

1 SB186  
2 204744-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 13-FEB-20

SYNOPSIS: Under existing law, an individual serving a term of imprisonment or awaiting death may petition the court for DNA testing under certain circumstances, including if the evidence would demonstrate the convicted individual's factual innocence of the offense.

This bill would limit the convicted individuals who may petition for DNA testing, would revise the standard for petitioning for DNA testing, would extend the time frame in which motions for DNA testing may be made, and would provide for an appeal of DNA testing determinations.

A BILL  
TO BE ENTITLED  
AN ACT

Relating to criminal procedure; to amend Section 15-18-200, Code of Alabama 1975, relating to DNA testing of

1 convicted individuals, to limit the convicted individuals who  
2 may petition for DNA testing; and to revise the standard for  
3 petitioning for DNA testing and for granting a petition; to  
4 extend the time frame in which motions for DNA testing may be  
5 made, and would provide for an appeal of DNA testing  
6 determinations.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 15-18-200, Code of Alabama 1975,  
9 is amended to read as follows:

10 "§15-18-200.

11 "(a) An individual convicted of ~~a capital offense~~  
12 murder, manslaughter, criminally negligent homicide, assault  
13 in the first degree, assault in the second degree, assault in  
14 the third degree, rape in the first degree, rape in the second  
15 degree, sodomy in the first degree, sodomy in the second  
16 degree, sexual misconduct, sexual torture, sexual abuse in the  
17 first degree, sexual abuse in the second degree, sexual abuse  
18 of a child less than 12 years old, robbery in the first  
19 degree, robbery in the second degree, burglary in the first  
20 degree, burglary in the second degree, or the attempted  
21 commission of any of these offenses, who is serving a term of  
22 imprisonment or awaiting execution of a sentence of death,  
23 through written motion to the circuit court that entered the  
24 judgment of sentence, may apply for the performance of  
25 forensic deoxyribonucleic acid (DNA) testing on specific  
26 evidence, if that evidence was secured in relation to the  
27 investigation or prosecution that resulted in the conviction

1 of the ~~applicant~~ petitioner, is still available for testing as  
2 of the date of the motion, forensic DNA testing was not  
3 performed on the case at the time of the initial trial, and  
4 the results of the forensic DNA testing, on its face, would  
5 ~~demonstrate the convicted individual's factual innocence of~~  
6 ~~the offense convicted~~ raise a reasonable probability that the  
7 petitioner would not have been convicted, had favorable  
8 results been available at the time of the original  
9 prosecution. The filing of a motion as provided in this  
10 subsection shall not automatically stay an execution.

11 "(b) Upon receipt of a motion for DNA testing, the  
12 circuit court shall notify the state and shall afford the  
13 state an opportunity to respond to the motion.

14 "(c) After notice to the state and an opportunity to  
15 respond, the circuit court ~~may~~ shall order forensic DNA  
16 testing and analysis if the court finds that all of the  
17 following apply:

18 "(1) The specific evidence which the petitioner has  
19 requested be subject to forensic DNA testing and analysis is  
20 still in existence and is in a condition that allows forensic  
21 DNA testing and analysis to be conducted which would yield  
22 accurate and reliable results.

23 "(2) The evidence was not previously subjected to  
24 nuclear forensic DNA testing or was not subjected to another  
25 forensic DNA technology, and which may resolve an issue not  
26 previously resolved by any prior forensic DNA testing and  
27 analysis. The type of forensic DNA testing requested must be

1 generally accepted in the forensic community ~~with~~ and, if the  
2 results are eligible for inclusion, shall be included in the  
3 National DNA Index System of the Federal Bureau of  
4 Investigation (FBI).

5 "(d) Upon receipt of a motion for DNA testing or  
6 notice of a motion for DNA testing, the state and the circuit  
7 court shall take any steps reasonably necessary to ensure that  
8 any remaining biological material in the possession of either  
9 the state or the court is preserved pending the completion of  
10 proceedings under this section. In the event biological  
11 material is not available or that reliable testing is not  
12 possible due to the condition or absence of the biological  
13 material, the court shall dismiss the application without  
14 prejudice.

15 "(e) A motion for DNA testing shall contain all of  
16 the following items:

17 "(1) A clear and specific statement of how the  
18 requested forensic DNA testing ~~would prove the factual~~  
19 ~~innocence of the petitioner of the offense for which the~~  
20 ~~petitioner was convicted~~ demonstrates there is a reasonable  
21 probability that the petitioner would not have been convicted,  
22 had favorable results been available at the time of  
23 prosecution, under penalty of perjury.

24 "(2) A statement of the specific evidence that was  
25 secured in relation to the investigation or prosecution that  
26 resulted in the conviction of the petitioner to be tested,  
27 which shall include a statement that:

1           "a. The evidence, which potentially contains DNA,  
2 was obtained in relation to the crime and subsequent  
3 indictment, which resulted in the petitioner's conviction.

4           "b. The evidence was not subjected to DNA testing  
5 because the existence of the evidence was unknown to the  
6 petitioner or to the petitioner's trial attorney prior to  
7 trial or because the technology for the testing was not  
8 available at the time of trial.

9           "c. A description of the evidence to be tested and,  
10 if known, its present location, its origin and the date, time,  
11 and means of its original collection.

12           "d. The results of any DNA or other biological  
13 evidence testing that was conducted in relation to the  
14 investigation or prosecution that resulted in the conviction  
15 of the petitioner and entered as evidence at trial by either  
16 the prosecution or the defense, if known.

17           "e. If known, the names, addresses, and telephone  
18 numbers of all persons or entities who are known or believed  
19 to have possession of any evidence described by paragraph a.  
20 or b., and any persons or entities who have provided any of  
21 the information contained in the petitioner's motion,  
22 indicating which person or entity has which items of evidence  
23 or information.

24           "f. The names, addresses, and telephone numbers of  
25 all persons or entities who may potentially testify for the  
26 petitioner and a description of the subject matter and summary  
27 of the facts to which each person or entity may testify in the

1 event the circuit court determines an evidentiary hearing  
2 would be appropriate.

3 "(3) Prima facie evidence demonstrating that the  
4 identity of the perpetrator was at issue in the trial that  
5 resulted in the conviction of the petitioner and that DNA  
6 testing of the specified evidence would, assuming exculpatory  
7 results, ~~demonstrate the factual innocence of the applicant of~~  
8 ~~the offense for which the petitioner was convicted~~ raise a  
9 reasonable probability that the petitioner would not have been  
10 convicted, had favorable results been available at the time of  
11 the original prosecution.

12 "(f) (1) Except as provided in subdivision (2), the  
13 circuit court shall order the testing requested in a motion  
14 for DNA testing, under reasonable conditions designed to  
15 protect the interest of the state and the integrity of the  
16 evidence and testing process, upon a determination, after  
17 review of the record of the trial of the ~~applicant~~ petitioner,  
18 of all of the following:

19 "a. That the requirements of subsection (c) have  
20 been met.

21 "b. That the evidence to be tested is in the  
22 possession of the state or the court and has been subject to a  
23 chain of custody sufficient to establish that it has not been  
24 altered in any material respect.

25 "c. That the motion is made in a timely manner  
26 pursuant to the Alabama Rules of Criminal Procedure Rule  
27 32.2(c), or within ~~12 months~~ 10 years of August 1, ~~2009~~ 2020.

1           "d. That the motion is for the purpose of  
2 demonstrating ~~the actual innocence of the applicant~~ that there  
3 is a reasonable probability that the petitioner would not have  
4 been convicted, had reasonable results been available at the  
5 time of the original prosecution, and not to delay the  
6 execution of sentence or administration of justice.

7           "(2) The court may not order the testing requested  
8 in a motion for DNA testing if, after review of the petition,  
9 the state's response, if required, and the record of the trial  
10 of the ~~applicant~~ petitioner, the court determines that there  
11 is ~~no a reasonable possibility~~ probability that ~~the testing~~  
12 ~~will produce exculpatory evidence that would exonerate the~~  
13 ~~applicant of the offense for which the applicant was convicted~~  
14 petitioner would have not have been acquitted, had favorable  
15 results been available at the time of the original  
16 prosecution.

17           "(3) The petitioner and the state shall have the  
18 right to appeal a court decision regarding post-conviction DNA  
19 testing.

20           "(g) (1) Any DNA testing ordered under this section  
21 shall be conducted by the Department of Forensic Sciences or a  
22 laboratory mutually selected by the state and the petitioner,  
23 or if the state and the ~~applicant~~ petitioner are unable to  
24 agree on a laboratory, a laboratory selected by the court that  
25 ordered the testing. Any laboratory selected to conduct the  
26 testing shall be accredited by a national forensic  
27 organization and operate in compliance with the Quality



1 Assurance Standards for Forensic DNA Testing Laboratories  
2 issued by the Director of the FBI.

3 "(2) The costs of any testing ordered under this  
4 section shall be paid by the ~~applicant~~ petitioner, or in the  
5 case of ~~an applicant~~ a petitioner who is indigent, and if the  
6 testing is not performed by the Department of Forensic  
7 Sciences, by the State Fair Trial Tax Fund as ordered by the  
8 court. If ~~an applicant~~ a petitioner is deemed by the circuit  
9 court to be indigent and the circuit court orders the  
10 Department of Forensic Sciences to perform the forensic DNA  
11 testing and analysis, then the costs of testing ordered under  
12 this section shall be paid from the Alabama DNA Database Fund,  
13 as created in Section 36-18-32.

14 "(3) The circuit court may appoint counsel for an  
15 indigent petitioner solely for the purpose of proceeding under  
16 this provision providing for post-conviction DNA testing. This  
17 provision is not to be construed as creating the right to the  
18 appointment of counsel for an Alabama Rules of Criminal  
19 Procedure Rule 32 post-conviction appeal and is to be limited  
20 to the sole issue of petitioning for possible post-conviction  
21 DNA testing.

22 "(h) (1) If the DNA testing conducted under this  
23 section produces inconclusive evidence or evidence that is  
24 unfavorable to the petitioner, the court shall dismiss the  
25 petition.

26 "(2) If the DNA testing conducted under this section  
27 produces ~~conclusive evidence of~~ results that raise a

1 reasonable probability that the ~~petitioner's factual innocence~~  
2 of the offense convicted petitioner would not have been  
3 convicted, had favorable results been available at the time of  
4 the original prosecution, the petitioner, during a 60-day  
5 period beginning on the date on which the petitioner is  
6 notified of the test results, may file a petition to the  
7 circuit court that ordered the testing for post-conviction  
8 relief pursuant to Rule 32.1 of the Alabama Rules of Criminal  
9 Procedure. Upon receipt of a petition, the circuit court that  
10 ordered the testing shall consider the petition pursuant to  
11 Rule 32, et seq. of the Alabama Rules of Criminal Procedure."

12 Section 2. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.