

**SUBJECT:** Requiring DPS to supervise post-conviction review of DNA evidence

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 5 ayes — Keel, Riddle, Ellis, Hodge, Talton

0 nays

4 absent — Denny, Dunnam, P. Moreno, Pena

**WITNESSES:** None

**BACKGROUND:** Government Code, sec. 411.144 governs the regulation of DNA laboratories. It requires the director of the Department of Public Safety (DPS) to establish procedures for a DNA laboratory, criminal justice, or law enforcement agency in the collection, preservation, shipment, analysis, and use of a blood sample or other specimen for forensic DNA analysis in a manner that permits the exchange of DNA evidence between laboratories and the use of the evidence in a criminal case. A DNA laboratory, criminal justice, or law enforcement agency must follow the procedures established by the director and specified by the Federal Bureau of Investigation. The director at any reasonable time may enter and inspect the premises or audit the procedures of any laboratory that provides DNA records or forensic analyses. If a laboratory violates the rules, the director may prohibit the laboratory from exchanging DNA records with another laboratory, criminal justice, or law enforcement agency.

Government Code, sec. 411.145 allows the director to collect a reasonable fee for DNA analysis of a blood sample or other specimen submitted voluntarily to DPS or for providing population data or other appropriate research data. Fees must be deposited to the credit of the State Highway Fund and may be used only to defray the cost of administering the DNA database system.

**DIGEST:** HB 2704 would specify that any post-conviction review of DNA laboratory evidence in a criminal case, requested by the prosecution, must be under the supervision of the DPS director, and the director would have to employ a third-party consultant. The director could collect a reasonable fee for supervising post-conviction reviews of DNA laboratory evidence.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS  
SAY:**

HB 2704 would ensure an independent, unbiased review of post-conviction DNA evidence. It does not make sense to that the same laboratory that produced shoddy forensic analysis in the first place, or the district attorney's office that prosecuted cases using that evidence, should have exclusive control of the review process.

This bill is necessary in light of recent events in Houston, which were not isolated incidents. In December 2002, a DPS audit of the Houston Police Department (HPD) crime lab, which was unaccredited, found widespread problems. Among other things, the audit team found that lab personnel lacked necessary training and experience and that the lab was not designed to provide adequate security and minimize contamination. For example, water that came in through leaks in the roof might have contaminated evidence; the lab failed to calibrate properly equipment and instruments used in DNA testing; lab analysts may have exaggerated statistics in some instances; and trial testimony was based on questionable lab results. HPD and the Harris County District Attorney's Office are reviewing cases dating back to 1992 that involved DNA evidence tested at the HPD crime lab that inculpated the defendant, to see if the evidence needs to be retested. The review included cases from other counties and even federal cases.

HB 2704 would help restore the public's faith in the integrity of the criminal justice system by ensuring that post-conviction review of DNA evidence is conducted by an unbiased party. The problems at the HPD lab tarnished the system by incarcerating at least some innocent people. HB 2704 would restore public confidence in the manner in which those cases are reviewed. A review system that relies on HPD and the district attorney's office, neither of which is unbiased or independent, lacks sufficient credibility.

The bill would allow DPS to defray its costs by recovering reasonable fees from the cities and counties where it conducted reviews.

Concerns about defense attorneys not being able to request outside review are misplaced. Code of Criminal Procedure, art. 64 guarantees a convicted person

the right to submit a motion for forensic DNA testing and the right to have counsel present during such a proceeding.

**OPPONENTS  
SAY:**

HB 2704 inappropriately would limit those who could request an outside review of DNA evidence to prosecutors, who often work closely with crime laboratories. To ensure fairness, the bill should specify that defendants and defense attorneys also have the right to ask the DPS director to supervise the post-conviction review and employ a third-party consultant.

**NOTES:**

The companion bill, SB 1814 by Gallegos, has been referred to the Senate Criminal Justice Committee.

A related bill, HB 2703 by Bailey, passed the House on May 1 and is scheduled for public hearing by the Senate Criminal Justice Committee on May 13. It would make physical evidence and testimony regarding evidence inadmissible if, at the time of the analysis or the time the evidence was submitted to the court, the crime laboratory or other entity conducting the analysis was not accredited by DPS.