

1-1 By: Ellis, Hinojosa S.B. No. 122
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 March 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 122 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to postconviction forensic DNA analysis.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Article 64.01, Code of Criminal Procedure, is
1-13 amended by amending Subsections (a) and (b) and adding Subsection
1-14 (a-1) to read as follows:

1-15 (a) In this section, "biological material":

1-16 (1) means an item that is in possession of the state
1-17 and that contains blood, semen, hair, saliva, skin tissue or cells,
1-18 fingernail scrapings, bone, bodily fluids, or other identifiable
1-19 biological evidence that may be suitable for forensic DNA testing;
1-20 and

1-21 (2) includes the contents of a sexual assault evidence
1-22 collection kit.

1-23 (a-1) A convicted person may submit to the convicting court
1-24 a motion for forensic DNA testing of evidence containing biological
1-25 material. The motion must be accompanied by an affidavit, sworn to
1-26 by the convicted person, containing statements of fact in support
1-27 of the motion.

1-28 (b) The motion may request forensic DNA testing only of
1-29 evidence described by Subsection (a-1) [~~(a)~~] that was secured in
1-30 relation to the offense that is the basis of the challenged
1-31 conviction and was in the possession of the state during the trial
1-32 of the offense, but:

1-33 (1) was not previously subjected to DNA testing[+]

1-34 [~~(A) because DNA testing was:~~

1-35 [~~(i) not available, or~~

1-36 [~~(ii) available, but not technologically~~
1-37 ~~capable of providing probative results, or~~

1-38 [~~(B) through no fault of the convicted person,~~
1-39 ~~for reasons that are of a nature such that the interests of justice~~
1-40 ~~require DNA testing]; or~~

1-41 (2) although previously subjected to DNA testing, can
1-42 be subjected to testing with newer testing techniques that provide
1-43 a reasonable likelihood of results that are more accurate and
1-44 probative than the results of the previous test.

1-45 SECTION 2. Chapter 64, Code of Criminal Procedure, is
1-46 amended by adding Article 64.035 to read as follows:

1-47 Art. 64.035. UNIDENTIFIED DNA PROFILES. If an analyzed
1-48 sample meets the applicable requirements of state or federal
1-49 submission policies, on completion of the testing under Article
1-50 64.03, the convicting court shall order any unidentified DNA
1-51 profile to be compared with the DNA profiles in:

1-52 (1) the DNA database established by the Federal Bureau
1-53 of Investigation; and

1-54 (2) the DNA database maintained by the Department of
1-55 Public Safety under Subchapter G, Chapter 411, Government Code.

1-56 SECTION 3. Article 64.04, Code of Criminal Procedure, is
1-57 amended to read as follows:

1-58 Art. 64.04. FINDING. After examining the results of
1-59 testing under Article 64.03 and any comparison of a DNA profile
1-60 under Article 64.035, the convicting court shall hold a hearing and
1-61 make a finding as to whether, had the results been available during
1-62 the trial of the offense, it is reasonably probable that the person
1-63 would not have been convicted.

2-1 SECTION 4. The change in law made by this Act applies to a
2-2 motion for forensic DNA testing filed on or after the effective date
2-3 of this Act. A motion for forensic DNA testing filed before the
2-4 effective date of this Act is covered by the law in effect at the
2-5 time the motion was filed, and the former law is continued in effect
2-6 for that purpose.

2-7 SECTION 5. This Act takes effect September 1, 2011.

2-8

* * * * *