

By: Duncan S.B. No. 543
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Substitute by the following vote: Yeas 5, Nays 0; March 24, 2003,
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COMMITTEE SUBSTITUTE FOR S.B. No. 543 By: Ellis

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. Subsection (c), Article 64.01, 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
relationship between the guardian and convicted person exists
because of the age of the convicted person or because of the
physical or mental incompetency of the convicted person.

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

SECTION 3. Subsection (a), Article 64.03, 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:

(A) the evidence:

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

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

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

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

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

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

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

Art. 64.04. FINDING. After examining the results of
testing under Article 64.03, the convicting court shall hold a
hearing and make a finding as to whether ~~[the results are favorable]~~

2-1 ~~to the convicted person. For the purposes of this article, results~~
 2-2 ~~are favorable if~~, had the results been available [~~before or~~]
 2-3 during the trial of the offense, it is reasonably probable that the
 2-4 person would not have been [~~prosecuted or~~] convicted.

2-5 SECTION 5. Article 64.05, Code of Criminal Procedure, is
 2-6 amended to read as follows:

2-7 Art. 64.05. APPEALS. An appeal [~~of a finding~~] under this
 2-8 chapter [Article 64.03 or 64.04] is to a court of appeals in the
 2-9 same manner as an appeal of any other criminal matter, except that
 2-10 if the convicted person was convicted in a capital case and was
 2-11 sentenced to death, the appeal [~~of the finding~~] is a direct appeal
 2-12 to the court of criminal appeals.

2-13 SECTION 6. Subsection (a), Article 44.01, Code of Criminal
 2-14 Procedure, is amended to read as follows:

2-15 (a) The state is entitled to appeal an order of a court in a
 2-16 criminal case if the order:

2-17 (1) dismisses an indictment, information, or
 2-18 complaint or any portion of an indictment, information, or
 2-19 complaint;

2-20 (2) arrests or modifies a judgment;

2-21 (3) grants a new trial;

2-22 (4) sustains a claim of former jeopardy; [~~or~~]

2-23 (5) grants a motion to suppress evidence, a
 2-24 confession, or an admission, if jeopardy has not attached in the
 2-25 case and if the prosecuting attorney certifies to the trial court
 2-26 that the appeal is not taken for the purpose of delay and that the
 2-27 evidence, confession, or admission is of substantial importance in
 2-28 the case; or

2-29 (6) is issued under Chapter 64.

2-30 SECTION 7. The change in law made by this Act applies only
 2-31 to a convicted person who on or after the effective date of this Act
 2-32 submits a motion for forensic DNA testing of evidence under Article
 2-33 64.01, Code of Criminal Procedure, as amended by this Act. A
 2-34 convicted person who submits a motion under Article 64.01, Code of
 2-35 Criminal Procedure, before the effective date of this Act is
 2-36 covered by the law in effect when the motion was submitted, and the
 2-37 former law is continued in effect for that purpose.

2-38 SECTION 8. This Act takes effect September 1, 2003.

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