

## **BILL ANALYSIS**

Senate Research Center

H.B. 8  
By: Neave et al. (Nelson)  
Criminal Justice  
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Engrossed

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

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. 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.

H.B. 8 amends current law relating to the criminal statute of limitations for certain sexual offenses and the collection, analysis, and preservation of evidence of sexual assault and other sex offenses.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Requires this Act to be known as the Lavinia Masters Act.

SECTION 2. Amends Article 12.01, Code of Criminal Procedure, as follows:

Art. 12.01. FELONIES. Creates Subdivision (1)(C)(b) from existing text. Authorizes felony indictments, except as provided in Article 12.03 (Aggravated Offenses, Attempt, Conspiracy, Solicitation, Organized Criminal Activity), to be presented within these limits, and not afterward:

(1) no limitation:

(A)-(B) makes no changes to these paragraphs;

(C) sexual assault, if:

(i) during the investigation of the offense biological matter is collected and the matter:

(a) has not yet been subjected to forensic DNA testing; or

(b) has been subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(ii) makes no changes to this subparagraph;

(2)-(7) makes no changes to these subdivisions.

SECTION 3. Amends Article 38.43, Code of Criminal Procedure, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires an entity or individual described by Subsection (b) (relating to the applicability of biological evidence requirements to certain person and entities) to ensure that biological evidence, other than the contents of a sexual assault examination kit subject to Subsection (c-1), collected pursuant to an investigation or prosecution of a felony offense or conduct constituting a felony offense is retained and preserved:

(1) for not less than 40 years, or until any applicable statute of limitations, rather than the applicable statute of limitations, has expired, if there is an unapprehended actor associated with the offense; or

(2) makes no changes to this subdivision.

(c-1) Requires an entity or individual described by Subsection (b) 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 is retained and preserved for not less than 40 years, or until any applicable statute of limitations has expired, whichever period is longer. Provides that this subsection applies regardless of whether a person has been apprehended for or charged with committing the offense.

SECTION 4. Amends Article 56.065, Code of Criminal Procedure, by amending Subsection (g) and adding Subsections (g-1), (g-2), and (g-3), as follows:

(g) Creates Subsections (g)(1) and (g-1) from existing text. Requires the Department of Public Safety of the State of Texas (DPS), consistent with Chapter 420 (Sexual Assault Prevention and Crisis Services), Government Code, to develop procedures for:

(1) the transfer, rather than transfer and preservation, of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of DPS, rather than the transfer and preservation of evidence collected under this article (Medical Examination For Sexual Assault Victim Who Has Not Reported Assault; Costs) to a crime laboratory or other suitable location designated by the public safety director of DPS;

(2) the preservation of the evidence by the receiving entity; and

(3) the notification of the victim of the offense before a planned destruction of evidence under this article.

(g-1) Requires an entity receiving evidence described by Subsection (g), subject to Subsection (g-2), to preserve the evidence until the earlier of, rather than requiring the receiving entity receiving evidence described by Subsection (g) to preserve the evidence until the earlier of:

(1) the fifth anniversary of the date on which evidence was collected, rather than the second anniversary of the date the evidence was collected; or

(2) makes no changes to this subdivision.

(g-2) Authorizes an entity receiving evidence described by Subsection (g) to destroy the evidence on the expiration of the entity's duty to preserve the evidence under Subsection (g-1)(1) only if:

(1) the entity provides written notification to the victim of the offense, in a trauma-informed manner, of the decision to destroy the evidence that includes:

(A) detailed instructions on how the victim may make a written objection to the decision, including contact information for the entity; or

(B) a standard form for the victim to complete and return to the entity to make a written objection to the decision; and

(2) 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 of the evidence.

(g-3) Requires the entity to document the entity's attempt to notify the victim under Subsection (g-2).

SECTION 5. Amends Section 420.003, Government Code, by amending Subdivisions (1-a), (1-d), and (8) and adding Subdivision (3), to redefine "active criminal case," "law enforcement agency," and "survivor" and to define "sex offense."

SECTION 6. Amends Section 420.033, Government Code, as follows:

Sec. 420.033. CHAIN OF CUSTODY. Requires medical, law enforcement, DPS, and laboratory personnel who handle evidence of a sexual assault or other sex offense under this chapter or other law, rather than medical, law enforcement, DPS, and laboratory personnel who handle sexual assault evidence under this chapter or other law, to maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

SECTION 7. Amends Subchapter B, Chapter 420, Government Code, by adding Section 420.035, as follows:

Sec. 420.035. EVIDENCE RELEASE. (a) Requires the facility or entity, if a health care facility or other entity that performs a medical examination to collect evidence of a sexual assault or other sex offense receives signed, written consent to release the evidence as provided by Section 420.0735 (Consent For Release of Certain Evidence), to promptly notify any law enforcement agency investigating the alleged offense.

(b) Requires a law enforcement agency that receives notice from a health care facility or other entity under Subsection (a), except as provided by Subsection (c), to take possession of the evidence not later than the seventh day after the date the law enforcement agency receives notice.

(c) 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.

(d) Provides that failure to comply with evidence collection procedures or requirements under this section does not affect the admissibility of the evidence in a trial of the offense.

SECTION 8. Amends Subchapter B-1, Chapter 420, Government Code, as follows:

SUBCHAPTER B-1. New heading: ANALYSIS OF EVIDENCE OF SEXUAL  
ASSAULT OR OTHER SEX OFFENSE

Sec. 420.041. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to physical evidence of a sexual assault or other sex offense, rather than sexual assault, that is collected with respect to an active criminal case.

Sec. 420.042. New heading: ANALYSIS OF EVIDENCE. (a) Requires a law enforcement agency that receives evidence of a sexual assault or other sex offense that is

collected under this chapter or other law, rather than a law enforcement agency that receives sexual assault evidence of a sexual assault collected under this chapter or other law, to submit that evidence to a public accredited crime laboratory for analysis not later than the 30th day after the date on which that evidence was received.

(b) Makes a conforming change to this subsection.

(c) Requires a public accredited crime laboratory, if sufficient personnel and resources are available, as soon as practicable but not later than the 90th day after the date on which the laboratory received the evidence, to complete its analysis of any evidence of a sexual assault or other sex offense that is submitted under this chapter or other law, rather than to complete its analysis of sexual assault evidence submitted under this chapter or other law.

(d) Makes no changes to this subsection.

(e) Provides that the failure of a law enforcement agency to take possession of evidence of a sexual assault or other sex offense within the period required by Section 420.035 or to submit that evidence within the period required by this section does not affect the authority of, rather than the failure of a law enforcement agency to submit sexual assault evidence, within the period required by this section does not affect the authority of:

(1) the agency to take possession of the evidence;

(2) creates this subdivision from existing text and makes a nonsubstantive change;

(3) redesignates existing Subdivision (2) as Subdivision (3) and makes a nonsubstantive change; or

(4) DPS or a public accredited crime laboratory authorized under Section 420.043(b) to compare the DNA profile obtained from the biological evidence with DNA profiles in the databases described by Section 420.043(a).

(f) Provides that failure to comply with the requirements under this section does not affect the admissibility of the evidence in a trial of the offense.

**Sec. 420.043. DATABASE COMPARISON REQUIRED.** (a) Creates this subsection from existing text. Requires DPS, not later than the 30th day after the date an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, except as provided by Subsection (b), rather than requiring DPS, on the request of any appropriate person and after an evidence collection kit containing biological evidence has been analyzed by an accredited crime laboratory and any necessary quality assurance reviews have been performed, to compare the DNA profile obtained from the biological evidence with DNA profiles maintained in certain databases.

(b) Authorizes the laboratory, instead of DPS, if the evidence kit containing biological evidence is analyzed by a public accredited crime laboratory, to perform the comparison of DNA profiles required under Subsection (a) provided that:

(1) 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;

(2) the law enforcement agency that submitted the evidence collection kit containing biological evidence gives permission; and

(3) the laboratory meets applicable federal and state requirements to access the databases described by Subsection (a).

(c) Authorizes DPS to use appropriated funds to employ personnel and purchase equipment and technology necessary to comply with the requirements of this section.

Sec. 420.044. GRANT FUNDS. 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.

Sec. 420.045. REPORT OF UNANALYZED EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. 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.

Sec. 420.046. NONCOMPLIANCE. Authorizes failure to comply with the requirements of this subchapter to be used to determine eligibility for receiving grant funds from DPS, the Office of the Governor, or another state agency.

Sec. 420.047. AUDIT OF UNANALYZED EVIDENCE OF SEXUAL ASSAULT OR OTHER SEX OFFENSE. (a) Requires a law enforcement agency in possession of an evidence collection kit that has not been submitted for laboratory analysis to:

(1) 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;

(2) 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

(3) if the law enforcement agency submits an evidence collection kit under Subdivision (2) to a laboratory other than a DPS laboratory, notify DPS of:

(A) the laboratory to which the evidence collection kit was sent; and

(B) any analysis completed by the laboratory to which the evidence collection kit was sent and the date on which the analysis was completed.

(b) 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:

(1) a projected timeline for the completion of laboratory analyses, in accordance with this chapter, of all unanalyzed evidence collection kits submitted under Subsection (a)(2);

(2) a request for any necessary funding to accomplish the analyses under Subdivision (1), including a request for a grant of money under Article 102.056(e) (relating to certain appropriation from the criminal justice planning account), Code of Criminal Procedure, if money is available under that subsection;

(3) as appropriate, application materials for requests made as required by Subdivision (2); and

(4) if DPS determines that outsourcing certain evidence collection kits is necessary for timely analyses of the kits:

(A) a proposal for determining which evidence collection kits should be outsourced; and

(B) a list of laboratories DPS determines are capable of completing the outsourced analyses.

(c) Requires DPS, not later than September 1, 2022, and to the extent that funding is available, to, as provided by Sections 420.042 (Analysis of Sexual Assault Evidence) and 420.043 (Database Comparison Required), analyze or contract for the analysis of, and complete the required database comparison, or ensure that a public accredited laboratory completed the comparison, regarding all evidence collection kits submitted to DPS under Subsection (a)(2).

(d) Provides that, notwithstanding Subsection (c), DPS is not required to use under this section 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 this chapter.

(e) Authorizes DPS, to supplement funding of laboratory analyses under this section, to solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by this chapter.

(f) Provides that this section expires September 1, 2023.

SECTION 9. Amends Section 323.005, Health and Safety Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Deletes existing Subparagraphs (4)(A)(i) and (ii) (relating to providing that certain law enforcement agencies will pay for certain forensic examinations). Requires DPS to develop a standard information form for sexual assault survivors that is required to include:

(1)–(3) makes no changes to these paragraphs;

(4) information regarding crime victims compensation, including:

(A) a statement that public agencies are responsible for paying for the forensic portion of an examination conducted under Article 56.06 (Forensic Medical Examination For Sexual Assault Victim Who Has Reported Assault; Costs) or 56.065, Code of Criminal Procedure, and for the evidence collection kit used in connection with the examination; and

(B) information regarding the reimbursement of the survivor for the medical portion of the examination, rather than reimbursement information for the medical portion of the examination; and

(5)–(7) makes no changes to these subdivisions.

(d) Requires a health care facility, in addition to providing the information form described by Subsection (a), to ensure that the information described by Subsection (a)(4)(A) is orally communicated to the survivor.

SECTION 10. Amends Chapter 323, Health and Safety Code, by adding Section 323.0052, as follows:

Sec. 323.0052. INFORMATION FORM FOR SEXUAL ASSAULT SURVIVORS WHO HAVE NOT REPORTED ASSAULT. (a) Requires DPS to develop a standard information form that, as described by Subsection (b), is to be provided to sexual assault survivors who have not given signed, written consent to a health care facility to release the evidence as provided by Section 420.0735 (Consent For Release of Certain Evidence), Government Code. Requires the form to include the following information:

(1) DPS's policy regarding storage of evidence of a sexual assault or other sex offense that is collected under Article 56.065, Code of Criminal Procedure, including:

(A) a statement that the evidence will be stored until the fifth anniversary of the date on which the evidence was collected before the evidence becomes eligible for destruction; and

(B) DPS's procedures regarding the notification of the survivor before a planned destruction of the evidence;

(2) a statement that the survivor is authorized to request the release of the evidence to a law enforcement agency and report a sexual assault or other sex offense to the agency at any time;

(3) the name, phone number, and e-mail address of the law enforcement agency with jurisdiction over the offense; and

(4) the name and phone number of a local rape crisis center.

(b) Requires a health care facility that provides care to a sexual assault survivor who has not given consent as described by Subsection (a) to provide the standard form developed under Subsection (a) to the survivor before the survivor is released from the facility.

SECTION 11. Provides that Article 12.01, Code of Criminal Procedure, as amended by this Act, does not apply to an offense if the prosecution of that offense becomes barred by limitation before the effective date of this Act. Provides that the prosecution of that offense remains barred as if this Act had not taken effect.

SECTION 12. Makes application of Article 38.43, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 13. (a) Makes application of Article 56.065, Code of Criminal Procedure, and Chapter 420, Government Code, as amended by this Act, prospective.

(b) Makes application of Section 420.042(c), Government Code, as amended by this Act, prospective to January 1, 2021.

(c) Provides that, notwithstanding Section 420.046, Government Code, as added by this Act, a law enforcement agency's or public accredited crime laboratory's failure to comply with the requirements of Subchapter B-1, Chapter 420, Government Code, as amended by this Act, 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 Subchapter B-1, Chapter 420, Government Code, as amended by this Act, beginning on that date.

(d) Provides that Section 420.047, Government Code, as added by this Act, applies to an evidence collection kit in possession of a law enforcement agency on September 1, 2019.

SECTION 14. Effective date: September 1, 2019.