

By: Hochberg, Keel, Pena, et al.

H.B. No. 1011

A BILL TO BE ENTITLED

AN ACT

relating to postconviction DNA testing.

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

SECTION 1. Article 64.01(c), Code of Criminal Procedure, is amended to read as follows:

(c) A convicted person is entitled to counsel during a proceeding under this chapter. The convicting court shall appoint counsel for the convicted person if the [If a convicted] person informs the [convicting] court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for a motion to be filed, and [if] the court determines that the person is indigent[~~, the court shall appoint counsel for the person~~]. Compensation of counsel is provided in the same manner as is required by:

(1) Article 11.071 for the representation of a petitioner convicted of a capital felony; and

(2) Chapter 26 for the representation in a habeas corpus hearing of an indigent defendant convicted of a felony other than a capital felony.

SECTION 2. Chapter 64, Code of Criminal Procedure, is amended by adding Article 64.011 to read as follows:

Art. 64.011. GUARDIANS AND OTHER REPRESENTATIVES. (a) In this chapter, "guardian of a convicted person" means a person who is the legal guardian of the convicted person, whether the legal

1 relationship between the guardian and convicted person exists  
2 because of the age of the convicted person or because of the  
3 physical or mental incompetency of the convicted person.

4 (b) A guardian of a convicted person may submit motions for  
5 the convicted person under this chapter and is entitled to counsel  
6 otherwise provided to a convicted person under this chapter.

7 SECTION 3. Article 64.03(a), Code of Criminal Procedure, is  
8 amended to read as follows:

9 (a) A convicting court may order forensic DNA testing under  
10 this chapter only if:

11 (1) the court finds that:

12 (A) the evidence:

13 (i) still exists and is in a condition  
14 making DNA testing possible; and

15 (ii) has been subjected to a chain of  
16 custody sufficient to establish that it has not been substituted,  
17 tampered with, replaced, or altered in any material respect; and

18 (B) identity was or is an issue in the case; and

19 (2) the convicted person establishes by a  
20 preponderance of the evidence that:

21 (A) [~~a reasonable probability exists that~~] the  
22 person would not have been [~~prosecuted or~~] convicted if exculpatory  
23 results had been obtained through DNA testing; and

24 (B) the request for the proposed DNA testing is  
25 not made to unreasonably delay the execution of sentence or  
26 administration of justice.

27 SECTION 4. Article 64.04, Code of Criminal Procedure, is

1 amended to read as follows:

2 Art. 64.04. FINDING. After examining the results of  
3 testing under Article 64.03, the convicting court shall hold a  
4 hearing and make a finding as to whether [~~the results are favorable~~  
5 ~~to the convicted person. For the purposes of this article, results~~  
6 ~~are favorable if~~], had the results been available [~~before or~~]  
7 during the trial of the offense, it is reasonably probable that the  
8 person would not have been [~~prosecuted or~~] convicted.

9 SECTION 5. Article 64.05, Code of Criminal Procedure, is  
10 amended to read as follows:

11 Art. 64.05. APPEALS. An appeal [~~of a finding~~] under this  
12 chapter [Article 64.03 or 64.04] is to a court of appeals in the  
13 same manner as an appeal of any other criminal matter, except that  
14 if the convicted person was convicted in a capital case and was  
15 sentenced to death, the appeal [~~of the finding~~] is a direct appeal  
16 to the court of criminal appeals.

17 SECTION 6. Article 43.141(d), Code of Criminal Procedure,  
18 is amended to read as follows:

19 (d) The convicting court may modify or withdraw the order of  
20 the court setting a date for execution in a death penalty case if  
21 the court determines that additional proceedings are necessary on:

22 (1) a subsequent or untimely application for a writ of  
23 habeas corpus filed under Article 11.071; or

24 (2) a motion for forensic testing of DNA evidence  
25 submitted under Chapter 64.

26 SECTION 7. Article 44.01(a), Code of Criminal Procedure, is  
27 amended to read as follows:

1 (a) The state is entitled to appeal an order of a court in a  
2 criminal case if the order:

3 (1) dismisses an indictment, information, or  
4 complaint or any portion of an indictment, information, or  
5 complaint;

6 (2) arrests or modifies a judgment;

7 (3) grants a new trial;

8 (4) sustains a claim of former jeopardy; ~~or~~

9 (5) grants a motion to suppress evidence, a  
10 confession, or an admission, if jeopardy has not attached in the  
11 case and if the prosecuting attorney certifies to the trial court  
12 that the appeal is not taken for the purpose of delay and that the  
13 evidence, confession, or admission is of substantial importance in  
14 the case; or

15 (6) is issued under Chapter 64.

16 SECTION 8. The change in law made by this Act applies only  
17 to a convicted person who on or after the effective date of this Act  
18 submits a motion for forensic DNA testing of evidence under Article  
19 64.01, Code of Criminal Procedure, as amended by this Act. A  
20 convicted person who submits a motion under Article 64.01 before  
21 the effective date of this Act is covered by the law in effect when  
22 the motion was submitted, and the former law is continued in effect  
23 for that purpose.

24 SECTION 9. This Act takes effect September 1, 2003.