

By: Hochberg, et al.

H.B. No. 681

Substitute the following for H.B. No. 681:

By: Pena

C.S.H.B. No. 681

A BILL TO BE ENTITLED

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. Articles 64.03(c) and (d), Code of Criminal
11 Procedure, are amended to read as follows:

12 (c) If the convicting court finds in the affirmative the
13 issues listed in Subsection (a)(1) and the convicted person meets
14 the requirements of Subsection (a)(2), the court shall order that
15 the requested forensic DNA testing be conducted. The court may
16 order the test to be conducted by the Department of Public Safety,
17 by a laboratory operating under a contract with the department, or,
18 on agreement of the parties or for good cause shown, by another
19 laboratory.

20 (d) If the convicting court orders that the forensic DNA
21 testing be conducted by a laboratory other than a Department of
22 Public Safety laboratory or a laboratory under contract with the
23 department, the State of Texas is not liable for the cost of testing
24 unless good cause for payment of that cost has been shown. If the
25 court orders that the testing be conducted by a laboratory
26 described by this subsection, the court shall include in the order
27 requirements that:

1 (1) the DNA testing be conducted under reasonable
2 conditions designed to protect the integrity of the evidence and
3 the testing process;

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

7 (3) on completion of the DNA testing, the results of
8 the testing and all data related to the testing required for an
9 evaluation of the test results be immediately filed with the court
10 and copies of the results and data be served on the convicted person
11 and the attorney representing the state.

12 SECTION 3. (a) Section 3(d), Article 11.07, Code of
13 Criminal Procedure, as amended by this Act, applies only to an
14 application for a writ of habeas corpus filed on or after the
15 effective date of this Act. An application filed before the
16 effective date of this Act is covered by the law in effect when the
17 application was filed, and the former law is continued in effect for
18 that purpose.

19 (b) Article 64.03, Code of Criminal Procedure, as amended by
20 this Act, applies only to a motion for forensic DNA testing filed on
21 or after the effective date of this Act. A motion filed before the
22 effective date of this Act is covered by the law in effect when the
23 motion was filed, and the former law is continued in effect for that
24 purpose.

25 SECTION 4. This Act takes effect September 1, 2007.