

By: Hochberg

H.B. No. 681

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. Section 3(d), Article 11.07, Code of Criminal Procedure, is amended 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 the person designated to make them, the clerk of the convicting

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

6 SECTION 2. Articles 64.03(c) and (d), Code of Criminal
7 Procedure, are amended to read as follows:

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

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

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

27 (2) the DNA testing employ a scientific method

1 sufficiently reliable and relevant to be admissible under Rule 702,
2 Texas Rules of Evidence; and

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

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

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

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