

SUBJECT: Post-conviction forensic DNA analysis

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 11 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Moody, Pierson, Riddle, Vaught, Vo
0 nays

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Jason Kreag, The Innocence Project; (*Registered, but did not testify*: Edwin Colfax, The Justice Project; Scott Henson, Innocence Project of Texas; Amanda Marzullo, Texas Fair Defense Project; Matt Simpson, American Civil Liberties Union of Texas; Erica Surprenant, Texas Criminal Justice Coalition)

Against — None

BACKGROUND: Under Code of Criminal Procedure, art. 64.01, a convicted person may submit a motion for forensic DNA testing of evidence containing biological material if it was secured in relation to the offense on which the challenged conviction was based and was in the possession of the state during the trial of the offense, but:

- was not previously tested because testing was unavailable or available but not technically capable of providing probative results;
- was not previously tested through no fault of the convicted person for reasons that require testing in the interests of justice; or
- was previously tested but can be subjected to new tests that provide a reasonable likelihood of more accurate and probative results than that previous test.

Code of Criminal Procedure, art. 64.03 provides the conditions a defendant must meet before a motion for DNA testing is granted.

DIGEST: SB 1864 would amend Code of Criminal Procedure, art. 64.01 by

providing that a motion could be made for DNA testing if the material was not previously subjected to testing, no matter the reason testing was not done, if the other stated conditions were met.

Upon completion of DNA testing of evidence containing biological material, the convicting court would be required to order any unidentified DNA profile to be compared with the DNA profiles in the Federal Bureau of Investigation's Combined DNA Index System (CODIS) database.

The bill would take effect September 1, 2009, and would apply only to motions for DNA testing filed on or after this date.

**SUPPORTERS
SAY:**

SB 1864 would help exonerate wrongfully convicted individuals. To date, DNA evidence has been used to exonerate 38 people in Texas, and has played a crucial role in the majority of them. Current law provides that untested material can be tested if it is in the interests of justice. However, an unsympathetic judge still could deny the motion, even where material went untested due to failure on the part of the defense attorney rather than defendant. Allowing convicted persons to move for the DNA testing of untested biological material, regardless of the reason it had not been tested, would help secure the release of wrongfully convicted persons and help ensure that justice was done.

By requiring DNA evidence to be compared against DNA profiles in CODIS, SB 1864 could identify perpetrators more quickly and bring them to justice. Catching a guilty party would provide closure for victims and increase public safety.

The conditions detailed in Code of Criminal Procedure, art. 64.03 provide safeguards that prevent frivolous motions and testing. It is unlikely that SB 1864 would encourage the use of post-conviction DNA analysis as a defense strategy, given that these safeguards would still be in place. Even if the defense did not test biological material, the defense could not prohibit the state from testing it.

**OPPONENTS
SAY:**

By striking conditions for testing previously untested DNA, SB 1864 could create an incentive for a defendant not to test DNA until after conviction. Using post-conviction DNA analysis as a defense strategy could impede the execution of a death sentence and ultimately would delay justice.