

1-1 By: Lucio III (Senate Sponsor - Menéndez) H.B. No. 3872
 1-2 (In the Senate - Received from the House May 3, 2017;
 1-3 May 5, 2017, read first time and referred to Committee on Criminal
 1-4 Justice; May 21, 2017, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 21, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to a motion for forensic DNA testing of certain evidence
 1-20 previously subjected to faulty testing.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Chapter 11, Code of Criminal Procedure, is
 1-23 amended by adding Article 11.0731 to read as follows:

1-24 Art. 11.0731. PROCEDURES RELATED TO CERTAIN PREVIOUSLY
 1-25 TESTED EVIDENCE. (a) This article applies to relevant evidence
 1-26 consisting of biological material described by Article 64.01(a)
 1-27 that was:

1-28 (1) presented by the state at the convicted person's
 1-29 trial; and

1-30 (2) subjected to testing:

1-31 (A) at a laboratory that ceased conducting DNA
 1-32 testing after an audit by the Texas Forensic Science Commission
 1-33 revealed the laboratory engaged in faulty testing practices; and

1-34 (B) during the period identified in the audit as
 1-35 involving faulty testing practices.

1-36 (b) A court may grant a convicted person relief on an
 1-37 application for a writ of habeas corpus if the convicted person
 1-38 files an application, in the manner provided by Article 11.07,
 1-39 11.071, or 11.072, containing specific facts indicating that:

1-40 (1) the person previously filed a motion under Chapter
 1-41 64 for forensic DNA testing of evidence described by Subsection (a)
 1-42 that was denied because of a negative finding under Article
 1-43 64.03(a)(1)(A) or (B); and

1-44 (2) had the evidence not been presented at the person's
 1-45 trial, on the preponderance of the evidence the person would not
 1-46 have been convicted.

1-47 (c) For purposes of Section 4(a)(1), Article 11.07, Section
 1-48 5(a)(1), Article 11.071, and Section 9(a), Article 11.072, a claim
 1-49 or issue could not have been presented previously in an original
 1-50 application or in a previously considered application if the claim
 1-51 or issue is based on evidence that has been determined by the Texas
 1-52 Forensic Science Commission to have been subjected to faulty DNA
 1-53 testing practices.

1-54 SECTION 2. Article 64.01(b), Code of Criminal Procedure, is
 1-55 amended to read as follows:

1-56 (b) The motion may request forensic DNA testing only of
 1-57 evidence described by Subsection (a-1) that was secured in relation
 1-58 to the offense that is the basis of the challenged conviction and
 1-59 was in the possession of the state during the trial of the offense,
 1-60 but:

1-61 (1) was not previously subjected to DNA testing; or

2-1 (2) although previously subjected to DNA testing;
 2-2 (A) [7] can be subjected to testing with newer
 2-3 testing techniques that provide a reasonable likelihood of results
 2-4 that are more accurate and probative than the results of the
 2-5 previous test; or
 2-6 (B) was tested:
 2-7 (i) at a laboratory that ceased conducting
 2-8 DNA testing after an audit by the Texas Forensic Science Commission
 2-9 revealed the laboratory engaged in faulty testing practices; and
 2-10 (ii) during the period identified in the
 2-11 audit as involving faulty testing practices.

2-12 SECTION 3. Article 64.03, Code of Criminal Procedure, is
 2-13 amended by adding Subsection (b-1) to read as follows:

2-14 (b-1) Notwithstanding Subsection (c), a convicting court
 2-15 shall order that the requested DNA testing be done with respect to
 2-16 evidence described by Article 64.01(b)(2)(B) if the court finds in
 2-17 the affirmative the issues listed in Subsection (a)(1), regardless
 2-18 of whether the convicted person meets the requirements of
 2-19 Subsection (a)(2). The court may order the test to be conducted by
 2-20 any laboratory that the court may order to conduct a test under
 2-21 Subsection (c).

2-22 SECTION 4. This Act takes effect immediately if it receives
 2-23 a vote of two-thirds of all the members elected to each house, as
 2-24 provided by Section 39, Article III, Texas Constitution. If this
 2-25 Act does not receive the vote necessary for immediate effect, this
 2-26 Act takes effect September 1, 2017.

2-27 * * * * *