

1-1 By: Ellis S.B. No. 1864  
1-2 (In the Senate - Filed March 11, 2009; March 24, 2009, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 April 1, 2009, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; April 1, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to postconviction forensic DNA analysis.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Subsection (b), Article 64.01, Code of Criminal  
1-11 Procedure, is amended to read as follows:

1-12 (b) The motion may request forensic DNA testing only of  
1-13 evidence described by Subsection (a) that was secured in relation  
1-14 to the offense that is the basis of the challenged conviction and  
1-15 was in the possession of the state during the trial of the offense,  
1-16 but:

1-17 (1) was not previously subjected to DNA testing[+]

1-18 [~~(A) because DNA testing was:~~

1-19 [~~(i) not available; or~~

1-20 [~~(ii) available, but not technologically~~

1-21 ~~capable of providing probative results; or~~

1-22 [~~(B) through no fault of the convicted person,~~

1-23 ~~for reasons that are of a nature such that the interests of justice~~

1-24 ~~require DNA testing]; or~~

1-25 (2) although previously subjected to DNA testing, can  
1-26 be subjected to testing with newer testing techniques that provide  
1-27 a reasonable likelihood of results that are more accurate and  
1-28 probative than the results of the previous test.

1-29 SECTION 2. Chapter 64, Code of Criminal Procedure, is  
1-30 amended by adding Article 64.035 to read as follows:

1-31 Art. 64.035. UNIDENTIFIED DNA PROFILES. On completion of  
1-32 the testing under Article 64.03, the convicting court shall order  
1-33 any unidentified DNA profile to be compared with the DNA profiles in  
1-34 the CODIS DNA database established by the Federal Bureau of  
1-35 Investigation.

1-36 SECTION 3. Article 64.04, Code of Criminal Procedure, is  
1-37 amended to read as follows:

1-38 Art. 64.04. FINDING. After examining the results of  
1-39 testing under Article 64.03 and any comparison of a DNA profile  
1-40 under Article 64.035, the convicting court shall hold a hearing and  
1-41 make a finding as to whether, had the results been available during  
1-42 the trial of the offense, it is reasonably probable that the person  
1-43 would not have been convicted.

1-44 SECTION 4. The change in law made by this Act applies to a  
1-45 motion for forensic DNA testing filed on or after the effective date  
1-46 of this Act. A motion for forensic DNA testing filed before the  
1-47 effective date of this Act is covered by the law in effect at the  
1-48 time the motion was filed, and the former law is continued in effect  
1-49 for that purpose.

1-50 SECTION 5. This Act takes effect September 1, 2009.

1-51 \* \* \* \* \*