

## **BILL ANALYSIS**

Senate Research Center  
82R10028 JSC-D

S.B. 1616  
By: West  
Criminal Justice  
4/15/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

While Texas leads the nation in the number of persons found to have been wrongfully convicted, imprisoned, and later exonerated of crimes, mostly based on biological evidence, largely, the state is without uniform standards or established best practices regarding the collection, retention, and storage of these materials. More than half of persons exonerated in Texas were convicted of offenses in Dallas County. This was possible because Dallas County had reliable, established policies and practices regarding the collection and storage of biological evidence.

The goal of S.B. 1616 is to establish statewide, uniform guidelines to be used in the collection, retention, and storage of evidence that could be used in a criminal investigation. Justice is best served when law enforcement and the court system have the tools and procedures at their disposal to be certain that persons found factually responsible for the commission of a crime are the ones prosecuted for the offense.

S.B. 1616 requires certain law enforcement agencies, crime laboratories, prosecutors offices, public hospitals, governmental agencies, or other public entities that come in contact with biological evidence to adopt policies developed through the Texas Department of Public Safety related to the storage, preservation, retrieval, and disposal of these materials.

As proposed, S.B. 1616 amends current law relating to the collection, storage, preservation, retrieval, and destruction of biological evidence.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 1 (Article 38.43, Code of Criminal Procedure) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 38.43, Code of Criminal Procedure, as follows:

Art. 38.43. New heading: EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (a) Defines, in this article, "biological evidence." Deletes existing text requiring the attorney representing the state, a clerk, or any other officer in possession of evidence described by Subsection (b), in a criminal case in which a defendant is convicted, to ensure the preservation of the evidence. Deletes existing text of Subsection (b) providing that this article applies to evidence that was in the possession of the state during the prosecution of the case, and at the time of conviction was known to contain biological material that if subjected to scientific testing would more likely than not establish the identity of the person committing the offense or exclude a person from the group of persons who could have committed the offense.

(b) Provides that this article applies to a governmental or public entity or an individual, including a law enforcement agency, prosecutor's office, court, public hospital, or crime laboratory, that is charged with the collection, storage, preservation, or retrieval of biological evidence.

(c) Requires the Texas Department of Public Safety (DPS) to adopt rules relating to a person that collects, stores, preserves, or retrieves any biological evidence in relation to an investigation or prosecution of a felony offense or conduct constituting a felony offense specifying:

- (1) the felony offenses with respect to which biological evidence must be retained;
- (2) the period for which the evidence must be retained for each offense specified under Subdivision (1);
- (3) procedures for the collection, storage, preservation, and retrieval of the evidence; and
- (4) procedures for the destruction of the evidence after expiration of the retention period prescribed under Subdivision (2).

Deletes existing text requiring that material required to be preserved under this article be preserved, except as provided by Subsection (d), until the inmate is executed, dies, or is released on parole, if the defendant was convicted of a capital felony, or until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment.

(d) Redesignates existing Subsection (e) as Subsection (d). Deletes existing text authorizing the attorney representing the state, clerk, or other officer in possession of evidence described by Subsection (b) to destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of either the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence or the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

(e) Creates this subsection from existing text. Requires DPS to adopt rules authorizing a county with a population less than 100,000 to ensure the preservation of biological evidence by promptly delivering the evidence to DPS for storage in accordance with Section 411.052 (Preservation of Evidence Containing Biological Material), Government Code, and DPS rules. Makes nonsubstantive changes.

Deletes existing Subsection (f)(1) providing that this subsection applies only to evidence described by Subsection (b) that was used to prosecute and convict a defendant of an offense under Chapter 19 (Criminal Homicide), 21 (Sexual Offenses), or 22 (Assaultive Offenses), Penal Code, if on conviction of the offense the defendant was sentenced to a term of imprisonment of 10 years or more.

SECTION 2. Amends Section 411.052(a), Government Code, as added by Chapter 1179 (H.B. 3594), Acts of the 81st Legislature, Regular Session, 2009, to make a conforming change.

SECTION 3. Amends Subchapter A, Chapter 102, Code of Criminal Procedure, by adding Article 102.021, as follows:

Art. 102.021. COSTS ON CONVICTION TO FUND PRESERVATION OF BIOLOGICAL EVIDENCE. (a) Requires a defendant convicted of a felony offense to pay a fee of \$25 as a cost of court.

(b) Provides that, for purposes of this article, a person is considered to have been convicted if:

(1) a sentence is imposed on the person;

(2) the person receives community supervision, including deferred adjudication; or

(3) the court defers final disposition of the person's case.

(c) Requires the clerk of the court to collect the costs described by this article. Requires the clerk to keep separate records of the funds collected as costs under this article and to deposit the funds in the county or municipal treasury, as appropriate.

(d) Requires the custodian of a county or municipal treasury to:

(1) keep records of the amount of funds on deposit collected under this article; and

(2) send to the comptroller before the last day of the first month following each calendar quarter the funds collected under this article during the preceding quarter.

(e) Authorizes a county or municipality to retain 10 percent of the funds collected under this article by an officer of the county or municipality as a collection fee if the custodian of the county or municipal treasury complies with Subsection (d).

(f) Requires the custodian of the treasury to file the report required for the quarter in the regular manner and to state that no funds were collected if no funds due as costs under this article are deposited in a county or municipal treasury in a calendar quarter.

(g) Requires the comptroller of public accounts (comptroller) to deposit the funds received under this article to the credit of the biological evidence preservation account in the general revenue fund, to be used only for the purposes of Article 38.43.

(h) Provides that funds collected under this article are subject to audit by the comptroller.

SECTION 4. Amends Subchapter B, Chapter 102, Government Code, by adding Section 102.02105, as follows:

Sec. 102.02105. ADDITIONAL COURT COST ON CONVICTION: CODE OF CRIMINAL PROCEDURE. Requires a person convicted of a felony offense to pay a cost on conviction, in addition to all other costs, to fund proper collection, storage, preservation, retrieval, and destruction of biological evidence under Article 38.43, Code of Criminal Procedure (Art. 102.021, Code of Criminal Procedure) . . . \$25.

SECTION 5. (a) Requires DPS to adopt the rules required by Article 38.43, Code of Criminal Procedure, as amended by this Act, not later than January 1, 2012.

(b) Makes application of Article 38.43, Code of Criminal Procedure, as amended by this Act, prospective to January 1, 2012.

(c) Makes application of Article 102.021, Code of Criminal Procedure, and Section 102.02105, Government Code, as added by this Act, prospective to January 1, 2012.

SECTION 6. Effective date: upon passage or September 1, 2011.