

BILL ANALYSIS

C.S.H.B. 8
By: Neave
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been reported that there is a considerable backlog of untested rape kits across the state. There are concerns that evidence from these kits may no longer be admissible in court and that this not only denies justice to victims but also compromises public safety. C.S.H.B. 8 seeks to address these concerns, among others, by extending the statute of limitations for certain sexual offenses for which evidence is collected in a rape kit, regardless of whether it has been subject to forensic DNA testing, and by requiring an audit of untested rape kits across the state and setting deadlines by which those kits must be analyzed and processed.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 8 amends the Government Code to expand the applicability of Sexual Assault Prevention and Crisis Services Act provisions relating to the analysis of sexual assault evidence and the chain of custody of that evidence to include sex offenses other than sexual assault.

C.S.H.B. 8 requires a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense and that receives signed, written consent to release the evidence to promptly notify any law enforcement agency investigating the alleged offense. The bill requires a law enforcement agency that receives such notice to take possession of the evidence not later than the seventh day after the date the law enforcement agency receives notice. The bill requires a law enforcement agency that receives notice from a health care facility or other entity that is located more than 100 miles from the law enforcement agency to take possession of the evidence not later than the 14th day after the date the law enforcement agency receives notice. The bill requires a health care facility or other entity that performs a medical examination to collect such evidence that has not obtained signed, written consent to release the evidence, before the survivor is released from the facility, to provide a written notice to the survivor that contains certain information prescribed by the bill. The bill establishes that failure to comply with these evidence collection procedures or requirements does not affect the admissibility of the evidence in a trial of the offense.

C.S.H.B. 8 establishes that the failure of a law enforcement agency to take possession of evidence of a sexual assault or other sex offense within the applicable period prescribed by the bill does not affect the authority of:

- the agency to take possession of the evidence;
- the agency to submit the evidence to an accredited crime laboratory for analysis;
- an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons; or
- the Department of Public Safety (DPS) or an otherwise authorized public accredited crime laboratory to compare the DNA profile obtained from the biological evidence with DNA profiles in certain databases, as authorized by the bill.

C.S.H.B. 8 establishes that the failure of a law enforcement agency to submit evidence of a sexual assault or other sex offense within the statutorily prescribed period does not affect the authority of DPS or an otherwise authorized public accredited crime laboratory to compare the DNA profile obtained from the biological evidence with DNA profiles in certain state and FBI databases. The bill requires a public accredited crime laboratory to complete an analysis of evidence of a sexual assault or other sex offense not later than the 90th day after the date on which the laboratory received the evidence if sufficient personnel and resources are available and makes that deadline applicable to evidence of a sexual assault or other sex offense that is received on or after January 1, 2021. The bill establishes that failure to comply with the requirements of Sexual Assault Prevention and Crisis Services Act provisions relating to analysis of evidence, as amended by the bill, does not affect the admissibility of the evidence in a trial of the offense.

C.S.H.B. 8 requires DPS to make the required comparison of a DNA profile with DNA profiles in certain state and FBI databases not later than the 30th day after the date the analysis and quality assurance reviews of the applicable evidence collection kit containing biological evidence have been performed and removes the specification that such a comparison is triggered on the request of any appropriate person. If the evidence kit containing biological evidence is analyzed by a public accredited crime laboratory, the laboratory, instead of DPS, may perform the comparison, provided that:

- the laboratory performs the comparison not later than the 30th day after the date the analysis is complete and any necessary quality assurance reviews have been performed;
- the law enforcement agency that submitted the evidence collection kit containing biological evidence gives permission; and
- the laboratory meets applicable federal and state requirements to access the databases.

C.S.H.B. 8 authorizes DPS to use appropriated funds to employ personnel and purchase equipment and technology necessary to comply with the DNA database comparison requirements and requires DPS to apply for any available federal grant funds applicable to the analysis of evidence collection kits containing biological evidence, including grant money available under the National Institute of Justice's DNA Capacity Enhancement and Backlog Reduction Program.

C.S.H.B. 8 requires each law enforcement agency and public accredited crime laboratory to submit a quarterly report to DPS identifying the number of evidence collection kits that the law enforcement agency has not yet submitted for laboratory analysis or for which the crime laboratory has not yet completed an analysis, as applicable. The bill establishes that failure to comply with certain Sexual Assault Prevention and Crisis Services Act provisions relating to analysis of evidence of sexual assault or other sex offenses, as amended by the bill, may be used to determine eligibility for receiving grant funds from DPS, the office of the governor, or another state agency.

C.S.H.B. 8, in temporary provisions set to expire September 1, 2023, and applicable to an

evidence collection kit in possession of a law enforcement agency on September 1, 2019, requires a law enforcement agency in possession of such an evidence collection kit that has not been submitted for laboratory analysis to take the following actions:

- not later than December 15, 2019, submit to DPS a list of the agency's active criminal cases for which an evidence collection kit collected on or before September 1, 2019, has not yet been submitted for laboratory analysis;
- not later than January 15, 2020, and subject to the availability of laboratory storage space, submit to DPS or a public accredited crime laboratory, as appropriate, all evidence collection kits pertaining to those active criminal cases that have not yet been submitted for laboratory analysis; and
- if the law enforcement agency submits an evidence collection kit to a public accredited crime laboratory under the immediately preceding provision, notify DPS of that laboratory, any analysis completed by the laboratory, and the date on which the analysis was completed.

C.S.H.B. 8, in temporary provisions set to expire September 1, 2023, and applicable to an evidence collection kit in possession of a law enforcement agency on September 1, 2019, requires DPS, not later than September 1, 2020, to submit to the governor and the appropriate standing committees of the senate and the house of representatives a report containing the following:

- a projected timeline for the completion of laboratory analyses, in accordance with the Sexual Assault Prevention and Crisis Services Act, as amended by the bill, of all unanalyzed evidence collection kits pertaining to the active criminal cases that were submitted to DPS or a public accredited crime laboratory by the applicable deadline;
- a request for any necessary funding to accomplish the analyses, including a request for a grant of money under the criminal justice planning fund, if such money is available;
- as appropriate, application materials for such funding requests; and
- if DPS determines that outsourcing certain evidence collection kits is necessary for timely analyses of the kits, a proposal for determining which evidence collection kits should be outsourced and a list of laboratories DPS determines are capable of completing the outsourced analyses.

C.S.H.B. 8, in temporary provisions set to expire September 1, 2023, and applicable to all evidence collection kits in the possession of a law enforcement agency on September 1, 2019, that were submitted for analysis to DPS or a public accredited crime laboratory by the applicable deadline, requires DPS, not later than September 1, 2022, and to the extent that funding is available:

- to analyze, or contract for the analysis of, and complete the required database comparison as provided by certain Sexual Assault Prevention and Crisis Services Act provisions relating to analysis of evidence of sexual assault or other sex offenses, as amended by the bill; or
- to ensure that a public accredited laboratory completed the comparison.

C.S.H.B. 8, in temporary provisions set to expire September 1, 2023, and applicable to an evidence collection kit in possession of a law enforcement agency on September 1, 2019:

- establishes that DPS is not required under the bill's temporary provisions to use in a state fiscal year any amount of money from the state highway fund that exceeds the amount DPS has historically used in a state fiscal year to fund laboratory analyses of evidence collection kits under the Sexual Assault Prevention and Crisis Services Act; and
- authorizes DPS, for purposes of supplementing funding of laboratory analyses under the

bill's temporary provisions, to solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by the act, as amended by the bill.

C.S.H.B. 8 amends the Code of Criminal Procedure to expand the circumstances under which there is no statute of limitations for the offense of sexual assault to include such cases involving sexual assault in which biological matter is collected during the investigation of the offense and has not yet been subjected to forensic DNA testing. This change in law does not apply to an offense if the prosecution of that offense becomes barred by limitation before the bill's effective date, and the prosecution of that offense remains barred as if the bill had not taken effect.

C.S.H.B. 8 requires certain entities and individuals charged with the collection, storage, preservation, analysis, or retrieval of biological evidence to ensure that the contents of a sexual assault examination kit collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense, regardless of whether a person has been apprehended for or charged with committing the offense, is retained and preserved for not less than 40 years or until any applicable statute of limitations has expired, whichever period is longer.

C.S.H.B. 8 extends the required preservation period for evidence collected in a forensic medical examination of a victim of an alleged sexual assault who has not reported the assault to a law enforcement agency from the earlier of the second anniversary of the date on which the evidence was collected or the date on which written consent to release the evidence is obtained to the earlier of the fifth anniversary of either of those dates. The bill authorizes an entity receiving such evidence to destroy the evidence on the expiration of the entity's duty to preserve the evidence only if the entity notifies the victim of the offense in a trauma-informed manner of the decision to destroy the evidence and a written objection is not received by the entity from the victim before the 91st day after the date on which the entity notifies the victim of the planned destruction. The bill requires the entity to document its attempt to notify the victim. The bill requires DPS to develop procedures for the notification of a victim before such planned destruction of evidence.

C.S.H.B. 8 establishes that the failure of a law enforcement agency or public accredited crime laboratory to comply with certain Sexual Assault Prevention and Crisis Services Act provisions relating to analysis of evidence of sexual assault or other sex offenses, as amended by the bill, before January 15, 2020, does not affect the agency's or laboratory's eligibility for grants if the agency or laboratory is in compliance with those provisions beginning on that date.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 8 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a separate deadline for a law enforcement agency to take possession of evidence of a sexual assault or other sex offense from an applicable entity located more than 100 miles from the law enforcement agency.

The substitute includes a requirement for an entity to provide certain information to a survivor if the entity has not obtained signed, written consent from the survivor to release the evidence before the survivor is released from the applicable facility.

The substitute includes a requirement for each law enforcement agency and public accredited crime laboratory to submit a quarterly report to DPS identifying certain information relating to unprocessed evidence collection kits, and the substitute establishes that noncompliance with this requirement may be used to determine eligibility to receive certain grant funds.

The substitute, in the temporary provisions regarding the audit of unanalyzed evidence of sexual assault or other sex offense:

- replaces, as applicable, references to "evidence of sexual assault or other sex offense" with references to "evidence collection kit";
- changes the deadline by which a law enforcement agency must submit a list of active criminal cases involving applicable evidence collection kits that have not been submitted for laboratory analysis to DPS;
- changes the deadline by which an agency must submit all such evidence to DPS or a laboratory; and
- changes the deadline by which DPS must submit a report to the governor and the appropriate standing committees.

The substitute changes from 50 years to 40 years the minimum retention and preservation period for the contents of a sexual assault examination kit.

The substitute includes a provision requiring notification of a victim who has not reported an assault before a planned destruction of evidence and includes a provision authorizing an entity receiving evidence to destroy the evidence only if the entity notifies the victim in a trauma-informed manner of the decision and if a written objection is not received by a certain date after notification.