

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 681
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law is ambiguous regarding a judge's authority to order additional forensic testing, which has made some judges reluctant to order testing. In addition, the Department of Public Safety (DPS) currently has a backlog of orders for forensic DNA testing.

In January 2006, the Governor's Criminal Justice Advisory Council (council) issued recommendations for improving the criminal justice system to address these issues.

C.S.H.B. 681 implements the council's recommendations regarding post-conviction forensic testing by explicitly authorizing judges to order post-conviction forensic testing and specifying who will pay for forensic tests. The bill also expands the circumstances under which a non-DPS laboratory may conduct forensic DNA testing.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3, Article 11.07, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Authorizes the convicting court to order additional forensic testing if the court decides there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement. Requires the state to pay the cost of additional forensic testing ordered under this subsection, except that the applicant is required to pay the cost of the testing if the applicant retains counsel for purposes of filing an application under this article (Procedure After Conviction Without Death Penalty).

(e) Defines "additional forensic testing."

SECTION 2. Amends Article 64.01(c), Code of Criminal Procedure, to require counsel to be appointed under this subsection (Motion) not later than the 45th day after the date the court finds reasonable grounds or the date the court determines that the convicted person is indigent, whichever is later.

SECTION 3. Amends Article 64.02, Code of Criminal Procedure, as follows:

Art. 64.02. NOTICE TO STATE; RESPONSE. (a) Creates this subsection from existing text. Requires the convicting court to require the attorney representing the state to take certain actions in response to the motion not later than the 60th day after the date the motion is served on the attorney representing the state (response period).

(b) Authorizes the convicting court to proceed under Article 64.03 (Requirements; Testing) after the 60-day response period has expired, regardless of whether the attorney representing the state has submitted a response under Subsection (a).

SECTION 4. Amends Articles 64.03(b), (c), and (d), Code of Criminal Procedure, as follows:

(b) Authorizes a convicted person who pleaded guilty or nolo contendere or, whether before or after conviction, made a confession or similar admission in the case to submit a motion under this chapter. Prohibits the convicting court from finding that identity was not an issue in the case solely on the basis of that plea, confession, or admission, as applicable.

(c) 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 request of the convicted person, by another laboratory accredited under Section 411.0205 (Crime Laboratory Accreditation Process), Government Code.

(d) Provides that the State of Texas is not liable for the cost of testing unless good cause for payment of that cost has been shown if the convicting court orders that the forensic DNA testing be conducted by a laboratory other than DPS laboratory or a laboratory under contract with DPS. Provides that a political subdivision of the state is not liable for the cost of testing under this subsection, regardless of whether good cause for payment of that cost has been shown. Requires the court to include in the order a requirement that the DNA testing be conducted in a timely and efficient manner under reasonable conditions designed to protect the integrity of the evidence and the testing process if the court orders that the testing be conducted by a laboratory described by this subsection.

SECTION 5. (a) Makes application of Section 3(d), Article 11.07, Code of Criminal Procedure, as amended by this Act, prospective.

(b) Makes application of Chapter 64, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 6. Effective date: September 1, 2007.