

AN ACT

relating to DNA testing of biological evidence in certain capital cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 38.43, Code of Criminal Procedure, is amended by adding Subsections (i), (j), (k), (l), and (m) to read as follows:

(i) Before a defendant is tried for a capital offense in which the state is seeking the death penalty, subject to Subsection (j), the state shall require either the Department of Public Safety through one of its laboratories or a laboratory accredited under Section 411.0205, Government Code, to perform DNA testing, in accordance with the laboratory's capabilities at the time the testing is performed, on any biological evidence that was collected as part of an investigation of the offense and is in the possession of the state. The laboratory that performs the DNA testing shall pay for all DNA testing performed in accordance with this subsection.

(j) As soon as practicable after the defendant is charged with a capital offense, or on a motion by the state or the defendant in a capital case, unless the state has affirmatively waived the death penalty in writing, the court shall order the state and the defendant to meet and confer about which biological materials collected as part of an investigation of the offense qualify as

1 biological evidence that is required to be tested under Subsection
2 (i). If the state and the defendant agree on which biological
3 materials constitute biological evidence, the biological evidence
4 shall be tested in accordance with Subsection (i). If the state and
5 the defendant do not agree on which biological materials qualify as
6 biological evidence, the state or the defendant may request the
7 court to hold a hearing to determine the issue. On receipt of a
8 request for a hearing under this subsection, the court shall set a
9 date for the hearing and provide written notice of the hearing date
10 to the state and the defendant. At the hearing, there is a
11 rebuttable presumption that the biological material that the
12 defendant requests to be tested constitutes biological evidence
13 that is required to be tested under Subsection (i). This subsection
14 does not in any way prohibit the state from testing biological
15 evidence in the state's possession.

16 (k) If an item of biological evidence is destroyed or lost
17 as a result of DNA testing performed under Subsection (i), the
18 laboratory that tested the evidence must provide to the defendant
19 any bench notes prepared by the laboratory that are related to the
20 testing of the evidence and the results of that testing.

21 (l) The defendant's exclusive remedy for testing that was
22 not performed as required under Subsection (i) or (j) is to seek a
23 writ of mandamus from the court of criminal appeals at any time on
24 or before the date an application for a writ of habeas corpus is due
25 to be filed in the defendant's case under Section 4(a), Article
26 11.071. An application for a writ of mandamus under this subsection
27 does not toll any period of limitations applicable to a habeas

1 petition under state or federal law. The defendant is entitled to
2 only one application for a writ of mandamus under this subsection.
3 At any time after the date an application for a writ of habeas
4 corpus is filed in the defendant's case under Section 4(a), Article
5 11.071, the defendant may file one additional motion for forensic
6 testing under Chapter 64.

7 (m) A defendant may have another laboratory accredited
8 under Section 411.0205, Government Code, perform additional
9 testing of any biological evidence required to be tested under
10 Subsection (i). On an ex parte showing of good cause to the court, a
11 defendant may have a laboratory accredited under Section 411.0205,
12 Government Code, perform testing of any biological material that is
13 not required to be tested under Subsection (i). The defendant is
14 responsible for the cost of any testing performed under this
15 subsection.

16 SECTION 2. Subsections (i), (j), (k), (l), and (m), Article
17 38.43, Code of Criminal Procedure, as added by this Act, apply only
18 to a trial that commences on or after the effective date of this
19 Act, regardless of whether the alleged offense was committed
20 before, on, or after that date.

21 SECTION 3. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1292 passed the Senate on April 17, 2013, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 24, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1292 passed the House, with amendments, on May 22, 2013, by the following vote: Yeas 145, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor