

McLennan DA at odds with state trend on DNA testing

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Author: Cindy V. Culp Tribune-Herald staff writer

In stark opposition to prosecutors in some of Texas' largest jurisdictions, McLennan County District Attorney Abel Reyna has no plans to adopt a policy generally supporting prisoners' requests for DNA testing after conviction.

That position puts Reyna at odds with the state's public policy direction. During the past decade, lawmakers have systematically expanded access to testing. The most recent update came this spring, with legislators saying there were still too many barriers to testing for people who claim wrongful conviction.

Texas leads the nation in cases where prisoners have been exonerated by DNA testing. So far, 45 people have been freed from Texas prisons by the process.

But Reyna, who took office in January, said he won't support testing requests unless a case meets a rigorous set of guidelines. Having an all-comers approach would be unfair to victims and their families, he said. Plus, it would flood his office and the court system with bogus requests, he said.

"What does any person who's ever been pled or been tried have to lose?" Reyna said. "McLennan County would probably need another felony district court to just handle (testing) motions."

That's not the experience of some of Texas' largest jurisdictions, where DNA testing requests are generally supported by their offices, prosecutors there said.

Austin's Travis County, for example, usually gets two to three requests per month. The county has a population of more than 1 million people.

Dallas County — which has a population of 2.4 million people and has had more DNA exonerations than any jurisdiction in the nation — gets fewer than 10 testing requests per month.

Biological evidence

Those low numbers are a reflection of the fact that biological evidence is not collected in most cases, said Nick Vilbas, executive director of the Innocence Project of Texas. Such evidence exists in just 10 percent of serious felony cases, he said.

“You don’t have to worry too much about irrelevant testing happening,” Vilbas said.

He also pointed out Texas first implemented a law that allowed state-paid DNA testing after conviction in 2001. If there was a danger of prosecutors being overrun with requests, it would have happened by now, he said.

The willingness of district attorneys to support testing varies by county. The most common reason requests are rejected is because no evidence exists that is suitable for DNA testing, Vilbas said.

When biological evidence is available, prosecutors who object usually do so on the grounds that other evidence proved the defendant’s guilt, Vilbas said. But prosecutors will have difficulty making such arguments now because of changes to the law and recent court decisions, he said.

Under current law, inmates can ask for DNA testing if biological evidence in their case has never been tested, regardless of the reason why.

They also can ask for new analysis of previously tested evidence if newer methods that might yield more accurate results have become available since the initial testing.

“The fight shouldn’t be about getting the testing done,” Vilbas said. “The fight should be about what does the testing mean.”

The Texas District & County Attorneys Association does not take a stance on legislation because members often have divergent points of view, said Shannon Edmonds, director of governmental relations. But he noted that no prosecutors spoke against the testing expansion bill lawmakers overwhelmingly passed this spring.

Similarly, Edmonds said, he didn’t hear much buzz about the bill during legislative update seminars he gave for prosecutors around the state.

“It was not one of the changes that elicited much comment,” he said.

Edmonds said there’s no question testing requests could be abused by inmates who “have nothing but time on their hands.” During the year, he has heard some prosecutors express frustration about having to address meritless requests, he said.

But, Edmonds said, the number of inmates eligible to file such requests is

dwindling.

“As time goes on, these exonerations are going to trickle down to nothing because DNA testing is done during the pre-trial, investigative stage,” he said.

Lake Waco murders

Reyna is having to weigh the issue of post-conviction testing because of a DNA testing request recently filed in a decades-old murder case. It's part of an effort to exonerate Anthony Melendez, the only living defendant in the infamous 1982 case known as the Lake Waco triple murders.

Melendez pleaded guilty to the crime, which involved the deaths of three teenagers.

He since has recanted, saying he falsely confessed because his attorneys told him he would almost certainly get the death penalty if he went to trial.

Waco attorney Walter M. Reaves Jr., who is leading the exoneration effort, filed a request for DNA testing in the case last month. A hearing on the request is set for Dec. 2.

Reyna previously told the Tribune-Herald he opposes the idea of DNA testing in the case. But he now refuses to discuss it because the case is pending before the court.

In general, Reyna said, his office will evaluate all post-conviction DNA testing requests on an individual basis. Factors to be considered include:

- * Whether the defendant pleaded guilty or was found guilty by a jury.
- * What other evidence was presented in the case.
- * Whether DNA testing was previously available.
- * The potential evidentiary value of any results that might be obtained.
- * Whether there was prosecutorial misconduct.

“You look at everything when those cases come in,” Reyna said.

While a jury's verdict shouldn't necessarily be the final word in a case, it should be given deference and respect, Reyna said.

The effect of testing on victims and their family members also should be considered, he said.

Testing could open old psychological wounds, Reyna said. Some guilty defendants might even use it as a harassment tool, he said.

“What a great way to continue to torment them, say that it’s not over yet,” Reyna said. “At what point does a victim and a family get to close the chapter?”

Reyna said he would view testing more favorably if inmates had to agree to certain stipulations. For example, inmates with a sentence lighter than life without parole could agree to that heftier punishment if the testing proved their guilt. For those already serving life without parole, the hook could be the death penalty being put back on the table, he said.

But no capable defense attorney ever would agree to such stipulations, Reyna said.

Prosecutors in some of Texas’ largest jurisdictions have a different view.

Travis County

Bryan Case, director of the appellate division for the Travis County District Attorney’s Office, said his office evaluates the two to three DNA testing requests it gets per month in a way that gives the benefit of the doubt to the defendant.

On occasion, his office will oppose a request that is “patently ridiculous,” he said. An example would be a case where prior DNA testing solidified the person’s guilt.

But for the most part, if the office determines testable evidence exists, prosecutors support the request, Case said.

“It doesn’t bring much of a burden on anybody,” Case said. “It does not open up the floodwaters.”

Travis County has seen a few cases where testing proved a defendant’s guilt, Case said. He figures the prisoners requested the testing “on a hope and a prayer” it would somehow not incriminate them.

But even in those instances, Case said he is glad testing was done.

“You don’t know it’s a waste of resources until (testing) concludes he’s guilty,” he

said.

Dallas County has a similar philosophy. District Attorney Craig Watkins created the Conviction Integrity Unit within his office in 2007.

One of its main purposes is to look at post-conviction claims of innocence. The county has had 26 DNA exonerations so far.

Russell Wilson, who supervises the unit, said its policy is to support testing if biological evidence exists and DNA results could help settle who committed a crime. The office gets fewer than 10 requests per month, on average, he said.

Evaluating the requests takes some time, Wilson said. But it's generally not excessive. Prosecutors simply read through the case to see if DNA testing could be helpful, he said.

The office gets some frivolous requests that prosecutors oppose, Wilson said. But it's not a big problem, he said.

"I think the general notion is it's better to be sure of the accuracy of someone's guilt than leave lingering questions that testing could resolve," Wilson said.

The public has been supportive of that approach, Wilson said. He said he thinks people are more confident in the criminal justice system as a whole if they know prosecutors are willing to take a look at cases where mistakes may have been made.

"We still send a lot of people to prison," Wilson said. "But we do it within the law and with a fair trial."

cculp@wacotrib.com

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