

By: Ellis, Hinojosa  
(Gallego, Hartnett, Davis of Dallas, Zedler,  
Rodriguez)

S.B. No. 122

A BILL TO BE ENTITLED

AN ACT

relating to postconviction forensic DNA analysis.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

(a) In this section, "biological material":

(1) means an item that is in possession of the state and that contains blood, semen, hair, saliva, skin tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing; and

(2) includes the contents of a sexual assault evidence collection kit.

(a-1) A convicted person may submit to the convicting court a motion for forensic DNA testing of evidence containing biological material. The motion must be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.

(b) The motion may request forensic DNA testing only of evidence described by Subsection (a-1) [~~(a)~~] 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           (1) was not previously subjected to DNA testing[+  
2                    ~~[(A) because DNA testing was:~~  
3                            ~~[(i) not available; or~~  
4                            ~~[(ii) available, but not technologically~~  
5 ~~capable of providing probative results; or~~  
6                            ~~[(B) through no fault of the convicted person,~~  
7 ~~for reasons that are of a nature such that the interests of justice~~  
8 ~~require DNA testing]; or~~

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

13           SECTION 2. Chapter 64, Code of Criminal Procedure, is  
14 amended by adding Article 64.035 to read as follows:

15           Art. 64.035. UNIDENTIFIED DNA PROFILES. If an analyzed  
16 sample meets the applicable requirements of state or federal  
17 submission policies, on completion of the testing under Article  
18 64.03, the convicting court shall order any unidentified DNA  
19 profile to be compared with the DNA profiles in:

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

22                   (2) the DNA database maintained by the Department of  
23 Public Safety under Subchapter G, Chapter 411, Government Code.

24           SECTION 3. Article 64.04, Code of Criminal Procedure, is  
25 amended to read as follows:

26           Art. 64.04. FINDING. After examining the results of  
27 testing under Article 64.03 and any comparison of a DNA profile

1 under Article 64.035, the convicting court shall hold a hearing and  
2 make a finding as to whether, had the results been available during  
3 the trial of the offense, it is reasonably probable that the person  
4 would not have been convicted.

5         SECTION 4. The change in law made by this Act applies to a  
6 motion for forensic DNA testing filed on or after the effective date  
7 of this Act. A motion for forensic DNA testing filed before the  
8 effective date of this Act is covered by the law in effect at the  
9 time the motion was filed, and the former law is continued in effect  
10 for that purpose.

11         SECTION 5. This Act takes effect September 1, 2011.