

**SUBJECT:** Requiring biological evidence from small counties to be stored by DPS

**COMMITTEE:** Public Safety — committee substitute recommended

**VOTE:** 8 ayes — Merritt, Frost, Burnam, Driver, P. King, Mallory Caraway, Rodriguez, Vo  
0 nays  
1 absent — Lewis

**WITNESSES:** For — (*Registered, but did not testify:* Edwin Colfax, The Justice Project; Jay Johannes, Colorado County Attorney’s Office; Matt Simpson, The ACLU of Texas)  
Against — None  
On — Dennis Loockerman, Texas Department of Public Safety

**BACKGROUND:** The 77th Legislature in 2001 enacted SB 3 by Duncan, which requires the preservation of biological evidence in criminal cases in which the defendant is convicted. The prosecutor, court clerk, or another officer must preserve biological evidence that was in the state’s possession during prosecution of the case and that could identify a person who committed an offense or exclude a person from a suspect list.  
  
For a capitol felon, the biological evidence must be preserved until the inmate is executed, dies, or is released on parole. For inmates given any other type of prison sentence, evidence must be kept until the inmates die, completed their sentences, or are released on parole or mandatory supervision.  
  
Prosecutors, court clerks, or other officers can destroy the evidence only if they notify by mail the defendants, their attorneys, and convicting courts of the planned destruction and receive no written objection within 90 days of mailing the notice.

**DIGEST:** CSHB 3594 would require the prosecutor, court clerk or another officer in a county with a population of less than 100,000 to preserve biological

evidence by delivering it to DPS for storage. This storage requirement would apply only to homicides and assaults in which a defendant was sentenced to more than 10 years in prison .

The bill would require DPS to maintain a storage space for biological evidence from counties with less than 100,000 residents. The bill also would require DPS to maintain a storage space to preserve evidence connected to sex offenses. DPS would adopt rules to carry out the requirements in the bill.

The bill would take effect September 1, 2009 and DPS and the state would have until November 1, 2009, to adopt rules to implement it. DPS and the state would be required to begin accepting biological evidence from small rural counties by January 1, 2010. The bill would apply to criminal proceedings that began on or after January 1, 2010.

**SUPPORTERS  
SAY:**

CSHB 3594 would allow smaller counties that lack crime labs to send biological evidence to DPS for post-conviction storage. The state requires long-term storage of biological evidence. The bill would help small communities, who otherwise cannot afford new equipment and facilities, to comply with state requirements.

The bill would help protect the integrity of biological evidence by requiring it to be stored in official DPS crime labs rather than in unequipped court houses or in the homes of court clerks. When properly preserved, biological evidence, including rape kits, bloody weapons or clothes, can be examined with modern DNA testing to determine to whom the evidence belongs. In some cases, DNA must be stored over long periods of time so that evidence can be re-tested if doubt were to arise regarding a criminal conviction.

Biological evidence must be handled and stored according to specific procedures. Most biological evidence is sensitive to extreme heat and needs to be refrigerated or stored in a climate-controlled building. Counties with populations of less than 100,000 often end up storing biological evidence in attics and closets because they do not have the proper storage facilities and equipment. Additionally, biological evidence must be carefully labeled and organized to prevent mix-ups. DPS crime labs have the experience, equipment and organizational structure best suited to store biological evidence.

The bill would not affect overall state expenditures because the new DPS facility created by the bill could be funded using existing resources. There is a \$1 million rider in the prison industries budget, which is not a part of general revenue, that could be transferred to fund the program, and any additional expenses to the state would be minimal. CSHB 3594 would require hiring only two new DPS staff members.

**OPPONENTS  
SAY:**

CSHB 3594 would cost the state more than half a million dollars over the course of each biennium. Smaller counties should not be able to pass the costs of storing biological evidence on to the state simply based on population size. The bill would require DPS to hire two more FTEs and rent a 55,000 square foot facility for storage of biological evidence from lesser-populated counties. Smaller counties have smaller criminal case loads that can be handled adequately by local law enforcement.

**OTHER  
OPPONENTS  
SAY:**

Storing biological evidence in crime labs is unlikely to ensure its safety. Evidence stored in crime labs is frequently misplaced, and lab tests are used disproportionately to benefit prosecutors rather than to exonerate the wrongly convicted. CSHB 3594 would require law enforcement officials in small counties to deliver evidence to DPS labs, which could increase the likelihood of misplacement or tampering. Biological evidence is best stored locally.

**NOTES:**

The fiscal note indicates an annual cost to the State Highway Fund would be between \$266,982 and \$282,583 per year over the next five years.