

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Hochberg, et al.

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.

ADOPTED

MAY 22 2007

*Patry Spaw*  
Secretary of the Senate

By: Duncan

H.B. No. 681

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

By: *John Whitman*

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. 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.



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 11, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing. ), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Code of Criminal Procedure relating to post-conviction DNA testing. The bill would allow judges to order additional forensic testing to resolve controverted and previously unresolved facts in an applicant's writ of *habeas corpus*. The bill would add timelines to the appointment of counsel in DNA testing cases. The bill would allow the use of a testing laboratory other than Department of Public Safety for good cause and require the state pay for the tests. According to information received from the Texas County and District Attorney's Association and the Travis, Bexar and Dallas County district attorneys' offices, approximately 25 additional DNA typing requests may be filed each year. To the extent the bill would amend court procedures regarding appointments and provide for additional testing, no significant fiscal implication to the State is anticipated.

The bill would take effect September 1, 2007.

**Local Government Impact**

Dallas County reports a cost of approximately one percent over the current budget for court-appointed attorneys, which would be \$50,000 in fiscal year 2008 and a larger amount in subsequent fiscal years.

Bexar County reports an additional \$50,100 in fiscal year 2008 for court-appointed attorneys, an amount that would rise to \$57,269 in fiscal year 2012 due to an estimated yearly increase of 3.4 percent in criminal justice cases.

Harris County reports a minimum of six additional staff will be needed at a total cost of \$240,333 in fiscal year 2008. More may be needed if the district attorney's office is unable to meet the 30-day requirement for testing, which is possible because tests may have to be ordered from a private laboratory instead of the laboratory at the Texas Department of Public Safety. The fiscal year costs will rise to \$843,468 in fiscal year 2012.

Tarrant County reports that implementing the provisions of the bill would have no measurable impact on the county's budget.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JOB, ES, ZS, TB, LG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**May 4, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend Article 11.07 of the Code of Criminal Procedure relating to post conviction DNA testing. The bill would allow judges to order additional forensic testing to resolve controverted and previously unresolved facts in an applicant's writ of *habeas corpus*.

The bill would require the state to pay the cost of the testing unless the applicant had retained counsel for the purpose of filing an application under Article 11.07. The bill would allow the use of a testing laboratory other than Department of Public Safety for good cause and require the state pay for the tests. According to information received from the Texas County and District Attorney's Association and the Travis, Beaxar and Dallas County district attorneys' offices, approximately 25 additional DNA typing requests may be filed each year. To the extent the Department of Public Safety or other state-paid laboratories would incur costs for additional forensic testing, the fiscal implication to the State is not anticipated to be significant.

The bill would take effect September 1, 2007 and would apply only to writs filed on or after the effective date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JOB, ES, ZS, TB, LG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 22, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing. ), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Article 11.07 of the Code of Criminal Procedure relating to post conviction DNA testing. The bill would allow judges to order additional forensic testing to resolve controverted and previously unresolved facts in an applicant's writ of *habeas corpus*.

The bill would require the state to pay the cost of the testing unless the applicant had retained counsel for the purpose of filing an application under Article 11.07. The bill would allow the use of a testing laboratory other than Department of Public Safety for good cause and require the state pay for the tests. According to information received from the Texas County and District Attorney's Association and the Travis, Beaxar and Dallas County district attorneys' offices, approximately 25 additional DNA typing requests may be filed each year. To the extent the Department of Public Safety or other state-paid laboratories would incur costs for additional forensic testing, the fiscal implication to the State is not anticipated to be significant.

The bill would take effect September 1, 2007 and would apply only to writs filed on or after the effective date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JOB, ES, ZS, TB, LG



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 80TH LEGISLATIVE REGULAR SESSION**

**March 5, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction DNA testing.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Article 11.07 of the Code of Criminal Procedure relating to post conviction DNA testing. The bill would allow judges to order additional forensic testing to resolve controverted and previously unresolved facts in an applicant's writ of *habeas corpus*.

The bill would require the state to pay the cost of the testing unless the applicant had retained counsel for the purpose of filing an application under Article 11.07. The bill would allow the use of a testing laboratory other than Department of Public Safety for good cause and require the state pay for the tests. According to information received from the Texas County and District Attorney's Association and the Travis, Beaxar and Dallas County district attorneys' offices, approximately 25 additional DNA typing requests may be filed each year. To the extent the Department of Public Safety or other state-paid laboratories would incur costs for additional forensic testing, the fiscal implication to the State is not anticipated to be significant.

The bill would take effect September 1, 2007 and would apply only to writs filed on or after the effective date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 405 Department of Public Safety

**LBB Staff:** JOB, ES, ZS, TB, LG





**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 11, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG, TM



**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**May 4, 2007**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, TM



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**March 26, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction forensic testing.), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**80TH LEGISLATIVE REGULAR SESSION**

**March 4, 2007**

**TO:** Honorable Aaron Pena, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB681** by Hochberg (Relating to postconviction DNA testing.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG



