

- SUBJECT:** Allowing a motion for forensic DNA testing of certain evidence
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Moody, Hunter, Canales, Gervin-Hawkins, Hefner, Lang, Wilson
0 nays
- WITNESSES:** For — (*Registered, but did not testify:* John Hubbard and Ian Randolph, Ami Gordon; Chas Moore, Austin Justice Coalition; Shea Place, Texas Criminal Defense Lawyers Association; Amanda Marzullo, Texas Defender Service; Marc Levin, Texas Public Policy Foundation, Thomas Parkinson)

Against — None

On — Brady Mills, Texas Department of Public Safety - Crime Laboratory Service
- BACKGROUND:** Writs of habeas corpus are a way to challenge the legality of a criminal conviction or the process that resulted in a conviction or sentence.

Code of Criminal Procedure, ch. 11 establishes procedures for applying for writs of habeas corpus in non-death penalty felony convictions, in death penalty cases, and in felony and misdemeanor cases in which a person was sentenced to community supervision. If a convicted person was not granted relief in an initial application, a court may not consider the merits of a subsequent application, except in certain circumstances.

Art. 64.01 allows a convicted person to file a motion for forensic DNA testing of evidence that had not been previously tested during the trial or, although previously tested, can be subjected to new tests that provide a reasonable likelihood of more accurate and probative results.

Art. 64.03 requires a court to order forensic DNA testing if:

- the evidence is in a condition that makes testing possible and has been subjected to sufficient chain of custody;
- identity was an issue in the case; and
- the convicted person establishes by a preponderance of the evidence that the person would not have been convicted if exculpatory results had been obtained through DNA testing and the request is not made to delay the execution of sentence.

The testing may be done by the Department of Public Safety, a lab under contract with the department, or other certain accredited labs.

Concerns have been raised about improper examination of DNA samples that served as key evidence in certain violent crime cases. As a result, prosecutors have notified defendants that their cases may be eligible for review.

DIGEST: HB 3872 would allow courts to grant relief on an application for a writ of habeas corpus that contained specific facts indicating that:

- the convicted person previously filed a motion for forensic DNA testing of biological evidence that was denied; and
- had the evidence not been presented at the trial, on the preponderance of the evidence the person would not have been convicted.

If a convicted person was not granted relief based on an application for a writ of habeas corpus, the person could submit a subsequent application if the Texas Forensic Science Commission determined that the evidence considered in the initial application was subject to faulty DNA testing practices.

The bill would allow a convicted person to file a motion for forensic DNA testing of previously tested evidence if it was tested:

- 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

- during the period identified in the audit as involving faulty testing practices.

The convicting court would be required to order the requested DNA testing to be done regardless of whether the convicted person established by a preponderance of the evidence that the person would not have been convicted if exculpatory results had been obtained through DNA testing.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.