

SUBJECT: Defining exculpatory evidence for post-conviction forensic DNA testing

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Collier, Zedler, J. González, P. King, Murr, Pacheco

0 nays

3 absent — K. Bell, Hunter, Moody

WITNESSES: For —Mike Ware, Innocence Project of Texas; Michael Morton;
(*Registered, but did not testify:* Pete Gallego, Bexar County Criminal District Attorney's Office; Chris Harris, Just Liberty; Vincent Giardino, Tarrant County Criminal District Attorney's Office; Elsa Alcala, Texas Defender Service; Emily Gerrick, Texas Fair Defense Project; and 11 individuals)

Against — None

BACKGROUND: Code of Criminal Procedure ch. 64 authorizes convicted persons to submit to a court a motion asking for forensic DNA testing of certain evidence. The motion may request testing only under certain conditions, including that the evidence was not previously tested, was tested but could be tested with newer techniques, or was tested at a lab that stopped testing after an audit revealed it engaged in faulty testing practices.

Code of Criminal Procedure art. 64.03 allows courts to order testing only under certain conditions, including that the convicted person established by a preponderance of the evidence that:

- the person would not have been convicted if exculpatory results had been obtained through DNA testing; and
- the request for testing was not made to unreasonably delay the execution of sentence or administration of justice.

Some have suggested that current law be clarified so that the definition of

exculpatory evidence clearly includes DNA evidence that resulted in a match to a party included in a DNA database.

DIGEST:

HB 3424 would define exculpatory results related to certain DNA testing requested by convicted persons to include DNA test results that indicated a match between an unidentified DNA profile on the evidence tested and another profile in a DNA database established by the FBI or the Texas Department of Public Safety or in possession of a law enforcement agency. The comparison would have to be conducted by a DPS lab or certain other labs identified in current statute.

The bill would take effect September 1, 2019, and would apply to motions for DNA testing filed on or after that date.