

AN ACT

relating to postconviction forensic testing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3, Article 11.07, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, additional forensic testing, and hearings, as well as using personal recollection. The state shall pay the cost of additional forensic testing ordered under this subsection, except that the applicant shall pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article. ~~The~~ ~~[Also, the]~~ convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of

1 the person designated to make them, the clerk of the convicting
2 court shall immediately transmit to the Court of Criminal Appeals,
3 under one cover, the application, any answers filed, any motions
4 filed, transcripts of all depositions and hearings, any affidavits,
5 and any other matters such as official records used by the court in
6 resolving issues of fact.

7 (e) For the purposes of Subsection (d), "additional
8 forensic testing" does not include forensic DNA testing as provided
9 for in Chapter 64.

10 SECTION 2. Article 64.01(c), Code of Criminal Procedure, is
11 amended to read as follows:

12 (c) A convicted person is entitled to counsel during a
13 proceeding under this chapter. The convicting court shall appoint
14 counsel for the convicted person if the person informs the court
15 that the person wishes to submit a motion under this chapter, the
16 court finds reasonable grounds for a motion to be filed, and the
17 court determines that the person is indigent. Counsel must be
18 appointed under this subsection not later than the 45th day after
19 the date the court finds reasonable grounds or the date the court
20 determines that the person is indigent, whichever is later.

21 Compensation of counsel is provided in the same manner as is
22 required by:

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

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

1 SECTION 3. Article 64.02, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 64.02. NOTICE TO STATE; RESPONSE. (a) On receipt of
4 the motion, the convicting court shall:

5 (1) provide the attorney representing the state with a
6 copy of the motion; and

7 (2) require the attorney representing the state to
8 take one of the following actions in response to the motion not
9 later than the 60th day after the date the motion is served on the
10 attorney representing the state:

11 (A) deliver the evidence to the court, along with
12 a description of the condition of the evidence; or

13 (B) explain in writing to the court why the state
14 cannot deliver the evidence to the court.

15 (b) The convicting court may proceed under Article 64.03
16 after the response period described by Subsection (a)(2) has
17 expired, regardless of whether the attorney representing the state
18 submitted a response under that subsection.

19 SECTION 4. Articles 64.03(b), (c), and (d), Code of
20 Criminal Procedure, are amended to read as follows:

21 (b) A convicted person who pleaded guilty or nolo contendere
22 or, whether before or after conviction, made a confession or
23 similar admission in the case may submit a motion under this
24 chapter, and the convicting court is prohibited from finding that
25 identity was not an issue in the case solely on the basis of that
26 plea, confession, or admission, as applicable.

27 (c) If the convicting court finds in the affirmative the

1 issues listed in Subsection (a)(1) and the convicted person meets
2 the requirements of Subsection (a)(2), the court shall order that
3 the requested forensic DNA testing be conducted. The court may
4 order the test to be conducted by:

5 (1) the Department of Public Safety;

6 (2) ~~[by]~~ a laboratory operating under a contract
7 with the department; ~~;~~ [] or

8 (3) [] on the request of the convicted person
9 ~~[agreement of the parties]~~, [by] another laboratory if that
10 laboratory is accredited under Section 411.0205, Government Code.

11 (d) If the convicting court orders that the forensic DNA
12 testing be conducted by a laboratory other than a Department of
13 Public Safety laboratory or a laboratory under contract with the
14 department, the State of Texas is not liable for the cost of testing
15 under this subsection unless good cause for payment of that cost has
16 been shown. A political subdivision of the state is not liable for
17 the cost of testing under this subsection, regardless of whether
18 good cause for payment of that cost has been shown. If the court
19 orders that the testing be conducted by a laboratory described by
20 this subsection, the court shall include in the order requirements
21 that:

22 (1) the DNA testing be conducted in a timely and
23 efficient manner under reasonable conditions designed to protect
24 the integrity of the evidence and the testing process;

25 (2) the DNA testing employ a scientific method
26 sufficiently reliable and relevant to be admissible under Rule 702,
27 Texas Rules of Evidence; and

1 (3) on completion of the DNA testing, the results of
2 the testing and all data related to the testing required for an
3 evaluation of the test results be immediately filed with the court
4 and copies of the results and data be served on the convicted person
5 and the attorney representing the state.

6 SECTION 5. (a) Section 3(d), Article 11.07, Code of
7 Criminal Procedure, as amended by this Act, applies only to an
8 application for a writ of habeas corpus filed on or after the
9 effective date of this Act. An application filed before the
10 effective date of this Act is covered by the law in effect when the
11 application was filed, and the former law is continued in effect for
12 that purpose.

13 (b) Chapter 64, Code of Criminal Procedure, as amended by
14 this Act, applies only to a motion for forensic DNA testing filed on
15 or after the effective date of this Act. A motion filed before the
16 effective date of this Act is covered by the law in effect when the
17 motion was filed, and the former law is continued in effect for that
18 purpose.

19 SECTION 6. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 681 was passed by the House on April 18, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 681 on May 24, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 681 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor