

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 64. MOTION FOR FORENSIC DNA TESTING

Art. 64.01. MOTION. (a) In this section, "biological material":

(1) means an item that is in possession of the state and that contains blood, semen, hair, saliva, skin tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing; and

(2) includes the contents of a sexual assault evidence collection kit.

(a-1) A convicted person may submit to the convicting court a motion for forensic DNA testing of evidence that has a reasonable likelihood of containing biological material. The motion must be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.

(b) The motion may request forensic DNA testing only of evidence described by Subsection (a-1) 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:

(A) 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; or

(B) was tested:

(i) at a laboratory that ceased conducting DNA testing after an audit by the Texas Forensic Science Commission revealed the laboratory engaged in faulty testing practices; and

(ii) during the period identified in the audit as involving faulty testing practices.

(c) A convicted person is entitled to counsel during a proceeding under this chapter. The convicting court shall appoint

counsel for the convicted person if the person informs the court that the person wishes to submit a motion under this chapter, the court finds reasonable grounds for a motion to be filed, and the court determines that the person is indigent. Counsel must be appointed under this subsection not later than the 45th day after the date the court finds reasonable grounds or the date the court determines that the person is indigent, whichever is later. Compensation of counsel is provided in the same manner as is required by:

(1) Article [11.071](#) for the representation of a petitioner convicted of a capital felony; and

(2) Chapter [26](#) for the representation in a habeas corpus hearing of an indigent defendant convicted of a felony other than a capital felony.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 2, eff. April 5, 2001. Subsec. (c) amended by Acts 2003, 78th Leg., ch. 13, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1006 (H.B. [681](#)), Sec. 2, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 278 (H.B. [1573](#)), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 366 (S.B. [122](#)), Sec. 1, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 70 (S.B. [487](#)), Sec. 1, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 903 (H.B. [3872](#)), Sec. 2, eff. June 15, 2017.

Art. 64.011. GUARDIANS AND OTHER REPRESENTATIVES. (a) In this chapter, "guardian of a convicted person" means a person who is the legal guardian of the convicted person, whether the legal relationship between the guardian and convicted person exists because of the age of the convicted person or because of the physical or mental incompetency of the convicted person.

(b) A guardian of a convicted person may submit motions for the convicted person under this chapter and is entitled to counsel

otherwise provided to a convicted person under this chapter.

Added by Acts 2003, 78th Leg., ch. 13, Sec. 2, eff. Sept. 1, 2003.

Art. 64.02. NOTICE TO STATE; RESPONSE. (a) On receipt of the motion, the convicting court shall:

(1) provide the attorney representing the state with a copy of the motion; and

(2) require the attorney representing the state to take one of the following actions in response to the motion not later than the 60th day after the date the motion is served on the attorney representing the state:

(A) deliver the evidence to the court, along with a description of the condition of the evidence; or

(B) explain in writing to the court why the state cannot deliver the evidence to the court.

(b) The convicting court may proceed under Article 64.03 after the response period described by Subsection (a)(2) has expired, regardless of whether the attorney representing the state submitted a response under that subsection.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 2, eff. April 5, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1006 (H.B. 681), Sec. 3, eff. September 1, 2007.

Art. 64.03. REQUIREMENTS; TESTING. (a) A convicting court may order forensic DNA testing under this chapter only if:

(1) the court finds that:

(A) the evidence:

(i) still exists and is in a condition making DNA testing possible; and

(ii) has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect;

(B) there is a reasonable likelihood that the evidence contains biological material suitable for DNA testing; and

(C) identity was or is an issue in the case; and

(2) the convicted person establishes by a

preponderance of the evidence that:

(A) the person would not have been convicted if exculpatory results had been obtained through DNA testing; and

(B) the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.

(b) A convicted person who pleaded guilty or nolo contendere or, whether before or after conviction, made a confession or similar admission in the case may submit a motion under this chapter, and the convicting court is prohibited from finding that identity was not an issue in the case solely on the basis of that plea, confession, or admission, as applicable.

(b-1) Notwithstanding Subsection (c), a convicting court shall order that the requested DNA testing be done with respect to evidence described by Article 64.01(b)(2)(B) if the court finds in the affirmative the issues listed in Subsection (a)(1), regardless of whether the convicted person meets the requirements of Subsection (a)(2). The court may order the test to be conducted by any laboratory that the court may order to conduct a test under Subsection (c).

(c) If the convicting court finds in the affirmative the issues listed in Subsection (a)(1) and the convicted person meets the requirements of Subsection (a)(2), the court shall order that the requested forensic DNA testing be conducted. The court may order the test to be conducted by:

(1) the Department of Public Safety;

(2) a laboratory operating under a contract with the department; or

(3) on the request of the convicted person, another laboratory if that laboratory is accredited under Article 38.01.

(d) If the convicting court orders that the forensic DNA testing be conducted by a laboratory other than a Department of Public Safety laboratory or a laboratory under contract with the department, the State of Texas is not liable for the cost of testing under this subsection unless good cause for payment of that cost has been shown. A political subdivision of the state is not liable for the cost of testing under this subsection, regardless of whether

good cause for payment of that cost has been shown. If the court orders that the testing be conducted by a laboratory described by this subsection, the court shall include in the order requirements that:

(1) the DNA testing be conducted in a timely and efficient manner under reasonable conditions designed to protect the integrity of the evidence and the testing process;

(2) the DNA testing employ a scientific method sufficiently reliable and relevant to be admissible under Rule 702, Texas Rules of Evidence; and

(3) 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.

(e) The convicting court, not later than the 30th day after the conclusion of a proceeding under this chapter, shall forward the results to the Department of Public Safety.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 2, eff. April 5, 2001. Subsec. (a) amended by Acts 2003, 78th Leg., ch. 13, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1006 (H.B. [681](#)), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 70 (S.B. [487](#)), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1276 (S.B. [1287](#)), Sec. 11, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 903 (H.B. [3872](#)), Sec. 3, eff. June 15, 2017.

Art. 64.035. UNIDENTIFIED DNA PROFILES. If an analyzed sample meets the applicable requirements of state or federal submission policies, on completion of the testing under Article [64.03](#), the convicting court shall order any unidentified DNA profile to be compared with the DNA profiles in:

(1) the DNA database established by the Federal Bureau

of Investigation; and

(2) the DNA database maintained by the Department of Public Safety under Subchapter G, Chapter 411, Government Code. Added by Acts 2011, 82nd Leg., R.S., Ch. 278 (H.B. 1573), Sec. 6, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 366 (S.B. 122), Sec. 2, eff. September 1, 2011.

Art. 64.04. FINDING. After examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035, the convicting court shall 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.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 2, eff. April 5, 2001.

Amended by Acts 2003, 78th Leg., ch. 13, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 278 (H.B. 1573), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 366 (S.B. 122), Sec. 3, eff. September 1, 2011.

Art. 64.05. APPEALS. An appeal under this chapter is to a court of appeals in the same manner as an appeal of any other criminal matter, except that if the convicted person was convicted in a capital case and was sentenced to death, the appeal is a direct appeal to the court of criminal appeals.

Added by Acts 2001, 77th Leg., ch. 2, Sec. 2, eff. April 5, 2001.

Amended by Acts 2003, 78th Leg., ch. 13, Sec. 5, eff. Sept. 1, 2003.