had presented the indictment, information, or petition in the case, the prosecutor would have new authority to require an entity or individual storing toxicological evidence to seek written approval from the prosecutor's office before destroying evidence subject to certain retention periods.

Requests to submit a specimen. The bill would expand Transportation Code provisions detailing what officers must inform persons of before requesting that they submit to the taking of a specimen. Officers would have to inform individuals that if they submitted to the taking of a blood specimen, the specimen would be retained and preserved in accordance with provisions in the Code of Criminal Procedure.

The bill also would establish a new requirement in cases in which individuals consented to the request for the taking of a specimen. In these cases, officers would be required to request that the person sign a statement that the officer requested the person to submit to the taking of a specimen, the person was informed of the consequences of not submitting

to the taking of a specimen, and the person voluntarily consented to the taking of a specimen.

Effective date. Provisions relating to what officers would have to tell individuals before requesting a specimen and the statement that individuals would be requested to sign would apply to requests made on or after the effective date.

Provisions relating to the retention and preservation periods for evidence would apply only to evidence for which the retention and preservation period expired on or after the bill's effective date. The bill would establish additional provisions for evidence for which the retention and preservation period had expired but notice had not yet been given under current law.

The bill would take effect September 1, 2021.