

## **BILL ANALYSIS**

C.S.S.B. 499  
By: Duncan  
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.S.B 499 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 existing post conviction DNA statute, Chapter 64 (Motion for Forensic DNA Testing), Code of Criminal Procedure, also requires clarification. C.S.S.B. 499 clarifies that a defendant's confession does not automatically preclude a defendant from getting a DNA test under Chapter 64 for the simple reason that "identity is not an issue." The bill authorizes a defendant to have the test administered in a laboratory that is not a Department of Public Safety (DPS) laboratory, or a laboratory under contract with DPS, and specifies who pays for the cost of such testing. It also requires a counsel to be appointed and an attorney to respond to a motion for forensic DNA testing within certain time periods.

### **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.S.B 499 amends the Code of Criminal Procedure (CCP) by explicitly authorizing courts to order additional 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 except that 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 purposes of filing an application. For these purposes, "additional forensic testing" does not include forensic DNA testing as provided for in Chapter 64, CCP (Motion for Forensic DNA Testing).

The bill would require counsel to be appointed under Article 64.01(c), CCP, not later than the 45th day after the date the court finds reasonable grounds or the date the court determines that the person is indigent, whichever is later. The bill also requires the convicting court, on receipt of a motion, to require the state's attorney to either deliver the evidence to the court, along with a description of the condition of the evidence, or explain in writing to the court why the state cannot deliver the evidence to the court in response to the motion not later than the 60th day after the date the motion is served on the state's attorney. Additionally, it authorizes the convicting court to proceed under Article 64.03, CCP, after the response period described by Article 64.02(a)(2), CCP, has expired, regardless of whether the state's attorney submitted a response under this subsection.

The bill authorizes a convicted person who pleaded guilty or nolo contendere or, whether before or after conviction, made a confession or similar admission in the case to submit a motion under Chapter 64, CCP (Motion for Forensic DNA Testing). The convicting court is prohibited from

finding that identity was not an issue in the case solely on the basis of that plea, confession, or admission, as applicable.

The bill authorizes the court to order a forensic DNA test to be conducted on the request of the convicted person, rather than an agreement of the parties, by another laboratory if it is accredited under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code.

The bill provides that if the convicting court orders that the forensic DNA testing be conducted by a laboratory other than a Department of Public Safety (DPS) laboratory or a DPS contracted laboratory, the state is not liable for the cost of testing unless good cause for payment of that cost has been shown. A political subdivision of the state is not liable for the cost of testing, regardless of whether good cause for payment of that cost has been shown. If the court orders that the testing be conducted by a DPS laboratory or a DPS contracted laboratory, the court is required to include in the order requirements that the DNA testing be conducted in a timely and efficient manner under reasonable conditions designed to protect the integrity of the evidence and the testing process, among others.

Section 3(d), Article 11.07, CCP, as amended by 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 the law in effect when the application was filed, and the former law is continued in effect for that purpose.

Chapter 64, CCP, as amended by this Act, applies only to a motion for forensic DNA testing filed on or after the effective date of this Act. A motion filed before the effective date of this Act is covered by the 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**

The substitute adds the provision that explicitly authorizes courts to order additional postconviction forensic testing in certain circumstances. The substitute provides that the state is required to pay the cost of the additional forensic testing in certain circumstances except that 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 purposes of filing an application. For these purposes, "additional forensic testing" does not include forensic DNA testing as provided for in Chapter 64, CCP (Motion for Forensic DNA Testing). The original bill did not include any of these provisions.

The substitute also requires the convicting court, on receipt of a motion, to require the state's attorney to either deliver the evidence to the court, along with a description of the condition of the evidence, or explain in writing to the court why the state cannot deliver the evidence to the court in response to the motion not later than the 60th day after the date the motion is served on the state's attorney; the original allowed the state's attorney no later than the 30th day.

The substitute adds that if the convicting court orders that the forensic DNA testing be conducted by a laboratory other than a Department of Public Safety (DPS) laboratory or a DPS contracted laboratory, the state is not liable for the cost of testing unless good cause for payment of that cost has been shown. The substitute also adds that a political subdivision of the state is not liable for the cost of testing, regardless of whether good cause for payment of that cost has been shown.

The substitute changed the effective date to September 1, 2007 from the original bill which provided for immediate effect if the Act received the necessary votes, and if not, then it takes effect September 1, 2007.