

By: Ellis

S.B. No. 1864

A BILL TO BE ENTITLED

AN ACT

relating to postconviction forensic DNA analysis.

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

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

(b) The motion may request forensic DNA testing only of evidence described by Subsection (a) 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:

(1) was not previously subjected to DNA testing[+  
[~~(A) because DNA testing was:~~  
~~[(i) not available, or~~  
~~[(ii) available, but not technologically~~  
~~capable of providing probative results, or~~  
~~[(B) through no fault of the convicted person,~~  
~~for reasons that are of a nature such that the interests of justice~~  
~~require DNA testing]; or~~

(2) although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test.

SECTION 2. Chapter 64, Code of Criminal Procedure, is amended by adding Article 64.035 to read as follows:

1       Art. 64.035. UNIDENTIFIED DNA PROFILES. On completion of  
2 the testing under Article 64.03, the convicting court shall order  
3 any unidentified DNA profile to be compared with the DNA profiles in  
4 the CODIS DNA database established by the Federal Bureau of  
5 Investigation.

6       SECTION 3. Article 64.04, Code of Criminal Procedure, is  
7 amended to read as follows:

8       Art. 64.04. FINDING. After examining the results of  
9 testing under Article 64.03 and any comparison of a DNA profile  
10 under Article 64.035, the convicting court shall hold a hearing and  
11 make a finding as to whether, had the results been available during  
12 the trial of the offense, it is reasonably probable that the person  
13 would not have been convicted.

14       SECTION 4. The change in law made by this Act applies to a  
15 motion for forensic DNA testing filed on or after the effective date  
16 of this Act. A motion for forensic DNA testing filed before the  
17 effective date of this Act is covered by the law in effect at the  
18 time the motion was filed, and the former law is continued in effect  
19 for that purpose.

20       SECTION 5. This Act takes effect September 1, 2009.