

- SUBJECT:** Defining exculpatory evidence for post-conviction DNA testing
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Murr, Vasut
0 nays
2 absent — Hinojosa, A. Johnson
- WITNESSES:** For — Mike Ware, Innocence Project of Texas; Michael Morton;
(*Registered, but did not testify:* Lauren Johnson, ACLU of Texas; Warren Burkley, Austin Justice Coalition; Angelica Cogliano, Austin Lawyers Guild; Shea Place, Texas Criminal Defense Lawyers Association; Maggie Luna, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Cynthia Simons, Texas Women's Justice Coalition; Rebecca Bernhardt, The Innocence Project; Jennifer Allmon, The Texas Catholic Conference of Bishops; Susana Carranza; I dona Griffith; Suzanne Mitchell)

Against — None
- BACKGROUND:** Code of Criminal Procedure ch. 64 authorizes convicted persons to submit to a court a motion asking for forensic DNA testing of certain evidence.

Under Code of Criminal Procedure art. 64.01(b) testing may be requested only under certain conditions, including that the evidence was not previously tested, was tested but could be tested with newer techniques, or was tested at a lab that stopped testing after an audit revealed it engaged in faulty testing practices.

Code of Criminal Procedure art. 64.03 allows courts to order testing only under certain conditions, including that 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; and
- the request for testing was not made to unreasonably delay the execution of sentence or administration of justice.

Some have suggested that the definition of exculpatory evidence, which indicates in part the circumstances under which DNA be tested, should clearly state that courts may consider the possibility of a match to an individual already in a DNA database.

DIGEST: HB 217 would define exculpatory results related to DNA testing requested by convicted persons to include test results that indicated a match between an unidentified DNA profile on the evidence tested and another profile in a DNA database established by the FBI or the Texas Department of Public Safety or other law enforcement agency.

The bill would take effect September 1, 2021, and would apply to motions for DNA testing filed on or after that date.