

BILL ANALYSIS

C.S.H.B. 681
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The current law in the Code of Criminal Procedure is ambiguous regarding a judge's authority to order additional forensic testing, which has made some judges reluctant to order testing. In addition, the Department of Public Safety (DPS) currently has a backlog of orders for DNA testing.

In January of 2006, the Governor's Criminal Justice Advisory Council issued recommendations for improving the criminal justice system to address these issues. C.S.H.B 681 implements the Council's recommendations regarding post-conviction forensic testing by explicitly authorizing judges to order post-conviction forensic testing and specifying who will pay for forensic tests. The bill also expands the circumstances under which a non-DPS laboratory may conduct DNA testing.

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

C.S.H.B 681 amends the Code of Criminal Procedure by explicitly authorizing courts to order postconviction forensic testing in certain circumstances. The bill provides that the state is required to pay the cost of the additional forensic testing in certain circumstances. However, the applicant of a writ of habeas corpus, who seeks relief from a felony judgment imposing a penalty other than death, is required to pay the cost of the additional forensic testing if the applicant retains counsel for this purpose. For these purposes, "additional forensic testing" does not include forensic DNA testing. Application of this Act applies only to an application for a writ of habeas corpus filed on or after the effective date of this Act. An application filed before the effective date of this Act is covered by law in effect when the application was filed, and the former law is continued in effect for that purpose.

C.S.H.B. 681 also authorizes courts to allow postconviction DNA testing to be conducted by a laboratory other than a DPS laboratory or a laboratory under contract with DPS if a party can show good cause. Unless good cause for payment of the cost of ordering the postconviction DNA testing is shown, the State of Texas is not liable for the cost. Application of this Act applies only to a motion for forensic testing filed on or after the effective date of this Act. A motion filed before the effective date of this Act is covered by law in effect when the motion was filed, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 681 clarifies that "additional forensic testing" does not include forensic DNA testing for purposes of postconviction forensic testing in which an applicant has filed a writ of habeas corpus and who seeks relief from a felony judgment imposing a penalty other than death. The substitute also changes the caption from "relating to postconviction DNA testing" to "relating to postconviction forensic testing."

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