

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 3
By: Duncan
Jurisprudence
2/13/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Current statutes regulating the use of biological evidence, particularly evidence containing DNA, have been surpassed by developments in the science of biological evidence and other related technologies, unnecessarily inhibiting the use of such evidence. As proposed, C.S.S.B. 3 establishes procedures for the preservation and use of evidence containing DNA and postconviction DNA testing.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the court of criminal appeals in SECTION 4 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.39, as follows:

Art. 38.39. PRESERVATION OF EVIDENCE CONTAINING BIOLOGICAL MATERIAL.

(a) Requires the attorney representing the state, a clerk, or any other officer in possession of evidence described by Subsection (b), in a criminal case in which a defendant is convicted, to ensure the preservation of the evidence.

(b) Provides that this article applies to evidence that:

- was in the possession of the state during the prosecution of the case; and
- at the time of conviction was known to contain biological material that if subjected to scientific testing would more likely than not establish the identity of the person committing the offense, or exclude a person from the group of persons who could have committed the offense.

(c) Requires material required to be preserved under this article, except as provided by Subsection (d), to be preserved:

- until the inmate is executed, dies, or is released on parole, if the defendant was convicted of a capital felony; or
- until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment.

(d) Authorizes the attorney representing the state, clerk, or other officer in possession of evidence described by Subsection (b) to destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence, and written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after notice of the planned destruction of the evidence is mailed.

(e) Provides that to the extent of any conflict, this article controls over Article 2.21.

SECTION 2. Amends Part I, Code of Criminal Procedure, by adding Chapter 64, as follows:

CHAPTER 64. MOTION FOR FORENSIC DNA TESTING

Art. 64.01. MOTION. (a) Authorizes a convicted person to submit to the convicting court a motion for forensic DNA testing of evidence containing biological material. Requires the motion to be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.

(b) Authorizes the motion to 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 challenge conviction and was in the possession of the state during the trial of the offense, but:

- was not previously subjected to DNA testing because DNA testing was not available, or was available, but not technologically capable of providing probative results, or through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing; or
- 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.

Art. 64.02. NOTICE TO STATE; RESPONSE. Requires the trial court, on receipt of the motion, to:

- provide the attorney representing the state with a copy of the motion; and
- require the attorney representing the state to deliver the evidence to the court, along with a description of the condition of the evidence, or explain in writing to the court why the state cannot deliver the evidence to the court.

Art. 64.03. REQUIREMENTS; TESTING. (a) Authorizes a convicting court to order forensic DNA testing under this chapter only if:

- the court finds that the evidence meets certain specific criteria; and
- the convicted person establishes by a preponderance of the evidence a reasonable probability exists that the person would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing, and the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.

(b) Requires the court, if the convicting court finds in the affirmative the issues listed in Subsection (a)(1) and the convicted person meets the requirements in Subsection (a)(2), to order that the requested forensic DNA testing be conducted. Authorizes the court to order the test to be conducted by the Department of Public Safety (DPS), by a laboratory operating under a contract with DPS, or, on agreement of the parties, by another laboratory.

(c) Provides that the State of Texas is not liable for the cost of testing if the convicting court orders that the forensic DNA testing be conducted by a laboratory other than a DPS laboratory or a laboratory under contract with DPS. Requires the court, if the court orders that the testing be conducted by a laboratory described by this subsection, to include in the

order requirements that:

- the DNA testing be conducted under reasonable conditions designed to protect the integrity of the evidence and the testing process;
- the DNA testing employ a scientific method sufficiently reliable and relevant to be admissible under Rule 702 (Testimony by Experts), Texas Rules of Evidence; and
- on completion of the DNA testing, the results of the testing and all data related to the testing required for an evaluation of the test results be immediately filed with the court and copies of the results and data be served on the convicted person and the attorney representing the state.

(d) Requires the convicting court, not later than the 30th day after the conclusion of a proceeding under this chapter, to forward the results to DPS.

Art. 64.04. FINDING. Requires the convicting court, after examining the results of testing under Article 64.03, to hold a hearing and make a finding as to whether the results are favorable to the convicted person. Provides that, for the purposes of this article, results are favorable if, had the results been available before or during the trial of the offense, it is reasonably probable that the person would not have been prosecuted or convicted.

Art. 64.05. APPEALS. Provides that an appeal of a finding under Article 64.04 is to a court of appeals, except that if the convicted person was convicted in a capital case, the appeal of the finding is a direct appeal to the court of criminal appeals.

SECTION 3. Amends Section 411.142(g), Government Code, to authorize the DNA database to contain DNA records of certain samples, including results of testing ordered under Article 64.03, Code of Criminal Procedure.

SECTION 4. (a) Provides that if a person filed an application for a postconviction writ of habeas corpus that was denied or dismissed before September 1, 2001, and if the results of forensic testing conducted under Article 64.03, Code of Criminal Procedure, as added by this Act, are favorable to the person, a claim based on actual innocence that is asserted in a subsequent application is, for the purposes of Section 4(a), Article 11.07, Code of Criminal Procedure, and Section 5(a), Article 11.071, Code of Criminal Procedure, a claim the legal basis for which was unavailable on the date the applicant filed the previous application.

(b) Provides that an applicant whose application for a writ of habeas corpus is pending on September 1, 2001, on submitting a motion under Chapter 64, Code of Criminal Procedures, is entitled to a stay of the proceeding pending a determination by the convicting court as to whether to order DNA testing, and on receiving favorable results, to amend the petition. Requires the court of criminal appeals to adopt rules to provide for a stay of proceedings and the filing of amendments as authorized by this subsection.

(c) Requires the Texas Department of Criminal Justice (department) to provide notice of the provisions of this Act to all persons housed in facilities operated by or under contract with the department. Requires the department to meet certain conditions in providing notice under this section.

SECTION 5. Effective date: upon passage or September 1, 2001.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from the original by amending provisions relating to the application of Article 38.39, Code of Criminal Procedure, to certain evidence. Replaces references to the “counsel of the defendant” with the “last attorney of record.” Adds provision regarding conflicts with Article 2.21, Code of Criminal Procedure.

SECTION 2. Differs from the original by requiring certain items to be submitted with the motion. Amends the criteria under which a motion may be filed to request forensic DNA testing. Replaces references to the “trial court” with the “convicting court.” Amends provisions relating to a finding as to whether the test results are favorable to the convicted person to require the convicting court to hold a hearing. Deletes previously proposed Article 64.05, Code of Criminal Procedure, relating to the court’s discretion. Adds provisions relating to the appeal of findings under proposed Article 64.04, Code of Criminal Procedure.

SECTION 3. No change.

SECTION 4. Differs from the original by deleting provisions relating to the filing of a notice of intent to submit a motion under this Act. Deletes the reference to previously proposed Subsection (a) of this section. Amends provisions relating to the Texas Department of Criminal Justice’s dissemination of information regarding this Act.

SECTION 5. Differs from original by amending the effective date of this Act.