

## AN ACT

relating to the collection, analysis, and preservation of sexual assault or DNA evidence.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.113, Government Code, is amended by adding Subsection (e) to read as follows:

(e) The department's failure to expunge a DNA record as required by this section may not serve as the sole grounds for a court in a criminal proceeding to exclude evidence based on or derived from the contents of that record.

SECTION 2. Section 420.003, Government Code, is amended by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (1-b), (1-c), and (1-d) to read as follows:

(1) "Accredited crime laboratory" means a crime laboratory, as that term is defined by Article 38.35, Code of Criminal Procedure, that has been accredited under Section 411.0205.

(1-a) "Active criminal case" means a case:

(A) in which:

(i) a sexual assault has been reported to a law enforcement agency; and

(ii) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(B) for which:

(i) the statute of limitations has not run with respect to the prosecution of the sexual assault; or

(ii) a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

(1-b) "Advocate" means a person who provides advocacy services as an employee or volunteer of a sexual assault program.

(1-c) "Department" means the Department of Public Safety of the State of Texas.

(1-d) "Law enforcement agency" means a state or local law enforcement agency in this state with jurisdiction over the investigation of a sexual assault.

(6) "Sexual assault nurse examiner" means a registered nurse who has completed a service-approved examiner training course described by Section 420.011.

SECTION 3. Subsection (e), Section 420.031, Government Code, is amended to read as follows:

(e) Evidence collected under this section may not be released unless a signed, [the survivor of the offense or a legal representative of the survivor signs a] written consent to release the evidence is obtained as provided by Section 420.0735.

SECTION 4. Subchapter B, Chapter 420, Government Code, is amended by adding Section 420.033 to read as follows:

Sec. 420.033. CHAIN OF CUSTODY. Medical, law enforcement, department, and laboratory personnel who handle sexual assault evidence under this chapter or other law shall maintain the chain of custody of the evidence from the time the evidence is collected until the time the evidence is destroyed.

SECTION 5. Chapter 420, Government Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. ANALYSIS OF SEXUAL ASSAULT EVIDENCE

Sec. 420.041. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to physical evidence of a sexual assault with respect to an active criminal case.

Sec. 420.042. ANALYSIS OF SEXUAL ASSAULT EVIDENCE. (a) A law enforcement agency that receives sexual assault evidence collected under this chapter or other law shall 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) A person who submits sexual assault evidence to a public accredited crime laboratory under this chapter or other law shall provide the following signed, written certification with each submission: "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation."

(c) If sufficient personnel and resources are available, a public accredited crime laboratory as soon as practicable shall complete its analysis of sexual assault evidence submitted under this chapter or other law.

(d) To ensure the expeditious completion of analyses, the department and other applicable public accredited crime laboratories may contract with private accredited crime laboratories as appropriate to perform those analyses, subject to the necessary quality assurance reviews by the public accredited crime laboratories.

(e) 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 submit the evidence to an accredited crime laboratory for analysis; or
- (2) an accredited crime laboratory to analyze the evidence or provide the results of that analysis to appropriate persons.

Sec. 420.043. DATABASE COMPARISON REQUIRED. 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, the department shall compare the DNA profile obtained from the biological evidence with DNA profiles maintained in:

- (1) state databases, including the DNA database maintained under Subchapter G, Chapter 411, if the amount and quality of the analyzed sample meet the requirements of the state database comparison policies; and
- (2) the CODIS DNA database established by the Federal Bureau of Investigation, if the amount and quality of the analyzed sample meet the requirements of the bureau's CODIS comparison policies.

SECTION 6. Section 420.071, Government Code, is amended to read as follows:

Sec. 420.072. EXCEPTIONS. (a) A communication, a [or] record, or evidence that is confidential under this subchapter may be disclosed in court or in an administrative proceeding if:

(1) the proceeding is brought by the survivor against an advocate or a sexual assault program or is a criminal proceeding or a certification revocation proceeding in which disclosure is relevant to the claims or defense of the advocate or sexual assault program; or

(2) the survivor or other appropriate person [a person authorized to act on behalf of the survivor] consents in writing to the disclosure [release of the confidential information] as

provided by Section 420.073 or ~~420.0735~~, as applicable.

(b) A communication, ~~a [or] record, or evidence~~ that is confidential under this subchapter may be disclosed only to:

(1) medical or law enforcement personnel if the advocate determines that there is a probability of imminent physical danger to any person for whom the communication, ~~[or] record, or evidence~~ is relevant or if there is a probability of immediate mental or emotional injury to the survivor;

(2) a governmental agency if the disclosure is required or authorized by law;

(3) a qualified person to the extent necessary for a management audit, financial audit, program evaluation, or research, except that a report of the research, audit, or evaluation may not directly or indirectly identify a survivor;

(4) a person authorized to receive the disclosure as a result of [who has the] written consent obtained under [of the survivor or of a person authorized to act on the survivor's behalf as provided by] Section 420.073 or 420.0735; or

(5) an advocate or a person under the supervision of a counseling supervisor who is participating in the evaluation or counseling of or advocacy for the survivor.

(c) A communication, ~~a [or] record, or evidence~~ that is confidential under this subchapter may not be disclosed to a parent or legal guardian of a survivor who is a minor if an advocate or a sexual assault program knows or has reason to believe that the parent or legal guardian of the survivor is a suspect in the sexual assault of the survivor.

SECTION 7. The heading to Section 420.073, Government Code, is amended to read as follows:

Sec. 420.073. CONSENT FOR RELEASE OF CERTAIN CONFIDENTIAL INFORMATION.

SECTION 8. Subsection (a), Section 420.073, Government Code, is amended to read as follows:

(a) Consent for the release of confidential information other than evidence contained in an evidence collection kit must be in writing and signed by the survivor, a parent or legal guardian if the survivor is a minor, a legal guardian if the survivor has been adjudicated incompetent to manage the survivor's personal affairs, an attorney ad litem appointed for the survivor, or a personal representative if the survivor is deceased. The written consent must specify:

- (1) the information or records covered by the release;
- (2) the reason or purpose for the release; and
- (3) the person to whom the information is to be

released.

SECTION 9. Subchapter F, Chapter 420, Government Code, is amended by adding Section 420.0735 to read as follows:

Sec. 420.0735. CONSENT FOR RELEASE OF CERTAIN EVIDENCE.

(a) Consent for the release of evidence contained in an evidence collection kit must be in writing and signed by:

(1) the survivor, if the survivor is 14 years of age or older;

(2) the survivor's parent or guardian or an employee of the Department of Family and Protective Services, if the survivor is younger than 14 years of age; or

(3) the survivor's personal representative, if the survivor is deceased.

(b) For purposes of Subsection (a)(1), a written consent signed by an incapacitated person, as that term is defined by Section 601, Texas Probate Code, is effective regardless of whether the incapacitated person's guardian, guardian ad litem, or other

legal agent signs the release. If the incapacitated person is unable to provide a signature and the guardian, guardian ad litem, or other legal agent is unavailable to sign the release, then the investigating law enforcement officer may sign the release.

(c) Consent for release under Subsection (a) applies only to evidence contained in an evidence collection kit and does not affect the confidentiality of any other confidential information under this chapter.

(d) The written consent must specify:

(1) the evidence covered by the release;

(2) the reason or purpose for the release; and

(3) the person to whom the evidence is to be released.

(e) A survivor or other person authorized to consent may withdraw consent to the release of evidence by submitting a written notice of withdrawal to the person or program to which consent was provided. Withdrawal of consent does not affect evidence disclosed before the date written notice of the withdrawal was received.

(f) A person who receives evidence made confidential by this chapter may not disclose the evidence except to the extent that disclosure is consistent with the authorized purposes for which the person obtained the evidence.

SECTION 10. Section 420.074, Government Code, is amended to read as follows:

Sec. 420.074. CRIMINAL SUBPOENA. Notwithstanding any other provision of this chapter, a person shall disclose a communication, a ~~or~~ record, or evidence that is confidential under this chapter for use in a criminal investigation or proceeding in response to a subpoena issued in accordance with law.

SECTION 11. Section 420.075, Government Code, is amended to read as follows:

Sec. 420.075. OFFENSE. A person commits an offense if the person intentionally or knowingly discloses a communication, a ~~or~~ record, or evidence that is confidential under this chapter, except as provided by this chapter. An offense under this section is a Class C misdemeanor.

SECTION 12. Subsections (f) and (g), Article 56.065, Code of Criminal Procedure, are amended to read as follows:

(f) The department, consistent with Chapter 420, Government Code, may develop procedures regarding the submission or collection of additional evidence of the alleged sexual assault other than through an examination as described by this article.

(g) The department, consistent with Chapter 420, Government Code, shall develop procedures for the transfer and preservation of evidence collected under this article to a crime laboratory or other suitable location designated by the public safety director of the department. The receiving entity shall preserve the evidence until the earlier of:

(1) the second anniversary of the date the evidence was collected; or

(2) the date on which ~~the victim or a legal representative of the victim signs a~~ written consent to release the evidence is obtained as provided by Section 420.0735, Government Code.

SECTION 13. Subsection (e), Article 102.056, Code of Criminal Procedure, is amended to read as follows:

(e) The legislature shall determine and appropriate the necessary amount from the criminal justice planning account to the criminal justice division of the governor's office for reimbursement in the form of grants to the Department of Public Safety of the State of Texas and other ~~local~~ law enforcement agencies for expenses incurred in performing duties imposed on

those agencies under Section [~~Sections~~] 411.1471 or Subchapter B-1, Chapter 420 [~~and 411.1472~~], Government Code, as applicable. On the first day after the end of a calendar quarter, a law enforcement agency incurring expenses described by this subsection in the previous calendar quarter shall send a certified statement of the costs incurred to the criminal justice division. The criminal justice division through a grant shall reimburse the law enforcement agency for the costs not later than the 30th day after the date the certified statement is received. If the criminal justice division does not reimburse the law enforcement agency before the 90th day after the date the certified statement is received, the agency is not required to perform duties imposed under Section [~~Sections~~] 411.1471 or Subchapter B-1, Chapter 420 [~~and 411.1472~~], Government Code, as applicable, until the agency has been compensated for all costs for which the [~~local law enforcement~~] agency has submitted a certified statement under this subsection.

SECTION 14. On or after the effective date of this Act, the Department of Public Safety of the State of Texas shall ensure that any unanalyzed sexual assault evidence that is in the possession of a law enforcement agency and that is collected:

(1) on or after August 1, 2011, is analyzed in accordance with Chapter 420, Government Code, as amended by this Act; and

(2) before August 1, 2011, is analyzed as nearly as possible to the time provided by Chapter 420, Government Code, as amended by this Act.

SECTION 15. (a) A law enforcement agency in possession of sexual assault evidence that has not been submitted for laboratory analysis shall:

(1) not later than October 15, 2011, submit to the Department of Public Safety of the State of Texas a list of the agency's active criminal cases for which sexual assault evidence has not yet been submitted for laboratory analysis;

(2) not later than April 1, 2012, and subject to the availability of laboratory storage space, submit, as appropriate, to the Department of Public Safety of the State of Texas or a public accredited crime laboratory, as defined by Section 420.003, Government Code, as amended by this Act, all sexual assault evidence pertaining to those active criminal cases that has not yet been submitted for laboratory analysis; and

(3) if the law enforcement agency submits evidence under Subdivision (2) of this subsection to a laboratory other than a Department of Public Safety of the State of Texas laboratory, notify the department of:

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

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

(b) Not later than February 15, 2013, the Department of Public Safety of the State of Texas shall 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 Chapter 420, Government Code, as amended by this Act, of all unanalyzed sexual assault evidence submitted under Subdivision (2), Subsection (a) of this section;

(2) a request for any necessary funding to accomplish the analyses under Subdivision (1) of this subsection, including a

request for a grant of money under Subsection (e), Article 102.056, Code of Criminal Procedure, as amended by this Act, if money is available under that subsection;

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

(4) if the department determines that outsourcing of a portion of the submitted evidence is necessary for timely analyses of the evidence:

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

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

(c) Not later than September 1, 2014, and to the extent that funding is available, the Department of Public Safety of the State of Texas shall, as provided by Sections 420.042 and 420.043, Government Code, as added by this Act, analyze or contract for the analysis of, and complete the required database comparison regarding, all sexual assault evidence submitted to the department under Subdivision (2), Subsection (a) of this section.

(d) Notwithstanding Subsection (c) of this section, the Department of Public Safety of the State of Texas 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 the department has historically used in a state fiscal year to fund laboratory analyses of sexual assault evidence under Chapter 420, Government Code, as amended by this Act.

(e) To supplement funding of laboratory analyses under this section, the Department of Public Safety of the State of Texas may solicit and receive grants, gifts, or donations of money from the federal government or private sources as described by Chapter 420, Government Code.

SECTION 16. Notwithstanding Chapter 420, Government Code, as amended by this Act, and Section 14 of this Act, this Act does not apply to sexual assault evidence collected before September 1, 1996.

SECTION 17. (a) Except as provided by Subsection (e), Article 102.056, Code of Criminal Procedure, as amended by this Act, Section 420.007, Government Code, and Subsection (d), Section 15 of this Act, state funds may not be appropriated for the purpose of implementing this Act.

(b) Notwithstanding any other law, the Department of Public Safety of the State of Texas may not use legislative appropriations to discharge any additional duties imposed by this Act on the department.

SECTION 18. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 1636 passed the Senate on May 5, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

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I hereby certify that S.B. No. 1636 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

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Chief Clerk of the House

Approved:

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Date

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Governor

