

## **BILL ANALYSIS**

Senate Research Center  
85R12292 MAW-D

H.B. 3872  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 3872 provides due process to certain defendants who were deprived of it during forensic testing. In addition, H.B. 3872 would allow a court to grant a writ of habeas corpus to a convicted person whose DNA evidence, in connection with their conviction, was presented by the state at their trial. This DNA evidence was subject to testing at a lab that ceased testing after an audit by the Texas Forensic Commission revealed the laboratory engaged in faulty test practices, during a time period identified in the audit as having faulty practices.

Further, in order for a court to grant relief, a convicted person must file an application with the court containing facts that demonstrate that had the DNA evidence not been presented at the defendant's trial, on the preponderance of evidence, the person would not have been convicted.

H.B. 3872 amends current law relating to a motion for forensic DNA testing of certain evidence previously subjected to faulty testing.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 11, Code of Criminal Procedure, by adding Article 11.0731, as follows:

Art. 11.0731. PROCEDURES RELATED TO CERTAIN PREVIOUSLY TESTED EVIDENCE. (a) Provides that this article applies to relevant evidence consisting of biological material described by Article 64.01(a) (relating to the definition of "biological material") that was presented by the state at the convicted person's trial and subjected to certain testing.

(b) Authorizes a court to grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files an application, in certain manners, containing specific facts indicating that:

(1) the person previously filed a motion under Chapter 64 (Motion for Forensic DNA Testing) for forensic DNA testing of evidence described by Subsection (a) that was denied because of certain negative findings; and

(2) had the evidence not been presented at the person's trial, on the preponderance of the evidence the person would not have been convicted.

(c) Provides that, for purposes of Section 4(a)(1) (relating to certain applications for a writ of habeas corpus involving claims and issues that could not have been previously presented), Article 11.07 (Procedure After Conviction Without Death Penalty), Section 5(a)(1) (relating to certain applications for a writ of habeas corpus involving claims and issues that could not have been presented in an initial application), Article 11.071 (Procedure in Death Penalty Case), and Section 9(a)

(relating to prohibiting a court from considering a subsequent application, except under certain conditions), Article 11.072 (Procedure in Community Supervision Case), a claim or issue could not have been presented previously in an original application or in a previously considered application if the claim or issue is based on evidence that has been determined by the Texas Forensic Science Commission (FSC) to have been subjected to faulty DNA testing practices.

SECTION 2. Amends Article 64.01(b), Code of Criminal Procedure, as follows:

(b) Authorizes the motion to request forensic DNA testing only of certain evidence 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 meets certain criteria, including the evidence was tested at a laboratory that ceased conducting DNA testing after an audit by the FSC revealed the laboratory engaged in faulty testing practices and during the period identified in the audit as involving faulty testing practices.

SECTION 3. Amends Article 64.03, Code of Criminal Procedure, by adding Subsection (b-1), as follows:

(b-1) Requires a convicting court, notwithstanding Subsection (c) (relating to requiring the court to order forensic DNA testing under certain conditions), to order that the requested DNA testing be done with respect to evidence described by Article 64.01(b)(2)(B) (relating to DNA tested at facilities that closed or engaged in faulty testing practices) if the court finds in the affirmative the issues listed in Subsection (a)(1) (relating to authorizing a court to order forensic DNA testing if certain determinations regarding the evidence are made), regardless of whether the convicted person meets the requirements of Subsection (a)(2) (relating to authorizing the court to order forensic DNA testing if the convicted person establishes certain facts). Authorizes the court to order the test to be conducted by any laboratory that the court may order to conduct a test under Subsection (c).

SECTION 4. Effective date: upon passage or September 1, 2017.