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Vernon's Texas Statutes and Codes Annotated
Code of Criminal Procedure (Refs & Annos)
Title 1. Code of Criminal Procedure of 1965

Art. 64.01. Motion

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2015 (Approx. 2 pages)
CHAPTER 64. MOTION FOR FORENSIC DNA TESTING

Effective: September 1, 2015

Vernon's Ann.Texas C.C.P. Art. 64.01

Art. 64.01. Motion

Currentness

(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, 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.

(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.

Credits

NOTES OF DECISIONS (158)

Validity
Due process
Substantive due process
In general
Jurisdiction
Purpose
Procedural requirements
Affidavits
Right to counsel
Right to cross examine
Unreasonable delay
Conduct of counsel
Hearing
Right to test
Retesting
Denial of motion
Reasonable probability of innocence
Postconviction DNA
Evidence containing biological material
Scope of motion
Scope of testing
Mandamus
Findings
Appeal
Review
Habeas corpus

Added by Acts 2001, 77th Leg., ch. 2, § 2, eff. April 5, 2001. Amended by Acts 2003, 78th Leg., ch. 13, § 1, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 1006, § 2, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 278 (H.B. 1573), § 5, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 366 (S.B. 122), § 1, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 70 (S.B. 487), § 1, eff. Sept. 1, 2015.

Notes of Decisions (158)

Vernon's Ann. Texas C. C. P. Art. 64.01, TX CRIM PRO Art. 64.01
Current through the end of the 2015 Regular Session of the 84th Legislature

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NOTES OF DECISIONS (25)

- In general
- Destroyed evidence
- Evidence
- Affidavits
- Standing
- Denial of motion
- State's response to motion
- Review

Vernon's Texas Statutes and Codes Annotated
 Code of Criminal Procedure (Refs & Annos)
 Title 1. Code of Criminal Procedure of 1965

Art. 64.02. Notice to State; Response

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2007 (Approx. 2 pages)
 Chapter 04. MOTION FOR FORENSIC DNA TESTING

Effective: September 1, 2007

Vernon's Ann.Texas C.C.P. Art. 64.02

Art. 64.02. Notice to State; Response

Currentness

(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.

Credits

Added by Acts 2001, 77th Leg., ch. 2, § 2, eff. April 5, 2001. Amended by Acts 2007, 80th Leg., ch. 1006, § 3, eff. Sept. 1, 2007.

Notes of Decisions (25)

Vernon's Ann. Texas C. C. P. Art. 64.02, TX CRIM PRO Art. 64.02
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Art. 64.03. Requirements; Testing

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2015 (Approx. 3 pages)
Chapter 04. MOTION FOR FORENSIC DNA TESTING

Effective: September 1, 2015

Vernon's Ann.Texas C.C.P. Art. 64.03

Art. 64.03. Requirements; Testing

Currentness

- (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.
- (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

NOTES OF DECISIONS (236)

Validity
In general
Purpose
Construction and application
Jurisdiction
Reasonable probability
Hearing
Unreasonable delay
Continuance
Effective assistance of counsel
Additional tests
Right to test
Right to counsel
Identity an issue
Self-defense
Laboratory notes
Laboratory conducting testing
Findings
Admissibility of evidence
Burden of proof
Presumptions and burden of proof
Sufficiency of evidence
Appeal
Review

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.

Credits

Added by Acts 2001, 77th Leg., ch. 2, § 2, eff. April 5, 2001. Amended by Acts 2003, 78th Leg., ch. 13, § 3, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 1006, § 4, eff. Sept. 1, 2007; Acts 2015, 84th Leg., ch. 70 (S.B. 487), § 2, eff. Sept. 1, 2015; Acts 2015, 84th Leg., ch. 1276 (S.B. 1287), § 11, eff. Sept. 1, 2015.

Notes of Decisions (236)

Vernon's Ann. Texas C. C. P. Art. 64.03, TX CRIM PRO Art. 64.03
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Art. 64.035. Unidentified DNA Profiles

Vernon's Texas Statutes and Codes Annotated · Code of Criminal Procedure · Effective: September 1, 2011 (Approx. 2 pages)
Chapter 64. MOTION FOR FORENSIC DNA TESTING

Effective: September 1, 2011

Vernon's Ann.Texas C.C.P. Art. 64.035

Art. 64.035. Unidentified DNA Profiles

Currentness

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.

Credits

Added by Acts 2011, 82nd Leg., ch. 278 (H.B. 1573), § 6, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 366 (S.B. 122), § 2, eff. Sept. 1, 2011.

Vernon's Ann. Texas C. C. P. Art. 64.035, TX CRIM PRO Art. 64.035

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Art. 64.04. Finding

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2011 (Approx. 2 pages)
 Chapter 04. MOTION FOR FORENSIC DNA TESTING

Effective: September 1, 2011

Vernon's Ann.Texas C.C.P. Art. 64.04

Art. 64.04. Finding

Currentness

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.

Credits

Added by Acts 2001, 77th Leg., ch. 2, § 2, eff. April 5, 2001. Amended by Acts 2003, 78th Leg., ch. 13, § 4, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., ch. 278 (H.B. 1573), § 7, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., ch. 366 (S.B. 122), § 3, eff. Sept. 1, 2011.

Notes of Decisions (40)

Vernon's Ann. Texas C. C. P. Art. 64.04, TX CRIM PRO Art. 64.04
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NOTES OF DECISIONS (40)

- Due process
- Construction and application
- Probability of different verdict
- Jurisdiction
- Standing
- Right to testify
- Standard
- Failure to conduct hearing
- Evidence at hearing
- Mandamus
- Review

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Vernon's Texas Statutes and Codes Annotated
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Art. 64.05. Appeals

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2003 (Approx. 2 pages)
Chapter 04. MURKIN FOR FORENSIC DNA TESTING

Effective: September 1, 2003

Vernon's Ann. Texas C.C.P. Art. 64.05

Art. 64.05. Appeals

Currentness

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.

Credits

Added by Acts 2001, 77th Leg., ch. 2, § 2, eff. April 5, 2001. Amended by Acts 2003, 78th Leg., ch. 13, § 5, eff. Sept. 1, 2003.

Notes of Decisions (48)

Vernon's Ann. Texas C. C. P. Art. 64.05, TX CRIM PRO Art. 64.05
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NOTES OF DECISIONS (48)

- In general
- Jurisdiction
- Standing
- Notice of appeal
- Hearing
- Appeal
- Review