

By: Lucio III

H.B. No. 3872

A BILL TO BE ENTITLED

AN ACT

relating to a motion for forensic DNA testing of certain evidence previously subjected to faulty testing.

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

SECTION 1. Chapter 11, Code of Criminal Procedure, is amended by adding Article 11.0731 to read as follows:

Art. 11.0731. PROCEDURES RELATED TO CERTAIN PREVIOUSLY TESTED EVIDENCE. (a) This article applies to relevant evidence consisting of biological material described by Article 64.01(a) that was:

(1) presented by the state at the convicted person's trial; and

(2) subjected to testing:

(A) 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

(B) during the period identified in the audit as involving faulty testing practices.

(b) A court may grant a convicted person relief on an application for a writ of habeas corpus if the convicted person files an application, in the manner provided by Article 11.07, 11.071, or 11.072, containing specific facts indicating that:

(1) the person previously filed a motion under Chapter 64 for forensic DNA testing of evidence described by Subsection (a)

1 that was denied because of a negative finding under Article  
2 64.03(a)(1)(A) or (B); and

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

6 (c) For purposes of Section 4(a)(1), Article 11.07, Section  
7 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim  
8 or issue could not have been presented previously in an original  
9 application or in a previously considered application if the claim  
10 or issue is based on evidence that has been determined by the Texas  
11 Forensic Science Commission to have been subjected to faulty DNA  
12 testing practices.

13 SECTION 2. Article 64.01(b), Code of Criminal Procedure, is  
14 amended to read as follows:

15 (b) The motion may request forensic DNA testing only of  
16 evidence described by Subsection (a-1) that was secured in relation  
17 to the offense that is the basis of the challenged conviction and  
18 was in the possession of the state during the trial of the offense,  
19 but:

20 (1) was not previously subjected to DNA testing; or

21 (2) although previously subjected to DNA testing:

22 (A) [7] can be subjected to testing with newer  
23 testing techniques that provide a reasonable likelihood of results  
24 that are more accurate and probative than the results of the  
25 previous test; or

26 (B) was tested:

27 (i) at a laboratory that ceased conducting

1 DNA testing after an audit by the Texas Forensic Science Commission  
2 revealed the laboratory engaged in faulty testing practices; and  
3 (ii) during the period identified in the  
4 audit as involving faulty testing practices.

5 SECTION 3. Article 64.03, Code of Criminal Procedure, is  
6 amended by adding Subsection (b-1) to read as follows:

7 (b-1) Notwithstanding Subsection (c), a convicting court  
8 shall order that the requested DNA testing be done with respect to  
9 evidence described by Article 64.01(b)(2)(B) if the court finds in  
10 the affirmative the issues listed in Subsection (a)(1), regardless  
11 of whether the convicted person meets the requirements of  
12 Subsection (a)(2). The court may order the test to be conducted by  
13 any laboratory that the court may order to conduct a test under  
14 Subsection (c).

15 SECTION 4. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2017.