

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 3  
By: Duncan  
Jurisprudence  
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### **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, 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 contains biological material and:

- was in the possession of the state during the prosecution of the case; and
- because of the presence of the biological material, might establish the identity of the individual committing the offense or any element of the offense for which the defendant was convicted.

(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 or 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, counsel 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, counsel, or court before the 91st day after notice of the planned destruction of the evidence is mailed.

SECTION 2. Amends Title 1, 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.

(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
- 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 trial court to order forensic DNA testing under this chapter only if:

- the trial 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 trial court, if the trial 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 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 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 court, after examining the results of testing under Article 64.03, to 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. COURT'S DISCRETION. Provides that this chapter does not limit a trial court's discretion to order DNA testing in the interest of justice, if the trial court first makes a finding that results of testing may be material to a claim of innocence.

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) Requires a person who was finally convicted before September 1, 2001, and who wishes to submit a motion requesting postconviction DNA testing under Chapter 64, Code of Criminal Procedure, as added by this Act, to file a notice of intent to submit the motion before September 1, 2005.

(b) Provides that if a person described by Subsection (a) of this section 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.

(c) 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.

(d) Requires the Texas Department of Criminal Justice (TDCJ) to provide each inmate imprisoned in the institutional division of TDCJ on September 1, 2001, with a copy of this Act and a brief description of this Act in layman's terms and in a language the inmate understands. Requires TDCJ to require the inmate to sign a dated statement acknowledging that the inmate received the documents described by this subsection. Requires the TDCJ employee, if the inmate refuses to accept the document, to sign a dated statement describing the refusal. Provides that the September 1, 2005, deadline under Subsection (a) of this section by which an inmate must submit a motion is extended by one day for each day after September 1, 2001, on which TDCJ does not have a signed statement acknowledging the inmate's receipt of documents or a signed statement describing the inmate's refusal to accept documents.

SECTION 5. Effective date: September 1, 2001.

