

## **BILL ANALYSIS**

Senate Research Center  
82R472 SJM-D

S.B. 122  
By: Ellis, Hinojosa  
Criminal Justice  
3/18/2011  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 122 would clarify Texas' post-conviction DNA statute to address issues that arose in the Ricardo Rachell exoneration in Houston and the *Routier v. State* decision by the Court of Criminal Appeals. Under this bill, a motion for post-conviction DNA testing would be granted if the biological evidence was not previously tested; or the biological evidence was previously tested, but can be subjected to newer testing techniques that provide a reasonable likelihood that the results will be more accurate and probative than the previous test results.

The bill would also require the court to order any unidentified DNA profile discovered during post-conviction DNA testing to be compared with the DNA profiles in the Federal Bureau of Investigation's CODIS DNA database. Such a comparison could be used to identify the actual perpetrator and exonerate the convicted.

Under existing law, post-conviction DNA testing can be granted only if the evidence containing biological material was not previously subjected to DNA testing because DNA testing was not available, testing was available but not technologically capable of providing probative results, or was not tested through no fault of the convicted person, and should be tested in the interests of justice. If the biological material was previously tested and can be subjected to newer testing techniques that could result in a more accurate and probative result, then it can be ordered to be tested again.

There is no specific statute that authorizes the courts to order an unidentified DNA profile to be compared with the DNA profiles in the FBI's database.

As proposed, S.B. 122 amends current law relating to postconviction forensic DNA analysis.

### **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(b), Code of Criminal Procedure, as follows:

(b) Authorizes a motion to request forensic DNA testing only of evidence described by Subsection (a) (relating to a motion for forensic DNA testing of evidence containing biological material) that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but:

- (1) was not previously subjected to DNA testing; or
- (2) 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.

Deletes existing text relating to evidence that 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.

SECTION 2. Amends Chapter 64, Code of Criminal Procedure, by adding Article 64.035, as follows:

Art. 64.035. UNIDENTIFIED DNA PROFILES. Requires the convicting court, on completion of the testing under Article 64.03 (Requirements; Testing), to order any unidentified DNA profile to be compared with the DNA profiles in the CODIS DNA database established by the Federal Bureau of Investigation.

SECTION 3. Amends Article 64.04, Code of Criminal Procedure, as follows:

Art. 64.04. FINDING. Requires the convicting court, after examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035, to hold a hearing and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would not have been convicted.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2011.