

BILL ANALYSIS

S.B. 122
By: Ellis
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

S.B. 122 would clarify Texas' post-conviction DNA statute to address issues that arose in the Ricardo Rachell exoneration in Houston and the *Routier v. State* decision by the Court of Criminal Appeals. Under this bill, a motion for post-conviction DNA testing would be granted if the biological evidence was not previously tested; or the biological evidence was previously tested, but can be subjected to newer testing techniques that provide a reasonable likelihood that the results will be more accurate and probative than the previous test results.

The bill would also require the court to order any unidentified DNA profile discovered during post-conviction DNA testing to be compared with the DNA profiles in the Federal Bureau of Investigation's CODIS DNA database. Such a comparison could be used to identify the actual perpetrator and exonerate the convicted.

Under existing law, post-conviction DNA testing can be granted only if the evidence containing biological material was not previously subjected to DNA testing because DNA testing was not available, testing was available but not technologically capable of providing probative results, or was not tested through no fault of the convicted person, and should be tested in the interests of justice. If the biological material was previously tested and can be subjected to newer testing techniques that could result in a more accurate and probative result, then it can be ordered to be tested again.

There is no specific statute that authorizes the courts to order an unidentified DNA profile to be compared with the DNA profiles in the FBI's database.

S.B. 122 amends current law relating to postconviction forensic DNA analysis

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Article 64.01, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Defines "biological material" in this section.

(a-1) Redesignates existing Subsection (a) as Subsection (a-1). Makes no further changes to this subsection.

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

(1) was not previously subjected to DNA testing; or

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

Deletes existing text relating to evidence that was not previously subjected to DNA testing because DNA testing was not available or was available but not technologically capable of providing probative results; or through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing.

SECTION 2. Amends Chapter 64, Code of Criminal Procedure, by adding Article 64.035, as follows:

Art. 64.035. UNIDENTIFIED DNA PROFILES. Requires the convicting court, if an analyzed sample meets the applicable requirements of state or federal submission policies, on completion of the testing under Article 64.03 (Requirements; Testing), to order any unidentified DNA profile to be compared with the DNA profiles in:

(1) the DNA database established by the Federal Bureau of Investigation; and

(2) the DNA database maintained by the Department of Public Safety under Subchapter G (DNA Database System), Chapter 411 (Department of Public Safety of the State of Texas), Government Code.

SECTION 3. Amends Article 64.04, Code of Criminal Procedure, as follows:

Art. 64.04. FINDING. Requires the convicting court, after examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035, to hold a hearing and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would not have been convicted.

SECTION 4. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2011.