

By: Ellis, et al.  
(Turner of Harris, Miles, Carter)

S.B. No. 1292

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to DNA testing of biological evidence in certain capital  
3 cases.

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

5 SECTION 1. Article 38.43, Code of Criminal Procedure, is  
6 amended by adding Subsections (i), (j), (k), (l), and (m) to read as  
7 follows:

8 (i) Before a defendant is tried for a capital offense in  
9 which the state is seeking the death penalty, the Department of  
10 Public Safety shall perform DNA testing, in accordance with the  
11 department's capabilities at the time the testing is performed, or  
12 have DNA tested by a laboratory accredited under Section 411.0205,  
13 Government Code, on all biological evidence that was collected as  
14 part of an investigation of the offense. The laboratory that  
15 performed the DNA testing shall pay for all DNA testing performed in  
16 accordance with this subsection.

17 (j) As soon as practicable after the defendant is charged  
18 with a capital offense, or on a motion by the state or the defendant  
19 in a capital case, the court shall order the state and the defendant  
20 to meet and confer about which biological materials collected as  
21 part of an investigation of the offense qualify as biological  
22 evidence that is required to be tested under Subsection (i). If the  
23 state and the defendant agree on which biological materials  
24 constitute biological evidence, the biological evidence shall be

1 tested in accordance with Subsection (i). If the state and the  
2 defendant do not agree on which biological materials qualify as  
3 biological evidence, the state or the defendant may request the  
4 court to hold a hearing to determine the issue. On receipt of a  
5 request for a hearing under this subsection, the court shall set a  
6 date for the hearing and provide written notice of the hearing date  
7 to the state and the defendant. At the hearing, a request by the  
8 defendant to test biological material is prima facie evidence that  
9 the biological material constitutes biological evidence that is  
10 required to be tested under Subsection (i).

11 (k) If an item of biological evidence is destroyed as a  
12 result of DNA testing performed under Subsection (i), the  
13 laboratory that tested the evidence must provide to the defendant  
14 any documentation related to the testing of the evidence and the  
15 results of that testing.

16 (l) A defendant is not entitled to a new trial or to a new  
17 sentencing proceeding based solely on a violation of Subsection  
18 (i), (j), or (k).

19 (m) A defendant may have another laboratory accredited  
20 under Section 411.0205, Government Code, perform additional  
21 testing of any biological evidence required to be tested under  
22 Subsection (i). On an ex parte showing of good cause to the court, a  
23 defendant may have a laboratory accredited under Section 411.0205,  
24 Government Code, perform testing of any biological material that is  
25 not required to be tested under Subsection (i). The defendant is  
26 responsible for the cost of any testing performed under this  
27 subsection.

1           SECTION 2. Subsections (i), (j), (k), (l), and (m), Article  
2 38.43, Code of Criminal Procedure, as added by this Act, apply only  
3 to a trial that commences on or after the effective date of this  
4 Act, regardless of whether the alleged offense was committed  
5 before, on, or after that date.

6           SECTION 3. This Act takes effect September 1, 2013.