BILL ANALYSIS

H.B. 1011
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Last session, the Legislature passed S.B. 3 which established a procedure for the testing of post-conviction DNA. The bill provided an opportunity for biological evidence to be tested -- post-conviction-- in cases where testing or technology was not available at the time of the trial. Under the law, the following conditions must exist:

1. biological evidence exists
2. evidence is in a condition that it can be tested
3. identity of perpetrator is or was an issue at trial
4. type of case where DNA would make a difference

As with any major piece of legislation, issues/problems/concerns arise after passage which require clarification or fine-tuning. H.B. 1011 proposes to clarify the intent of S.B. 3 and ensure efficient and effective use of the post-conviction DNA law.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1011 makes the following changes:

1. We have heard from a number of counties and judges that the courts are being "flooded" with letters from inmates asking for DNA testing. The requests provide no information as to whether post-conviction DNA would be appropriate. Unclear as to what is the appropriate course of action, the courts are appointing lawyers (primarily at county expense as most inmates are indigent) to investigate and file motions on all cases. This bill would clarify that the court is required to appoint a lawyer when it finds reasonable grounds for the motion to be filed and the court determines that the person is indigent. This change will ensure that those who have a viable case will be receiving the necessary local and state resources while not wasting time and money on frivolous claims.

2. Under the current law, in order to qualify for DNA testing, the defendant must establish by a preponderance of the evidence that "a reasonable probability exists that the person would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing."

   This provision was litigated before the Court of Criminal Appeals in <u>Kutzner v. State</u>, 75 S.W. 3d 427 (Tex. Crim. App. 2002). The Court's opinion in <u>Kutzner</u> highlighted the need for clarification by the Legislature as to how Chapter 64 is to be used. Specifically, the Legislature intended for Chapter 64 to be used as a motions procedure which, but for the fact that it appears after conviction, works like a pretrial motion. The Legislature did

not intend to introduce procedures and burdens which mirror the traditional post-trial procedure of writs of habeas corpus.

In order to make its intent clearer, H.B. 1011 makes the following changes to Article 64.03:

a. The bill clarifies that the standard of proof with regard to getting a DNA test is "preponderance of the evidence." By taking out the "reasonable probability" language, the intent is to clarify that the defendant does not have to meet two burdens. Despite the reasoning in Kutzner, the Legislature did not intend for the defendant to have to prove "actual innocence" (a principle under habeas law) in order to meet his burden to have the test done. The defendant must prove that, had the results of the DNA test been available at trial, there is a 51% chance that the defendant would not have been convicted.

b. The bill further clarifies that the defendant does not have to meet a two-prong test of not having been prosecuted or convicted. Rather, the intent was that the person would have to prove by a preponderance of the evidence that he would not have been convicted. Accordingly, the bill strikes the "prosecuted or" language.

3. There was also some confusion in Kutzner as to what sections under the law could be appealed. H.B. 1011 makes it clear that both the request for a test (based on legal or factual determinations) and the findings by the trial court are appealable. The bill corrects an inadvertent mistake which provided that all capital cases had a direct appeal to the Court of Criminal Appeals. The original intent was only for death penalty cases to have this direct appeal -- as they do in all other cases. H.B.1011 makes this change as well as giving the prosecution the right to appeal.

EFFECTIVE DATE

September 1, 2003.