

BILL ANALYSIS

C.S.H.B. 2438
By: Thompson, Senfronia
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, post-conviction DNA testing is allowed in certain criminal cases in order to ensure a more reliable and accurate justice system. Unfortunately, recent court decisions have strictly interpreted statutory language to require proof that evidence contains biological material before a judge may order DNA testing of the evidence to see if it exculpates the convicted person. Interested parties express concern that this interpretation severely restricts a judge's ability to order DNA testing, even when a convicted person has shown that the evidence is likely to contain biological material, which in turn may prevent rightful exonerations. C.S.H.B. 2438 seeks to address this issue.

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

C.S.H.B. 2438 amends the Code of Criminal Procedure to change the type of evidence for which a convicted person is authorized to submit to the convicting court a motion for forensic DNA testing from evidence containing biological material to evidence that has a reasonable likelihood of containing biological material. The bill adds to the conditions on the authority of a convicting court to order forensic DNA testing of evidence a condition that the court finds there is a reasonable likelihood that the evidence contains biological material suitable for DNA testing.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2438 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 64.01(a-1), Code of Criminal Procedure, is amended.

No equivalent provision.

SECTION 2. The change in law made by this Act applies to a motion for forensic DNA testing filed on or after the effective date of this Act. A motion for forensic DNA testing filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2015.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Article 64.03(a), Code of Criminal Procedure, is amended to read as follows:

(a) A convicting court may order forensic DNA testing under this chapter only if:

(1) the court finds that:

(A) the evidence:

(i) still exists and is in a condition making DNA testing possible; and

(ii) has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; ~~and~~

(B) there is a reasonable likelihood that the evidence contains biological material suitable for DNA testing; and

(C) identity was or is an issue in the case; and

(2) the convicted person establishes by a preponderance of the evidence that:

(A) the person would not have been convicted if exculpatory results had been obtained through DNA testing; and

(B) the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.