

Bill No. CS for CS for SB 366

Amendment No. Barcode 043518

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Villalobos moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 29, through
page 4, line 26, delete those lines

and insert: and which would exonerate that person or mitigate the sentence that person received.

(b) Except as provided in subparagraph 2., a petition for postsentencing DNA testing may be filed or considered:

1. Within 2 years following the date that the judgment and sentence in the case becomes final if no direct appeal is taken, within 2 years following the date that the conviction is affirmed on direct appeal if an appeal is taken, within 2 years following the date that collateral counsel is appointed or retained subsequent to the conviction being affirmed on direct appeal in a capital case, or by October 1, 2003, whichever occurs later; or

2. At any time if the facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney and could not have been ascertained by the exercise

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1 of due diligence.

2 (2) Method for seeking postsentencing DNA testing.--

3 (a) The petition for postsentencing DNA testing must
4 be made under oath by the sentenced defendant and must include
5 the following:

6 1. A statement of the facts relied on in support of
7 the petition, including a description of the physical evidence
8 containing DNA to be tested and, if known, the present
9 location or the last known location of the evidence and how it
10 was originally obtained;

11 2. A statement that the evidence was not previously
12 tested for DNA or a statement that the results of any previous
13 DNA testing were inconclusive and that subsequent scientific
14 developments in DNA testing techniques would likely produce a
15 definitive result;

16 3. A statement that the sentenced defendant is
17 innocent and how the DNA testing requested by the petition
18 will exonerate the defendant of the crime for which the
19 defendant was sentenced or will mitigate the sentence received
20 by the defendant for that crime;

21 4. A statement that identification of the defendant is
22 a genuinely disputed issue in the case, and why it is an
23 issue;

24 5. Any other facts relevant to the petition; and

25 6. A certificate that a copy of the petition has been
26 served on the prosecuting authority.

27 (b) Upon receiving the petition, the clerk of the
28 court shall file it and deliver the court file to the assigned
29 judge.

30 (c) The court shall review the petition and deny it if
31 it is insufficient. If the petition is sufficient, the

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1 prosecuting authority shall be ordered to respond to the
2 petition within 30 days.

3 (d) Upon receiving the response of the prosecuting
4 authority, the court shall review the response and enter an
5 order on the merits of the petition or set the petition for
6 hearing.

7 (e) Counsel may be appointed to assist the sentenced
8 defendant if the petition proceeds to a hearing and if the
9 court determines that the assistance of counsel is necessary
10 and makes the requisite finding of indigency.

11 (f) The court shall make the following findings when
12 ruling on the petition:

13 1. Whether the sentenced defendant has shown that the
14 physical evidence that may contain DNA still exists;

15 2. Whether the results of DNA testing of that physical
16 evidence would be admissible at trial and whether there exists
17 reliable proof to establish that the evidence has not been
18 materially altered and would be admissible at a future
19 hearing; and

20 3. Whether there is a reasonable probability that the
21 sentenced defendant would have been acquitted or would have
22 received a lesser sentence if the DNA evidence had been
23 admitted at trial.

24 (g) If the court orders DNA testing of the physical
25 evidence, the cost of such testing may be assessed against the
26 sentenced defendant unless he or she is indigent. If the
27 sentenced defendant is indigent, the state shall bear the cost
28 of the DNA testing ordered by the court.

29 (h) Any DNA testing ordered by the court shall be
30 carried out by the Department of Law Enforcement or its
31 designee, as provided in s. 943.3251.

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1 (i) The results of the DNA testing ordered by the
2 court shall be provided to the court, the sentenced defendant,
3 and the prosecuting authority.

4 (3) Right to appeal; rehearing.--

5 (a) An appeal from the court's order on the petition
6 for postsentencing DNA testing may be taken by any adversely
7 affected party.

8 (b) An order denying relief shall include a statement
9 that the sentenced defendant has the right to appeal within 30
10 days after the order denying relief is entered.

11 (c) The sentenced defendant may file a motion for
12 rehearing of any order denying relief within 15 days after
13 service of the order denying relief. The time for filing an
14 appeal shall be tolled until an order on the motion for
15 rehearing has been entered.

16 (d) The clerk of the court shall serve on all parties
17 a copy of any order rendered with a certificate of service,
18 including the date of service.

19 (4) Preservation of evidence.--

20 (a) Governmental entities that may be in possession of
21 any physical evidence in the case, including, but not limited
22 to, any investigating law enforcement agency, the clerk of the
23 court, the prosecuting authority, or the Department of Law
24 Enforcement shall maintain any physical evidence collected at
25 the time of the crime for which a postsentencing testing of
26 DNA may be requested.

27 (b) Except for a case in which the death penalty is
28 imposed, the evidence shall be maintained for at least the
29 period of time set forth in subparagraph (1)(b)1. In a case in
30 which the death penalty is imposed, the evidence shall be
31 maintained for 60 days after execution of the sentence.

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1 (c) A governmental entity may dispose of the physical
2 evidence before the expiration of the period of time set forth
3 in paragraph (1)(b) if all of the conditions set forth below
4 are met.

5 1. The governmental entity notifies all of the
6 following individuals of its intent to dispose of the
7 evidence: the sentenced defendant, any counsel of record, the
8 prosecuting authority, and the Attorney General.

9 2. The notifying entity does not receive, within 90
10 days after sending the notification, either a copy of a
11 petition for postsentencing DNA testing filed pursuant to this
12 section or a request that the evidence not be destroyed
13 because the sentenced defendant will be filing the petition
14 before the time for filing it has expired.

15 3. No other provision of law or rule requires that the
16 physical evidence be preserved or retained.

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19 ===== T I T L E A M E N D M E N T =====

20 And the title is amended as follows:

21 On page 1, line 11, after the semicolon,

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23 insert:

24 providing for preservation of evidence for
25 which testing of DNA may be requested;

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