

## **BILL ANALYSIS**

Senate Research Center

S.B. 335  
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Jurisprudence  
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Enrolled

### **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 whether 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 by reforming the notice and disposal procedure:

- Allows toxicological evidence to be destroyed without notice for cases in which the statute of limitations has expired or the case has been dismissed.
- Allows entities storing evidence to provide notice, instead of courts.
- Specifies how notice should be provided.
- Allows a DA's office to require that the office approve of toxicological evidence destruction.

Additionally, S.B. 335 ensures defendants are fully aware of their rights:

- Requires officers to inform defendants of how their toxicological specimen will be retained per Article 38.50.
- Requires officers to ask a person who verbally consents to providing a toxicological specimen to sign a written statement.

These changes will allow evidence rooms to dispose of thousands of toxicological specimens with no evidentiary value, per the original intent of the statutes.

S.B. 335 amends current law relating to the taking of a specimen to test for intoxication and 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 (c), (d), and (e) and adding Subsections (g) and (h), as follows:

(c) Requires an entity or individual described by Subsection (b) (relating to certain governmental or public entities charged with the preservation, analysis, or retrieval of toxicological evidence) to ensure that toxicological evidence collected pursuant to an investigation or prosecution of an offense under Chapter 49 (Intoxication and Alcoholic Beverage Offenses), Penal Code, is retained and preserved, as applicable, 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, rather than has not been presented.

(d) Requires a person from whom toxicology evidence was collected and, if the person is a minor, the person's parent or guardian, to be notified of the periods for which the evidence is authorized to be retained and preserved under Article 38.50 (Retention and Preservation of Toxicological Evidence of Certain Intoxication Offenses). Requires that the notice 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) (relating to specific periods during which toxicological evidence is required to be preserved).

Deletes existing text requiring the court, for each offense subject to Article 38.50, to 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 period for which the evidence is to be retained and preserved. Deletes existing text requiring the court, if an action of the prosecutor or the court changes the applicable period under Subsection (c), to notify the persons described by this subsection about the change. Makes nonsubstantive changes.

(e) Authorizes the entity or individual charged with storing toxicological evidence to 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 notice was given in accordance with Article 38.50 and, if applicable, the prosecutor's office gives written approval for the destruction under Subsection (h).

Deletes existing text authorizing the entity or individual charged with storing toxicological evidence to destroy the evidence on the expiration of the period provided by the notice most recently issued by the court under Subsection (d). Makes nonsubstantive changes.

(g) Requires that notice under Article 38.50 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) Authorizes a prosecutor's office to 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. Amends Section 724.015, Transportation Code, as follows:

Sec. 724.015. New heading: INFORMATION PROVIDED BY OFFICER BEFORE REQUESTING SPECIMEN; STATEMENT OF CONSENT. (a) Creates this subsection from existing text. Requires an officer, before requesting a person to submit to the taking of a specimen, to inform the person orally and in writing of certain information, including that 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. Makes nonsubstantive changes.

(b) Requires the officer, if a person consents to the request of an officer to submit to the taking of a specimen, to 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) Provides that, 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. 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) Authorizes the entity or individual charged with storing the evidence, if the applicable retention and preservation period under Article 38.50(c)(1), Code of Criminal Procedure, has expired with respect to the 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, to destroy the evidence pursuant to Article 38.50(e), Code of Criminal Procedure, as amended by this Act.

(c) 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), Code of Criminal Procedure, as amended by this Act, not later than September 1, 2022.

(d) Makes application of Section 724.015, Transportation Code, as amended by this Act, prospective.

SECTION 4. Effective date: September 1, 2021.