

**SB190 INTRODUCED**



1 SB190  
2 7PZKEE2-1  
3 By Senators Stewart, Singleton, Coleman-Madison, Coleman,  
4 Smitherman, Beasley, Hatcher  
5 RFD: Judiciary  
6 First Read: 05-Mar-24



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SYNOPSIS:

Under existing law, an individual convicted of a capital offense who is serving a term of imprisonment or awaiting execution may request a post-conviction DNA test upon petition meeting various requirements to the circuit court requesting the DNA testing and a finding by the court that the specific evidence that is the subject of the DNA testing is still in existence, the evidence was not previously subject to DNA testing.

Existing law also provides that an individual convicted of a capital offense must make a motion to apply for post-conviction DNA testing as provided by the Alabama Rules of Criminal Procedure or within 12 months of the enactment of the original act (Act 2009-768).

This bill would provide that an individual convicted of a non-capital offense who is serving a term of imprisonment may request a post-conviction DNA test.

This bill would delete any time limitations currently existing for motions for post-conviction DNA testing.

A BILL



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29 TO BE ENTITLED

30 AN ACT

31

32 Relating to criminal procedure; to amend Section  
33 15-18-200, Code of Alabama 1975, to provide for  
34 post-conviction DNA testing of inmates convicted of  
35 non-capital offenses; and to remove any time limitations on  
36 motions for such post-conviction relief.

37 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

40 "§15-18-200

41 (a) (1) An individual convicted of a capital or  
42 non-capital offense who is serving a term of imprisonment ~~or~~  
43 ~~awaiting execution of a sentence of death~~, through written  
44 motion to the circuit court that entered the judgment of  
45 sentence, may apply for the performance of forensic  
46 deoxyribonucleic acid (DNA) testing on specific evidence as  
47 provided in this section, ~~if that evidence was secured in~~  
48 ~~relation to the investigation or prosecution that resulted in~~  
49 ~~the conviction of the applicant, is still available for~~  
50 ~~testing as of the date of the motion, forensic DNA testing was~~  
51 ~~not performed on the case at the time of the initial trial,~~  
52 ~~and the results of the forensic DNA testing, on its face,~~  
53 ~~would demonstrate the convicted individual's factual innocence~~  
54 ~~of the offense convicted~~. The filing of athe motion as  
55 ~~provided in this subsection~~ shall not automatically stay an  
56 execution of a death sentence.



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57 (b) Upon receipt of a motion for DNA testing, the  
58 circuit court shall notify the state and shall afford the  
59 state an opportunity to respond to the motion.

60 ~~(c) After notice to the state and an opportunity to~~  
61 ~~respond, the circuit court may order forensic DNA testing and~~  
62 ~~analysis if the court finds that all of the following apply:~~

63 ~~(1) The specific evidence which the petitioner has~~  
64 ~~requested be subject to forensic DNA testing and analysis is~~  
65 ~~still in existence and is in a condition that allows forensic~~  
66 ~~DNA testing and analysis to be conducted which would yield~~  
67 ~~accurate and reliable results.~~

68 ~~(2) The evidence was not previously subjected to~~  
69 ~~nuclear forensic DNA testing or was not subjected to another~~  
70 ~~forensic DNA technology, and which may resolve an issue not~~  
71 ~~previously resolved by any prior forensic DNA testing and~~  
72 ~~analysis. The type of forensic DNA testing requested must be~~  
73 ~~generally accepted in the forensic community with the results~~  
74 ~~eligible for inclusion in the National DNA Index System of the~~  
75 ~~Federal Bureau of Investigation (FBI).~~

76 ~~(d)~~ (c) Upon receipt of a motion for DNA testing ~~or~~  
77 ~~notice of a motion for DNA testing~~, the state and the circuit  
78 court shall take any steps reasonably necessary to ensure that  
79 any remaining biological material in the possession of either  
80 the state or the court is preserved pending the completion of  
81 proceedings under this section. In the event biological  
82 material is not available or that reliable testing is not  
83 possible due to the condition or absence of the biological  
84 material, the court shall dismiss the ~~application~~ motion



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85 without prejudice.

86 ~~(e)~~ (d) A motion for DNA testing shall contain all of  
87 the following ~~items~~:

88 (1) A clear and specific statement of how the requested  
89 forensic DNA testing would prove the factual innocence of the  
90 petitioner of the offense for which the petitioner was  
91 convicted, under penalty of perjury.

92 (2) A statement of the specific evidence that was  
93 secured in relation to the investigation or prosecution that  
94 resulted in the conviction of the petitioner to be tested,  
95 which shall include a statement that:

96 a. The evidence, which potentially contains DNA, was  
97 obtained in relation to the crime and subsequent indictment,  
98 which resulted in the petitioner's conviction.

99 b. The evidence was not subjected to DNA testing  
100 because the existence of the evidence was unknown to the  
101 petitioner or to the petitioner's trial attorney prior to  
102 trial or because the technology for the testing was not  
103 available at the time of trial.

104 c. A description of the evidence to be tested and, if  
105 known, its present location, its origin and the date, time,  
106 and means of its original collection.

107 d. The results of any DNA or other biological evidence  
108 testing that was conducted in relation to the investigation or  
109 prosecution that resulted in the conviction of the petitioner  
110 and entered as evidence at trial by either the prosecution or  
111 the defense, if known.

112 e. If known, the names, addresses, and telephone



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113 numbers of all persons or entities who are known or believed  
114 to have possession of any evidence described by paragraph a.  
115 or b., and any persons or entities who have provided any of  
116 the information contained in the petitioner's motion,  
117 indicating which person or entity has which items of evidence  
118 or information.

119 f. The names, addresses, and telephone numbers of all  
120 persons or entities who may potentially testify for the  
121 petitioner and a description of the subject matter and summary  
122 of the facts to which each person or entity may testify in the  
123 event the circuit court determines an evidentiary hearing  
124 would be appropriate.

125 (3) Prima facie evidence demonstrating that the  
126 identity of the perpetrator was at issue in the trial that  
127 resulted in the conviction of the petitioner and that DNA  
128 testing of the specified evidence ~~would~~, assuming exculpatory  
129 results, would demonstrate the factual innocence of the  
130 ~~applicant~~petitioner of the offense for which the petitioner  
131 was convicted.

132 ~~(f)~~ (e) (1) Except as provided in subdivision (2), the  
133 circuit court shall order the testing requested in a motion  
134 for DNA testing, under reasonable conditions designed to  
135 protect the interest of the state and the integrity of the  
136 evidence and testing process, upon a determination, after  
137 review of the record of the trial of the applicant, ~~of all of~~  
138 ~~the following~~ that all of the following conditions have been  
139 satisfied:

140 a. ~~That the~~ The requirements of subsection ~~(e)~~ (d) have



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141 been met.

142 b. ~~That the~~The evidence to be tested is in the  
143 possession of the state or the court and has been subject to a  
144 chain of custody sufficient to establish that it has not been  
145 altered in any material respect.

146 ~~c. That the motion is made in a timely manner pursuant~~  
147 ~~to the Alabama Rules of Criminal Procedure Rule 32.2(c), or~~  
148 ~~within 12 months of August 1, 2009.~~

149 ~~d. That the~~c. The motion is for the purpose of  
150 demonstrating the actual innocence of the applicant and not to  
151 delay the execution of sentence or administration of justice.

152 (2) The court may not order the testing requested in a  
153 motion for DNA testing if, after review of the petition, the  
154 state's response, if required, and the record of the trial of  
155 the applicant, the court determines that there is no  
156 reasonable possibility that the testing will produce  
157 exculpatory evidence that would exonerate the applicant of the  
158 offense for which the applicant was convicted.

159 (f) Notwithstanding any provision of law to the  
160 contrary, when considering a motion for DNA testing, the court  
161 shall not give consideration to any limitations period that  
162 may otherwise be provided for by law. To the extent the Rule  
163 32.2(c) of the Alabama Rules of Criminal Procedure is in  
164 conflict with this subdivision, that rule is hereby  
165 superseded.

166 (g) (1) Any DNA testing ordered under this section shall  
167 be conducted by the Department of Forensic Sciences or a  
168 laboratory mutually selected by the state and the petitioner,



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169 or if the state and the applicant are unable to agree on a  
170 laboratory, a laboratory selected by the court that ordered  
171 the testing. Any laboratory selected to conduct the testing  
172 shall be accredited by a national forensic organization and  
173 operate in compliance with the Quality Assurance Standards for  
174 Forensic DNA Testing Laboratories issued by the Director of  
175 the FBI.

176 (2) The costs of any testing ordered under this section  
177 shall be paid by the ~~applicant~~petitioner, or in the case of ~~an~~  
178 ~~applicant~~a petitioner who is indigent, and if the testing is  
179 not performed by the Department of Forensic Sciences, by the  
180 State Fair Trial Tax Fund as ordered by the court. If ~~an~~  
181 ~~applicant~~a petitioner is deemed by the circuit court to be  
182 indigent and the circuit court orders the Department of  
183 Forensic Sciences to perform the forensic DNA testing and  
184 analysis, ~~then~~ the costs of testing ordered under this section  
185 shall be paid from the Alabama DNA Database Fund, as created  
186 in Section 36-18-32.

187 ~~(3)~~ (h) The circuit court may appoint counsel for an  
188 indigent petitioner solely for the purpose of proceeding under  
189 this section; provided nothing in this subsection  
190 ~~shall provision providing for post-conviction DNA testing. This~~  
191 ~~provision is not to~~ be construed as creating the right to the  
192 appointment of counsel for an Alabama Rules of Criminal  
193 Procedure Rule 32 post-conviction appeal and is to be limited  
194 to the sole issue of petitioning for possible post-conviction  
195 DNA testing.

196 ~~(h)~~ (i) (1) If the DNA testing conducted under this





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197 section produces inconclusive evidence or evidence that is  
198 unfavorable to the petitioner, the court shall dismiss the  
199 petition.

200 (2) If the DNA testing conducted under this section  
201 produces conclusive evidence of the petitioner's factual  
202 innocence of the offense convicted, the petitioner, during a  
203 60-day period beginning on the date on which the petitioner is  
204 notified of the test results, may file a petition to the  
205 circuit court that ordered the testing for post-conviction  
206 relief pursuant to Rule 32.1 of the Alabama Rules of Criminal  
207 Procedure. Upon receipt of a petition, the circuit court that  
208 ordered the testing shall consider the petition pursuant to  
209 Rule 32, et seq. of the Alabama Rules of Criminal Procedure."

210 Section 2. It is the intent of the Legislature in  
211 enacting this act that, pursuant to Section 150 of the  
212 Constitution of Alabama of 2022, the Alabama Supreme Court  
213 would amend the Alabama Rules of Criminal Procedure to conform  
214 to this act.

215 Section 3. This act shall become effective on October  
216 1, 2024.