

- SUBJECT:** Allowing post-conviction DNA testing on certain evidence
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Herrero, Moody, Canales, Hunter, Leach, Shaheen, Simpson
0 nays
- WITNESSES:** For — Nick Vilbas, Innocence Project of Texas; Patricia Cummings, Texas Criminal Defense Lawyers Association; Amanda Marzullo, Texas Defender Service; James Rytting; (*Registered, but did not testify:* Matt Simpson, ACLU of Texas; Sarah Pahl, Texas Criminal Justice Coalition; Yannis Banks, Texas NAACP; Jeffrey Knoll; Heather Ross; Mark Walters)

Against — (*Registered, but did not testify:* Tiana Sanford, Montgomery County District Attorney’s Office)

On — (*Registered, but did not testify:* Skylor Hearn, Department of Public Safety)
- BACKGROUND:** Code of Criminal Procedure, Art. 64.01(a-1) allows convicted persons to submit to the court a motion for forensic DNA testing of evidence containing biological material. Under Art. 64.03(a) courts can order testing only under certain conditions, including if the evidence still exists and is in a condition that makes testing possible.
- DIGEST:** CSHB 2438 would revise the conditions under which person could submit a request to a court for forensic DNA testing of evidence. Instead of evidence having to contain biological material, the evidence would be required to have a reasonable likelihood of containing biological material. To the current conditions that must be met for testing to be ordered, the bill would stipulate that there also would have to be a reasonable likelihood that the evidence contained biological material suitable for DNA testing.

The bill would take effect September 1, 2015, and would apply to motions for testing filed on or after that date.

**SUPPORTERS
SAY:**

CSHB 2438 would help clarify what courts should consider when ruling on requests for post-conviction DNA testing. Such testing can both free the innocent and confirm a guilty verdict, and allowing it in appropriate cases would make the criminal justice system more reliable and accurate.

While current law allows requests for testing on certain evidence that contains biological material, a Court of Criminal Appeals ruling strictly interpreted the language to mean that defendants must prove that biological material exists. This standard goes against the intention of the law and could exclude testing in cases in which it should be done. The standard can be extremely difficult to meet and in some cases could be done only by performing the testing itself.

The bill would address this by adding a reasonable standard for post-conviction DNA testing to other requirements in current law. Judges would have to determine there was a “reasonable likelihood” that biological evidence existed. This would not open the floodgates of testing but instead would restore the statute to its intended purpose of permitting testing when appropriate. Current requirements for requesting and authorizing testing would continue to be applied and would act as proper filters on requests. The number of tests ordered before the court ruling was reasonable, and that would continue under the bill. Debate over other parts of the current law should not stop the Legislature from making the clarification in this bill.

**OPPONENTS
SAY:**

Under CSHB 2438, DNA testing could be requested on numerous items or samples by claiming a reasonable likelihood that evidence contained biological material. This could increase the burden on courts and labs, drain resources, and lead to a large expansion in testing, some of which might be inappropriate.

**OTHER
OPPONENTS**

Post-conviction DNA testing should not be broadened when there is debate over the application of the statute, with experts disagreeing over

SAY: the extent to which prosecutors are bound to agree to the exculpatory nature of testing.