

By: Hochberg

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

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

(1) the court finds that:

1 (A) the evidence:
2 (i) still exists and is in a condition
3 making DNA testing possible; and
4 (ii) has been subjected to a chain of
5 custody sufficient to establish that it has not been substituted,
6 tampered with, replaced, or altered in any material respect; and
7 (B) identity was or is an issue in the case; and
8 (2) the convicted person establishes by a
9 preponderance of the evidence that:

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

13 (B) the request for the proposed DNA testing is
14 not made to unreasonably delay the execution of sentence or
15 administration of justice.

16 SECTION 3. Article 64.04, Code of Criminal Procedure, is
17 amended to read as follows:

18 Art. 64.04. FINDING. After examining the results of
19 testing under Article 64.03, the convicting court shall hold a
20 hearing and make a finding as to whether the results are favorable
21 to the convicted person. For the purposes of this article, results
22 are favorable if, had the results been available [~~before or~~] during
23 the trial of the offense, it is reasonably probable that the person
24 would not have been [~~prosecuted or~~] convicted.

25 SECTION 4. Article 64.05, Code of Criminal Procedure, is
26 amended to read as follows:

27 Art. 64.05. APPEALS. An appeal [~~of a finding~~] under this

1 chapter [Article 64.03 or 64.04] is to a court of appeals in the
2 same manner as an appeal of any other criminal matter, except that
3 if the convicted person was convicted in a capital case and was
4 sentenced to death, the appeal of the finding is a direct appeal to
5 the court of criminal appeals.

6 SECTION 5. Article 44.01(a), Code of Criminal Procedure, is
7 amended to read as follows:

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

10 (1) dismisses an indictment, information, or
11 complaint or any portion of an indictment, information, or
12 complaint;

13 (2) arrests or modifies a judgment;

14 (3) grants a new trial;

15 (4) sustains a claim of former jeopardy; ~~[or]~~

16 (5) grants a motion to suppress evidence, a
17 confession, or an admission, if jeopardy has not attached in the
18 case and if the prosecuting attorney certifies to the trial court
19 that the appeal is not taken for the purpose of delay and that the
20 evidence, confession, or admission is of substantial importance in
21 the case; or

22 (6) is issued under Chapter 64.

23 SECTION 6. The change in law made by this Act applies only
24 to a convicted person who on or after the effective date of this Act
25 submits a motion for forensic DNA testing of evidence under Article
26 64.01, Code of Criminal Procedure, as amended by this Act. A
27 convicted person who submits a motion under Article 64.01 before

1 the effective date of this Act is covered by the law in effect when
2 the motion was submitted, and the former law is continued in effect
3 for that purpose.

4 SECTION 7. This Act takes effect September 1, 2003.