

By: Duncan

S.B. No. 499

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. Subsection (c), Article 64.01, Code of Criminal Procedure, is amended to read as follows:

(c) A convicted person is entitled to counsel during a proceeding under this chapter. The convicting court shall appoint counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for a motion to be filed, and the court determines that the person is indigent. Counsel must be appointed under this subsection 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. Compensation of counsel is provided in the same manner as is required by:

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

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

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

Art. 64.02. NOTICE TO STATE; RESPONSE. (a) On receipt of

1 the motion, the convicting court shall:

2 (1) provide the attorney representing the state with a
3 copy of the motion; and

4 (2) require the attorney representing the state to
5 take one of the following actions in response to the motion not
6 later than the 30th day after the date the motion is served on the
7 attorney representing the state:

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

10 (B) explain in writing to the court why the state
11 cannot deliver the evidence to the court.

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

16 SECTION 3. Subsections (b), (c), and (d), Article 64.03,
17 Code of Criminal Procedure, are amended to read as follows:

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

24 (c) If the convicting court finds in the affirmative the
25 issues listed in Subsection (a)(1) and the convicted person meets
26 the requirements of Subsection (a)(2), the court shall order that
27 the requested forensic DNA testing be conducted. The court may

1 order the test to be conducted by:

2 (1) the Department of Public Safety;

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

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

8 (d) If the convicting court orders that the forensic DNA
9 testing be conducted by a laboratory other than a Department of
10 Public Safety laboratory or a laboratory under contract with the
11 department, the State of Texas is not liable for the cost of
12 testing. If the court orders that the testing be conducted by a
13 laboratory described by this subsection, the court shall include in
14 the order requirements that:

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

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

21 (3) on completion of the DNA testing, the results of
22 the testing and all data related to the testing required for an
23 evaluation of the test results be immediately filed with the court
24 and copies of the results and data be served on the convicted person
25 and the attorney representing the state.

26 SECTION 4. The change in law made by this Act applies only
27 to a convicted person who on or after the effective date of this Act

1 submits a motion for forensic DNA testing of evidence under Chapter
2 64, Code of Criminal Procedure, as amended by this Act. A convicted
3 person who submits a motion under Chapter 64, Code of Criminal
4 Procedure, before the effective date of this Act is covered by the
5 law in effect when the motion was submitted, and the former law is
6 continued in effect for that purpose.

7 SECTION 5. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2007.