

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. Article 64.01(c), 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 filed:

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

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

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

15 SECTION 3. Articles 64.03(b) and (c), Code of Criminal
16 Procedure, are amended to read as follows:

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

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

- 1 (1) the Department of Public Safety;
- 2 (2) [~~7~~ by] a laboratory operating under a contract
3 with the department; [~~7~~] or
- 4 (3) [~~7~~] on the request of the convicted person
5 [~~agreement of the parties~~], [~~by~~] another laboratory if that
6 laboratory is accredited under Section 411.0205, Government Code.

7 SECTION 4. The change in law made by this Act applies only
8 to a convicted person who on or after the effective date of this Act
9 submits a motion for forensic DNA testing of evidence under Chapter
10 64, Code of Criminal Procedure, as amended by this Act. A convicted
11 person who submits a motion under Chapter 64 before the effective
12 date of this Act is covered by the law in effect when the motion was
13 submitted, and the former law is continued in effect for that
14 purpose.

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