

BILL ANALYSIS

S.B. 335
By: Johnson
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2015, the legislature enacted legislation that created separate retention and preservation procedures for toxicological evidence from other biological evidence. This was intended to address concerns from local law enforcement regarding evidence rooms with blood and urine samples that no longer had any evidentiary value but could not be legally disposed of. The law also required courts to provide notice to defendants and entities storing evidence regarding the expiration of the retention period. Since the implementation of that law, problems have emerged with these notice requirements.

The law is ambiguous as to whether the court may issue the notice if the retention period has already expired. This could mean that if the entity does not request the notice before the retention period expires, it may have to store 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 seeks to eliminate remaining ambiguity regarding the disposal of toxicological evidence with no evidentiary value by reforming the notice and disposal procedure.

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

S.B. 335 amends the Code of Criminal Procedure to require a governmental or public entity or an individual charged with the collection, storage, preservation, analysis, or retrieval of toxicological evidence to ensure that toxicological evidence collected under an investigation or prosecution of an intoxication-related offense is retained and preserved for the greater of two years or the period of the statute of limitations for the offense for an indictment or information charging the defendant, or a petition in a juvenile proceeding, that has been dismissed without prejudice.

S.B. 335 revises the duty of a court to notify the applicable defendant, guardian, and entity or individual charged with storage of the evidence of the retention and preservation period as follows:

- by specifying that the person's parent may be notified as an alternative to notifying the person's guardian, if the person is a minor;

- by transferring the duty to the entity or individual that collects the evidence; and
- by requiring the court to fulfill the duty only if the court records show that the person was not given notice by the applicable entity or individual and the toxicological evidence is subject to the retention period for a defendant other than a defendant whose indictment, information, or petition has not been presented or has been dismissed without prejudice.

The bill sets out the manner in which the notice must be given.

S.B. 335 revises the conditions under which the entity or individual charged with storing the toxicological evidence may destroy the evidence. With respect to the authority of the entity or individual to destroy the evidence of a defendant whose indictment, information, or petition has not been presented or has been dismissed without prejudice on expiration of the retention period, the bill removes the condition that the expiration of the period is as provided in the required notice. The bill conditions the authority of the entity or individual to destroy the evidence of any defendant other than such a defendant on the prosecutor's office giving written approval for the destruction if the prosecutor's office requires that the entity or individual seeks such approval as authorized under the bill.

S.B. 335 amends the Transportation Code to require an officer, before requesting a person to submit to the taking of a specimen, to inform the person orally and in writing that if the person submits to the taking of a blood specimen, the specimen will be retained and preserved in accordance with statutory provisions relating to the retention and preservation of toxicological evidence relating to intoxication-related offenses. If the person consents to the request, the officer must request that the person sign a statement containing the following information:

- that the officer requested that the person submit to the taking of a specimen;
- that the person was informed of the consequences of not submitting to the taking of a specimen; and
- that the person voluntarily consented to the taking of a specimen.

With respect to certain toxicological evidence that is held on the bill's effective date and for which the applicable retention and preservation period has expired but the required notice has not been provided, the bill does the following:

- authorizes the applicable entity or individual to destroy evidence of a defendant whose indictment, information, or petition has not been presented; and
- requires the applicable court to provide notice to any defendant other than such a defendant not later than September 1, 2022.

EFFECTIVE DATE

September 1, 2021.