

## **BILL ANALYSIS**

H.B. 3872  
By: Lucio III  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the recent improper examination of DNA samples that served as key evidence in certain violent crime cases should prompt a thorough review of these cases. H.B. 3872 seeks to provide for this review by granting relief to certain defendants whose DNA samples were improperly examined in these cases.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

H.B. 3872 amends the Code of Criminal Procedure to authorize a court to grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files such an application in the manner provided by applicable state law containing specific facts indicating that the person previously filed a motion for forensic DNA testing of certain biological material evidence that was denied because of a negative finding regarding the existence or appropriate unaltered condition of the evidence and the likelihood that it contains biological material suitable for DNA testing; and indicating that, had the evidence not been presented at the person's trial, on the preponderance of the evidence, the person would not have been convicted. This authorization applies only to relevant evidence consisting of biological material that was presented by the state at the convicted person's trial and subjected to testing at a laboratory that ceased conducting DNA testing after an audit by the Texas Forensic Science Commission revealed the laboratory engaged in faulty testing practices and subjected to testing during the period identified in the audit as involving faulty testing practices. The bill establishes that, for purposes of a subsequent application for a writ of habeas corpus, 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 commission to have been subjected to faulty DNA testing practices.

H.B. 3872 includes among the evidence of which a convicted person may submit to the convicting court a motion for forensic DNA testing that has a reasonable likelihood of containing biological material 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, although previously subjected to DNA testing, was tested at a laboratory that ceased conducting DNA testing after an audit by the commission revealed the laboratory engaged in faulty testing practices and was tested during the period identified in the audit as involving faulty testing

practices. The bill requires a convicting court to order that the requested DNA testing be done with respect to such evidence if the court finds in the affirmative the conditions required by state law under which a convicting court may order forensic DNA testing, regardless of whether the convicted person establishes by a preponderance of the evidence that the person would not have been convicted if exculpatory results had been obtained through DNA testing and that the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice. The bill authorizes the court to order the test to be conducted by any laboratory that the court may order to conduct such a test under state law.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.