

1-1 By: Hochberg, Keel, Pena, et al. H.B. No. 1011  
1-2 (Senate Sponsor - Duncan)  
1-3 (In the Senate - Received from the House April 2, 2003;  
1-4 April 7, 2003, read first time and referred to Committee on  
1-5 Criminal Justice; April 16, 2003, rereferred to Committee on  
1-6 Administration; April 23, 2003, reported favorably by the  
1-7 following vote: Yeas 5, Nays 0; April 23, 2003, sent to printer.)

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to postconviction DNA testing.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 64.01(c), Code of Criminal Procedure, is  
1-13 amended to read as follows:

1-14 (c) A convicted person is entitled to counsel during a  
1-15 proceeding under this chapter. The convicting court shall appoint  
1-16 counsel for the convicted person if the ~~[If a convicted]~~ person  
1-17 informs the ~~[convicting]~~ court that the person wishes to submit a  
1-18 motion under this chapter, the court finds reasonable grounds for a  
1-19 motion to be filed, and ~~[if]~~ the court determines that the person is  
1-20 indigent~~[, the court shall appoint counsel for the person]~~.  
1-21 Compensation of counsel is provided in the same manner as is  
1-22 required by:

1-23 (1) Article 11.071 for the representation of a  
1-24 petitioner convicted of a capital felony; and

1-25 (2) Chapter 26 for the representation in a habeas  
1-26 corpus hearing of an indigent defendant convicted of a felony other  
1-27 than a capital felony.

1-28 SECTION 2. Chapter 64, Code of Criminal Procedure, is  
1-29 amended by adding Article 64.011 to read as follows:

1-30 Art. 64.011. GUARDIANS AND OTHER REPRESENTATIVES. (a) In  
1-31 this chapter, "guardian of a convicted person" means a person who is  
1-32 the legal guardian of the convicted person, whether the legal  
1-33 relationship between the guardian and convicted person exists  
1-34 because of the age of the convicted person or because of the  
1-35 physical or mental incompetency of the convicted person.

1-36 (b) A guardian of a convicted person may submit motions for  
1-37 the convicted person under this chapter and is entitled to counsel  
1-38 otherwise provided to a convicted person under this chapter.

1-39 SECTION 3. Article 64.03(a), Code of Criminal Procedure, is  
1-40 amended to read as follows:

1-41 (a) A convicting court may order forensic DNA testing under  
1-42 this chapter only if:

1-43 (1) the court finds that:

1-44 (A) the evidence:

1-45 (i) still exists and is in a condition  
1-46 making DNA testing possible; and

1-47 (ii) has been subjected to a chain of  
1-48 custody sufficient to establish that it has not been substituted,  
1-49 tampered with, replaced, or altered in any material respect; and

1-50 (B) identity was or is an issue in the case; and

1-51 (2) the convicted person establishes by a  
1-52 preponderance of the evidence that:

1-53 (A) ~~[a reasonable probability exists that]~~ the  
1-54 person would not have been ~~[prosecuted or]~~ convicted if exculpatory  
1-55 results had been obtained through DNA testing; and

1-56 (B) the request for the proposed DNA testing is  
1-57 not made to unreasonably delay the execution of sentence or  
1-58 administration of justice.

1-59 SECTION 4. Article 64.04, Code of Criminal Procedure, is  
1-60 amended to read as follows:

1-61 Art. 64.04. FINDING. After examining the results of  
1-62 testing under Article 64.03, the convicting court shall hold a  
1-63 hearing and make a finding as to whether ~~[the results are favorable~~  
1-64 ~~to the convicted person. For the purposes of this article, results~~

2-1 ~~are favorable if~~], had the results been available [~~before or~~]  
2-2 during the trial of the offense, it is reasonably probable that the  
2-3 person would not have been [~~prosecuted or~~] convicted.

2-4 SECTION 5. Article 64.05, Code of Criminal Procedure, is  
2-5 amended to read as follows:

2-6 Art. 64.05. APPEALS. An appeal [~~of a finding~~] under this  
2-7 chapter [Article 64.03 or 64.04] is to a court of appeals in the  
2-8 same manner as an appeal of any other criminal matter, except that  
2-9 if the convicted person was convicted in a capital case and was  
2-10 sentenced to death, the appeal [~~of the finding~~] is a direct appeal  
2-11 to the court of criminal appeals.

2-12 SECTION 6. Article 43.141(d), Code of Criminal Procedure,  
2-13 is amended to read as follows:

2-14 (d) The convicting court may modify or withdraw the order of  
2-15 the court setting a date for execution in a death penalty case if  
2-16 the court determines that additional proceedings are necessary on:

2-17 (1) a subsequent or untimely application for a writ of  
2-18 habeas corpus filed under Article 11.071; or

2-19 (2) a motion for forensic testing of DNA evidence  
2-20 submitted under Chapter 64.

2-21 SECTION 7. Article 44.01(a), Code of Criminal Procedure, is  
2-22 amended to read as follows:

2-23 (a) The state is entitled to appeal an order of a court in a  
2-24 criminal case if the order:

2-25 (1) dismisses an indictment, information, or  
2-26 complaint or any portion of an indictment, information, or  
2-27 complaint;

2-28 (2) arrests or modifies a judgment;

2-29 (3) grants a new trial;

2-30 (4) sustains a claim of former jeopardy; [~~or~~]

2-31 (5) grants a motion to suppress evidence, a  
2-32 confession, or an admission, if jeopardy has not attached in the  
2-33 case and if the prosecuting attorney certifies to the trial court  
2-34 that the appeal is not taken for the purpose of delay and that the  
2-35 evidence, confession, or admission is of substantial importance in  
2-36 the case; or

2-37 (6) is issued under Chapter 64.

2-38 SECTION 8. The change in law made by this Act applies only  
2-39 to a convicted person who on or after the effective date of this Act  
2-40 submits a motion for forensic DNA testing of evidence under Article  
2-41 64.01, Code of Criminal Procedure, as amended by this Act. A  
2-42 convicted person who submits a motion under Article 64.01 before  
2-43 the effective date of this Act is covered by the law in effect when  
2-44 the motion was submitted, and the former law is continued in effect  
2-45 for that purpose.

2-46 SECTION 9. This Act takes effect September 1, 2003.

2-47 \* \* \* \* \*