

**SUBJECT:** Revising timelines for analyzing sexual assault kits, auditing untested kits

**COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended

**VOTE:** 9 ayes — Nevárez, Paul, Burns, Calanni, Clardy, Goodwin, Israel, Lang, Tinderholt

0 nays

**WITNESSES:** For — Lauren Baker, Delaney Davis, Rhea Shahane, and Tatum Zeko, Deeds Not Words; Jenny Black and Juliana Gonzales, SAFE Alliance; Chris Kaiser, Texas Association Against Sexual Assault; Bertha Lavinia Masters; (*Registered, but did not testify*: Terra Tucker, Alliance for Safety and Justice; Olivia Ott, Austin Justice Coalition; Pete Gallego, Bexar County Criminal District Attorney's Office; Christina Green, Children's Advocacy Centers of Texas Inc.; Chris Jones and Rita Ostrander, Combined Law Enforcement Associations of Texas; Charles Reed, Dallas County Commissioners Court; Terrence Rhodes, Dallas Police Department; Priscilla Camacho, Dallas Regional Chamber; Wendy Davis, Ashka Dighe, Sophie Jerwick, and Andrea Reyes, Deeds Not Words; Aimee Bertrand, Harris County Commissioners Court; Nicholas Chu, Bobby Gutierrez, and Jama Pantel, Justices of the Peace and Constables Association of Texas; Sarah Carriker, League of Women Voters; Stephanie Stephens, Nacogdoches County Attorney; Aimee Arrambide, Blake Rocap, and Jasmine Wang, NARAL Pro-Choice Texas; Will Francis, National Association of Social Workers - Texas Chapter; Charley Wilkison, National Latino Officers Association and Dallas CLEAT; Jamaal Smith, City of Houston Office of Mayor; AJ Louderback, Sheriffs Association of Texas; Ana DeFrates, Survivor Justice Project; Jennifer Allmon, Texas Catholic Conference of Bishops; Linda Phan, Texas Council on Family Violence; Joshua Houston, Texas Impact; Deneen Robinson, The Afiya Center; Kyle Piccola, The Arc of Texas; Noel Johnson, Texas Municipal Police Association; Kirsha Haverlah; Emily Martin; Thomas Parkinson)

Against — None

On — (*Registered, but did not testify*: Skylor Hearn and Michael Lesko, Texas Department of Public Safety; Lynn Garcia, Texas Forensic Science Commission)

**BACKGROUND:** Texas currently has a backlog of untested sexual assault kits across the state. Concerns have been raised that evidence from these kits may no longer be admissible in court, potentially denying justice to victims and compromising public safety.

**DIGEST:** CSHB 8 would establish the Lavinia Masters Act. It would revise timelines for the possession and analysis of sexual assault examination kits, require an audit and deadlines for the analysis of untested kits, amend preservation guidelines in certain circumstances, and extend the statute of limitations for certain sexual assault offenses.

The bill would apply provisions of the Sexual Assault Prevention and Crisis Services Act (Government Code ch. 420) related to the analysis of sexual assault evidence to a sex offense other than sexual assault. "Sex offense" would mean an offense under Penal Code ch. 21 for which biological evidence was collected.

CSHB 8 would take effect September 1, 2019, and unless otherwise noted would apply only to evidence of sex offenses collected or biological evidence destroyed on or after that date.

**Release of sexual offense evidence to authorized persons.** If an entity that performed a medical exam to collect evidence of sexual assault or other sex offense received signed, written consent by or on behalf of the survivor to release the evidence, the entity promptly would have to notify any law enforcement agency investigating the alleged offense. A law enforcement agency that received notice would have to take possession of the evidence within seven days, except a law enforcement agency that received notice from a facility more than 100 miles away, which would have 14 days.

The failure of a law enforcement agency to take possession of the evidence within the required period would not affect the authority of:

- the agency to take possession of the evidence;
- the agency to submit the evidence to an accredited crime lab or for the lab to provide results of its analysis; or
- the Department of Public Safety (DPS) or a crime lab to compare the DNA profile obtained from the evidence with DNA profiles in state or federal DNA databases.

If a health care facility or other entity that performed a medical exam had not obtained consent to release the evidence, it would have to provide to the survivor, before the survivor was released from the facility, a written notice with:

- DPS's policy regarding storage sexual assault kits, including that the evidence would be stored for five years before it became eligible for destruction and the policy for notifying the survivor before destruction;
- a statement that the survivor could request the release of the evidence to a law enforcement agency and report a sex offense at any time; and
- contact information both for the law enforcement agency with jurisdiction over the offense and a for local rape crisis center.

Failure to comply with evidence collection procedures or requirements would not affect the admissibility of the evidence in a trial.

**Analysis of sexual assault evidence.** The bill would require a public accredited crime lab to complete its analysis of any evidence of sexual assault or other sex offense within 90 days of receiving the evidence. Failure to comply with this requirement would not affect the admissibility of the evidence in a trial. This provision would apply only to evidence received on or after January 1, 2021.

DPS would have to compare the DNA profile obtained from biological evidence with profiles in state and federal DNA databases, including CODIS, within 30 days of crime lab analysis of a sexual assault kit. If the kit was analyzed by a public accredited crime lab, the lab rather than DPS could perform the DNA comparison, provided that the comparison was performed within 30 days of analysis, the law enforcement agency that submitted the kit gave permission, and the lab met applicable federal and state requirements to access the state and federal DNA databases.

DPS could use appropriated funds to employ personnel and purchase equipment and technology necessary to comply with the database comparison requirements under this bill and other state law. DPS would be required to apply for any available federal grants applicable to the analysis of sexual assault kits, including grants available under the National Institute of Justice's DNA Capacity Enhancement and Backlog Reduction Program.

Failure to comply with analysis of sex offense evidence requirements under the bill and Government Code ch. 420, subch. B-1 could be used to determine a law enforcement agency's or crime lab's eligibility for receiving grants from DPS, the Office of the Governor, or another state agency. This would affect eligibility starting January 15, 2020.

**Report of unanalyzed sexual assault kits.** Each law enforcement agency and public accredited crime laboratory would have to submit a quarterly report to DPS identifying the number of sexual assault examination kits the agency had not yet submitted for analysis or for which a crime lab had not yet completed an analysis.

**Audit of unanalyzed sexual assault kits.** The bill would require a law enforcement agency in possession of an unanalyzed sexual assault kit collected on or before September 1, 2019, to:

- submit to DPS by December 15, 2019, a list of the agency's active criminal cases for which an eligible kit had not yet been analyzed;
- submit to DPS or a public accredited crime lab by January 15,

- 2020, all untested sexual assault kits pertaining to those cases; and
- notify DPS of the lab where the kit was sent and the date of and any analysis completed by the lab, if not submitted to DPS.

By September 1, 2020, DPS would have to submit to the governor and appropriate legislative committees a report containing:

- a timeline for the completion of lab analyses of all unanalyzed sexual assault kits submitted by law enforcement agencies;
- application materials and a request for any necessary funding to accomplish the analyses, including for grant money from the Office of the Governor's Criminal Justice Division for related expenses; and
- a proposal for determining which kits should be outsourced and a list of capable labs, if necessary, for timely analyses.

DPS would have to analyze or contract for the analysis of and complete required DNA database comparisons on all untested kits pertaining to active criminal cases by September 1, 2022.

DPS would not be required to use an amount from the state highway fund that exceeded what it historically used in a fiscal year for lab analyses of sexual assault kits. To supplement funding of lab analyses, DPS could solicit and receive grants, gifts, or donations from the federal government or private sources.

The bill's provisions related to the audit would expire September 1, 2023.

**Preservation of sexual assault kits.** The bill would extend the required preservation period for evidence collected in a sexual assault exam of a victim who had not reported the assault to law enforcement to the earlier of either the fifth anniversary of the date on which the evidence was collected or the date on which written consent to release the evidence was obtained.

A crime lab could destroy the evidence on the expiration of its duty for

preservation only if it notified the victim in a trauma-informed manner of the decision to destroy the evidence and a written objection was not received from the victim within 90 days of notification. The lab would have to document its attempt to notify the victim, and DPS would have to develop procedures for notification.

A sexual assault exam kit collected pursuant to an investigation or prosecution of a felony or conduct constituting a felony would have to be retained and preserved for at least 40 years or until any applicable statute of limitations had expired, whichever period was longer. This would apply regardless of whether a person had been apprehended for or charged with committing the offense.

**Statute of limitations.** The bill would expand the circumstances under which the offense of sexual assault had no statute of limitation to include all offenses of sexual assault for which biological matter was collected, regardless of whether it had been subjected to DNA testing. This would not apply to an offense if the prosecution became barred by limitation before the bill's effective date.

**NOTES:** The Legislative Budget Board notes that the fiscal implications of CSHB 8 cannot currently be determined but would be likely to have a significant negative impact to the General Revenue Fund.