

## **BILL ANALYSIS**

S.B. 1292  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties assert that testing all relevant DNA evidence before a trial commences in a capital case in which the death sentence is sought will help ensure that an innocent person is not put on death row for a crime the person did not commit and will save the state money with regard to incarceration and compensation costs. In addition, this testing would result in increased public safety by increasing the likelihood that the guilty party is found, convicted, and removed from the community. The parties contend that legislative action relating to DNA testing of biological evidence in certain capital cases is needed to prevent costly appeals and wrongful convictions in the future and to ensure public safety. S.B. 1292 seeks to address this concern.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1292 amends the Code of Criminal Procedure to require the Department of Public Safety (DPS), before a defendant is tried for a capital offense in which the state is seeking the death penalty, to perform DNA testing, in accordance with DPS's capabilities at the time the testing is performed, or have DNA tested by an accredited crime laboratory, on all biological evidence that was collected as part of an investigation of the offense. The bill requires the laboratory that performed the DNA testing to pay for such DNA testing. The bill requires the court, as soon as practicable after the defendant is charged with a capital offense, or on motion by the state or the defendant in a capital case, to order the state and the defendant to meet and confer about which biological materials collected as part of an investigation of the offense qualify as biological evidence that is required by the bill's provisions to be tested by DPS. The bill requires the biological evidence to be tested in accordance with the bill's provisions if the state and the defendant agree on which biological materials constitute biological evidence. The bill authorizes the state or the defendant, if the state and the defendant do not agree on which biological materials qualify as biological evidence, to request the court to hold a hearing to determine the issue and requires the court, on receipt of such a request, to set a date for the hearing and provide written notice of the hearing date to the state and the defendant. The bill specifies that, at the hearing, a request by the defendant to test biological material is prima facie evidence that the biological material constitutes biological evidence that is required to be tested under the bill's provisions.

S.B. 1292 requires a laboratory that tested an item of biological evidence that is destroyed as a result of the DNA testing to provide to the defendant any documentation related to the testing of the evidence and the results of that testing. The bill specifies that a defendant is not entitled to a new trial or to a new sentencing proceeding based solely on a violation of the bill's provisions, but authorizes a defendant to have another accredited crime laboratory perform additional testing of any biological evidence required to be tested under the bill's provisions. The bill authorizes a defendant, on an ex parte showing of good cause to the court, to perform testing of any

biological material that is not required to be tested under the bill's provisions and makes the defendant responsible for the cost of any such additional testing performed.

**EFFECTIVE DATE**

September 1, 2013.