

## **BILL ANALYSIS**

Senate Research Center  
78R5225 GWK-D

C.S.S.B. 543  
By: Duncan  
Criminal Justice  
3/19/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

The 77th Texas Legislature passed S.B. 3, which established a procedure for the testing of post-conviction DNA, to provide an opportunity for biological evidence to be tested in post-conviction cases where testing or technology was not available at the time of the trial. C.S.S.B. 543 clarifies the intent of S.B. 3 to ensure efficient and effective use of the post-conviction DNA law. C.S.S.B. 543 clarifies that the court is required to appoint a lawyer only when it finds reasonable grounds for the motion to be filed. The bill clarifies that the standard of proof for DNA testing is a preponderance of the evidence. This bill further clarifies that the defendant does not have to meet a two-prong test of not having been convicted or indicted, by striking out the “indicted or” language. Finally, this bill corrects an inadvertent mistake which provided that all capital cases had a direct appeal to the court of criminal appeals.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 64.01(c), Code of Criminal Procedure, as follows:

(c) Requires the convicting court to appoint counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for a motion to be filed, and the court determines that the person is indigent. Makes nonsubstantive changes.

SECTION 2. Amends Chapter 64, Code of Criminal Procedure, by adding Article 64.011, as follows:

Art. 64.011. GUARDIANS AND OTHER REPRESENTATIVES. Defines “guardian of a convicted person” for the purposes of this chapter. Authorizes a guardian of a convicted person to submit motions for the convicted person under this chapter and provides that the guardian is entitled to counsel otherwise provided to a convicted person under this chapter.

SECTION 3. Amends Article 64.03(a), Code of Criminal Procedure, as follows:

(a) Authorizes a convicting court to order forensic DNA testing under this chapter only if the convicted person establishes by a preponderance of evidence that the person would not have been convicted if exculpatory results had been obtained through DNA, rather than if the convicted person establishes by a preponderance of the evidence that a reasonable probability exists that the person would not have been prosecuted or convicted if such results had been obtained.

SECTION 4. Amends Article 64.04, Code of Criminal Procedure, as follows:

Art. 64.04. Finding. Requires the convicting court to hold a hearing and make a finding as to whether, had the result been available during the trial of offense, rather than before or during the trial of offense, it is reasonably probable that the person would not have been convicted, rather than prosecuted or convicted.

SECTION 5. Amends Article 64.05, Code of Criminal Procedure, as follows:

Art. 64.05. APPEALS. Provides that an appeal, rather than an appeal of a finding, under this chapter, rather than under Article 64.03 or 64.04, is to a court of appeals in the same manner as an appeal of any other criminal matter, except that if the convicted person was convicted in a capital case and was sentenced to death, the appeal of the finding is a direct appeal to the court of criminal appeals.

SECTION 6. Amends Article 44.01(a), Code of Criminal Procedure, as follows:

(a)(6) Provides that the state is entitled to appeal an order of a court in a criminal case if the order is issued under Chapter 64.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2003.

#### **SUMMARY OF COMMITTEE CHANGES**

In SECTION 2: Added to the original; all subsequent bill sections are renumbered accordingly. Adds Article 64.011 to Chapter 64, Code of Criminal Procedure.

In SECTION 4: Deletes language requiring the convicting court to determine whether the results of certain tests are favorable to the convicted person, requiring instead that the court simply determine whether, had the results been available during the trial of the offense, it is probable that the person would not have been convicted.