

1 SB266  
2 209377-2  
3 By Senators Smitherman and Orr  
4 RFD: Judiciary  
5 First Read: 24-FEB-21

8 SYNOPSIS: Under existing law, only a petitioner  
9 convicted of capital murder may request forensic  
10 DNA testing of evidence from the investigation or  
11 trial.

12 This bill would allow additional petitioners  
13 to request forensic DNA testing of evidence by  
14 expanding the list of eligible crimes.

15 Under existing law, a court may grant a  
16 petitioner's request for DNA testing when the  
17 petitioner proves the testing would demonstrate the  
18 petitioner's factual innocence of the offense  
19 committed.

20 This bill would require a petitioner to  
21 demonstrate by reasonable probability that he or  
22 she would not have been convicted or would have  
23 received a lesser sentence in order to get a court  
24 to grant a request for DNA testing.

25 Under existing law, DNA testing is limited  
26 to previously untested evidence.

1                   This bill would allow DNA testing for  
2                   previously untested evidence or previously tested  
3                   evidence in order to gain more probative results.  
4

5                                   A BILL  
6                                   TO BE ENTITLED  
7                                   AN ACT  
8

9                   Relating to criminal procedure; to amend Section  
10                  15-18-200, Code of Alabama 1975, to further provide for  
11                  requests for DNA testing of evidence by certain petitioners;  
12                  to establish procedures and standards for granting a motion  
13                  requesting DNA testing; and to provide retroactive testing  
14                  under certain circumstances.

15                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

18                                 "§15-18-200.

19                                 "(a) (1) An individual convicted of ~~a capital offense~~  
20                                 ~~who is serving a term of imprisonment or awaiting execution of~~  
21                                 ~~a sentence of death~~ any offense listed in subsection (b), or  
22                                 the attempted commission of any of the offenses listed in  
23                                 subsection (b), including a petitioner currently incarcerated,  
24                                 civilly committed, on parole or probation, or subject to sex  
25                                 offender registration for the period of the registration, or  
26                                 for the first five years, whichever is less, through written  
27                                 motion to the circuit court that entered the judgment of

1 sentence, ~~may apply for the performance of~~ file a motion to  
2 request forensic deoxyribonucleic acid (DNA) DNA testing on  
3 specific evidence, if that of biological evidence if all of  
4 the following occur:

5 "a. The evidence was secured in relation to the  
6 investigation or prosecution that resulted in the conviction  
7 of the applicant,

8 "b. The evidence is still available for testing as  
9 of the date of the motion,

10 "c. Either forensic DNA testing was not performed on  
11 the case at the time of the initial trial, and the results of  
12 the forensic DNA testing, on its face, would demonstrate the  
13 convicted individual's factual innocence of the offense  
14 convicted or, if forensic DNA testing was previously  
15 performed, additional DNA testing would provide a reasonable  
16 likelihood of more probative results.

17 "d. Testing, or additional testing, would  
18 demonstrate by reasonable probability that the petitioner  
19 would not have been convicted or would have received a lesser  
20 sentence if favorable results had been obtained.

21 "(2) The petitioner shall serve a copy of the  
22 motion, with a certificate of service, on the state.

23 "(3) The filing of a motion as provided in this  
24 subsection shall not automatically stay an execution.

25 "(4) The petitioner's motion is not a substitute  
26 for, nor does it affect, any remedy incident to the proceeding

1 in the trial court, or direct review of the conviction or  
2 sentence.

3 "(5) For the purposes of this article, the following  
4 words shall have the following meanings:

5 "a. BIOLOGICAL EVIDENCE. The contents of a sexual  
6 assault examination kit and any item that contains blood,  
7 semen, hair, saliva, skin tissue, fingernail scrapings, bone,  
8 bodily fluids, or other identifiable biological material that  
9 was collected as part of the criminal investigation or may  
10 reasonably be used to incriminate or exculpate any person for  
11 the offense. This definition applies whether that material is  
12 catalogued separately, such as on a slide, swab, or in a test  
13 tube, or is present on other evidence, including, but not  
14 limited to, clothing, ligatures, bedding, or other household  
15 material, drinking cups, cigarettes, or other items.

16 "b. CODIS. Combined DNA Index System.

17 "c. DNA. Deoxyribonucleic acid.

18 "d. SDIC. State DNA Index System.

19 "(b) A petitioner may file a motion as provided in  
20 subsection (a) if he or she was convicted of any of the  
21 following offenses:

22 "(1) Capital Murder, as provided in Section  
23 13A-5-40.

24 "(2) Murder, as provided in Section 13A-6-2.

25 "(3) Manslaughter, as provided in Section 13A-6-3.

26 "(4) Criminally negligent homicide, as provided in  
27 Section 13A-6-4.

1           "(5) Assault in the first degree, as provided in  
2 Section 13A-6-20.

3           "(6) Assault in the second degree, as provided in  
4 Section 13A-6-21.

5           "(7) Assault in the third degree, as provided in  
6 Section 13A-6-22.

7           "(8) Rape in the first degree, as provided in  
8 Section 13A-6-61.

9           "(9) Rape in the second degree, as provided in  
10 Section 13A-6-62.

11           "(10) Sodomy in the first degree, as provided in  
12 Section 13A-6-63.

13           "(11) Sodomy in the second degree, as provided in  
14 Section 13A-6-64.

15           "(12) Sexual misconduct, as provided in Section  
16 13A-6-65.

17           "(13) Sexual torture, as provided in Section  
18 13A-6-65.1.

19           "(14) Sexual abuse in the first degree, as provided  
20 in Section 13A-6-66.

21           "(15) Sexual abuse in the second degree, as provided  
22 in Section 13A-6-67.

23           "(16) Sexual abuse of a child less than 12 years  
24 old, as provided in Section 13A-6-69.1.

25           "(17) Burglary in the first degree, as provided in  
26 Section 13A-7-5.

1           "(18) Burglary in the second degree, as provided in  
2 Section 13A-7-6.

3           "(19) Robbery in the first degree, as provided in  
4 Section 13A-8-41.

5           "(20) Robbery in the second degree, as provided in  
6 Section 13A-8-42.

7           "(c) A motion for DNA testing shall contain all of  
8 the following items:

9           "(1) Name and case number of the original  
10 conviction.

11           "(2) The date of the entry of judgment of conviction  
12 and sentence of the original conviction.

13           "(3) A concise statement of the claims or grounds on  
14 which the motion is based.

15           "(4) A sworn statement of the petitioner that  
16 contains all of the following:

17           "a. That there exists a reasonable probability that  
18 the petitioner would not have been convicted or would have  
19 received a lesser sentence if favorable results had been  
20 obtained through DNA testing at the time of the original  
21 prosecution.

22           "b. That the evidence to be tested was secured  
23 during the investigation or prosecution that resulted in the  
24 conviction of the petitioner.

25           "c. That the evidence was not previously subjected  
26 to DNA testing or, if previously subjected to DNA testing, can

1 be subjected to additional DNA testing that provides a  
2 reasonable likelihood of more probative results.

3 "d. That the chain of custody of the evidence to be  
4 tested established that the evidence has not been tampered  
5 with, replaced, or altered in any material respect or, if the  
6 chain of custody does not establish the integrity of the  
7 evidence, that the testing itself has the potential to  
8 establish the integrity of the evidence. For purposes of this  
9 paragraph, evidence that has been in the custody of law  
10 enforcement, other governmental officials, or a public or  
11 private hospital shall be presumed to satisfy the chain of  
12 custody requirement, absent specific evidence of material  
13 tampering, replacement, or alteration.

14 "e. That the application for testing is made to  
15 demonstrate innocence or the appropriateness of a lesser  
16 sentence and not solely to unreasonably delay the execution of  
17 sentence or the administration of justice.

18 "(d) (1) ~~(b)~~ Upon receipt of a motion for DNA  
19 testing, the circuit court shall notify the state and shall  
20 afford the state an opportunity to respond to the motion. If  
21 it plainly appears from the face of the motion, any exhibits,  
22 or the prior proceedings that the petitioner is not entitled  
23 to any relief, the court may dismiss the motion and shall  
24 notify the petitioner.

25 "(2) If the motion is not dismissed under  
26 subdivision (1), the court shall order the state to file an  
27 answer in a time specified by the court.



1           "~~(c)~~ (e) After notice to the state and an  
2 opportunity to respond, the circuit court ~~may~~ shall order  
3 forensic DNA testing ~~and analysis of biological evidence~~ if  
4 the court ~~finds that all of the following apply:~~ determines  
5 there exists a reasonable probability that the petitioner  
6 would not have been convicted or would have received a lesser  
7 sentence if favorable results had been obtained through  
8 forensic DNA testing at the time of the original prosecution.

9           "~~(1)~~ The specific evidence which the petitioner has  
10 requested be subject to forensic DNA testing and analysis is  
11 still in existence and is in a condition that allows forensic  
12 DNA testing and analysis to be conducted which would yield  
13 accurate and reliable results.

14           "~~(2)~~ The evidence was not previously subjected to  
15 nuclear forensic DNA testing or was not subjected to another  
16 forensic DNA technology, and which may resolve an issue not  
17 previously resolved by any prior forensic DNA testing and  
18 analysis. The type of forensic DNA testing requested must be  
19 generally accepted in the forensic community with the results  
20 eligible for inclusion in the National DNA Index System of the  
21 Federal Bureau of Investigation (FBI).

22           "~~(d)~~ Upon receipt of a motion for DNA testing or  
23 notice of a motion for DNA testing, the state and the circuit  
24 court shall take any steps reasonably necessary to ensure that  
25 any remaining biological material in the possession of either  
26 the state or the court is preserved pending the completion of  
27 proceedings under this section. In the event biological

1 ~~material is not available or that reliable testing is not~~  
2 ~~possible due to the condition or absence of the biological~~  
3 ~~material, the court shall dismiss the application without~~  
4 ~~prejudice.~~

5 "(f) If forensic DNA testing is ordered pursuant to  
6 subsection (e), the judge may also order any of the following:

7 "(1) The state to locate and provide the petitioner  
8 with any document, note, log, or report relating to items of  
9 physical evidence collected in connection with the case, or to  
10 otherwise assist the petitioner in locating items of  
11 biological evidence that the state contends have been lost or  
12 destroyed.

13 "(2) The state to take reasonable measures to locate  
14 biological evidence that may be in its custody and to prepare  
15 an itemized inventory of the evidence.

16 "(3) The state to assist the petitioner in locating  
17 evidence that may be in the custody of a public or private  
18 hospital, public or private laboratory, or other public or  
19 private facility.

20 "(4) Both parties to reveal whether any DNA or other  
21 biological evidence testing was previously conducted without  
22 knowledge of the other party.

23 "(5) Both parties to produce laboratory reports  
24 prepared in connection with DNA testing, as well as the  
25 underlying data and the laboratory notes, if evidence had  
26 previously been subjected to DNA testing.

27 "(6) The type of DNA analysis to be used.

1           "(7) The testing procedures to be followed.

2           "(8) The preservation of a portion of the sample for  
3 testing replication.

4           "(9) Additional DNA testing if the results of the  
5 initial testing are inconclusive or otherwise merit additional  
6 scientific analysis.

7           "(10) A collection and DNA testing of elimination  
8 samples from third parties.

9           ~~"(e) A motion for DNA testing shall contain all of~~  
10 ~~the following items:~~

11           ~~"(1) A clear and specific statement of how the~~  
12 ~~requested forensic DNA testing would prove the factual~~  
13 ~~innocence of the petitioner of the offense for which the~~  
14 ~~petitioner was convicted, under penalty of perjury.~~

15           ~~"(2) A statement of the specific evidence that was~~  
16 ~~secured in relation to the investigation or prosecution that~~  
17 ~~resulted in the conviction of the petitioner to be tested,~~  
18 ~~which shall include a statement that:~~

19           ~~"a. The evidence, which potentially contains DNA,~~  
20 ~~was obtained in relation to the crime and subsequent~~  
21 ~~indictment, which resulted in the petitioner's conviction.~~

22           ~~"b. The evidence was not subjected to DNA testing~~  
23 ~~because the existence of the evidence was unknown to the~~  
24 ~~petitioner or to the petitioner's trial attorney prior to~~  
25 ~~trial or because the technology for the testing was not~~  
26 ~~available at the time of trial.~~

1           ~~"c. A description of the evidence to be tested and,~~  
2 ~~if known, its present location, its origin and the date, time,~~  
3 ~~and means of its original collection.~~

4           ~~"d. The results of any DNA or other biological~~  
5 ~~evidence testing that was conducted in relation to the~~  
6 ~~investigation or prosecution that resulted in the conviction~~  
7 ~~of the petitioner and entered as evidence at trial by either~~  
8 ~~the prosecution or the defense, if known.~~

9           ~~"e. If known, the names, addresses, and telephone~~  
10 ~~numbers of all persons or entities who are known or believed~~  
11 ~~to have possession of any evidence described by paragraph a.~~  
12 ~~or b., and any persons or entities who have provided any of~~  
13 ~~the information contained in the petitioner's motion,~~  
14 ~~indicating which person or entity has which items of evidence~~  
15 ~~or information.~~

16           ~~"f. The names, addresses, and telephone numbers of~~  
17 ~~all persons or entities who may potentially testify for the~~  
18 ~~petitioner and a description of the subject matter and summary~~  
19 ~~of the facts to which each person or entity may testify in the~~  
20 ~~event the circuit court determines an evidentiary hearing~~  
21 ~~would be appropriate.~~

22           ~~"(3) Prima facie evidence demonstrating that the~~  
23 ~~identity of the perpetrator was at issue in the trial that~~  
24 ~~resulted in the conviction of the petitioner and that DNA~~  
25 ~~testing of the specified evidence would, assuming exculpatory~~  
26 ~~results, demonstrate the factual innocence of the applicant of~~  
27 ~~the offense for which the petitioner was convicted.~~

1           ~~"(f) (1) Except as provided in subdivision (2), the~~  
2 ~~circuit court shall order the testing requested in a motion~~  
3 ~~for DNA testing, under reasonable conditions designed to~~  
4 ~~protect the interest of the state and the integrity of the~~  
5 ~~evidence and testing process, upon a determination, after~~  
6 ~~review of the record of the trial of the applicant, of all of~~  
7 ~~the following:~~

8           ~~"a. That the requirements of subsection (c) have~~  
9 ~~been met.~~

10          ~~"b. That the evidence to be tested is in the~~  
11 ~~possession of the state or the court and has been subject to a~~  
12 ~~chain of custody sufficient to establish that it has not been~~  
13 ~~altered in any material respect.~~

14          ~~"c. That the motion is made in a timely manner~~  
15 ~~pursuant to the Alabama Rules of Criminal Procedure Rule~~  
16 ~~32.2(c), or within 12 months of August 1, 2009.~~

17          ~~"d. That the motion is for the purpose of~~  
18 ~~demonstrating the actual innocence of the applicant and not to~~  
19 ~~delay the execution of sentence or administration of justice.~~

20          ~~"(2) The court may not order the testing requested~~  
21 ~~in a motion for DNA testing if, after review of the petition,~~  
22 ~~the state's response, if required, and the record of the trial~~  
23 ~~of the applicant, the court determines that there is no~~  
24 ~~reasonable possibility that the testing will produce~~  
25 ~~exculpatory evidence that would exonerate the applicant of the~~  
26 ~~offense for which the applicant was convicted.~~

1           "(g) (1) Any DNA testing ordered under this section  
2 shall be conducted by the Department of Forensic Sciences or a  
3 laboratory mutually selected by the state and the petitioner,  
4 or if the state and the applicant are unable to agree on a  
5 laboratory, a laboratory selected by the court that ordered  
6 the testing. Any laboratory selected to conduct the testing  
7 shall be accredited by a national forensic organization and  
8 operate in compliance with the Quality Assurance Standards for  
9 Forensic DNA Testing Laboratories issued by the Director of  
10 the FBI.

11           "(2) The costs of any testing ordered under this  
12 section shall be paid by the ~~applicant, or in the case of an~~  
13 ~~applicant who~~ petitioner. If the circuit court determines the  
14 petitioner is indigent, and ~~if~~ the testing is not performed by  
15 the Department of Forensic Sciences, the costs of the testing  
16 shall be paid by the State Fair Trial Tax Fund as ordered by  
17 the court. If ~~an applicant is deemed by~~ the circuit court ~~to~~  
18 ~~be~~ determines the petitioner is indigent and the circuit court  
19 orders the Department of Forensic Sciences to perform the  
20 ~~forensic DNA testing and analysis, then,~~ the costs of testing  
21 ~~ordered under this section~~ shall be paid from the Alabama DNA  
22 Database Fund, as created in Section 36-18-32.

23           "(3) The court may order additional testing, paid  
24 for in accordance with subdivision (2) upon a showing by the  
25 petitioner that the comparison of a DNA profile derived from  
26 the biological evidence at the scene of the crime for which he  
27 or she was convicted, when compared to the DNA profiles in the

1 SDIS or CODIS database systems, could provide evidence that  
2 raises a reasonable probability that the trier of fact would  
3 have come to a different outcome by virtue of that comparison  
4 demonstrating the possible guilt of a third party or parties.

5 ~~"(3)~~ (4) The circuit court may appoint counsel for  
6 an indigent petitioner solely for the purpose of proceeding  
7 under this provision providing for post-conviction DNA  
8 testing. This provision is not to be construed as creating the  
9 right to the appointment of counsel for an Alabama Rules of  
10 Criminal Procedure Rule 32 post-conviction appeal and is to be  
11 limited to the sole issue of petitioning for possible  
12 post-conviction DNA testing.

13 "(h) (1) If the DNA testing conducted under this  
14 section produces inconclusive evidence or evidence that is  
15 unfavorable to the petitioner, the court shall dismiss the  
16 petition.

17 "(2) If the DNA testing conducted under this section  
18 produces conclusive evidence ~~of the petitioner's factual~~  
19 ~~innocence of the offense convicted, the petitioner, during a~~  
20 ~~60-day period beginning on the date on which the petitioner is~~  
21 ~~notified of the test results, may file a petition to the~~  
22 ~~circuit court that ordered the testing for post-conviction~~  
23 ~~relief pursuant to Rule 32.1 of the Alabama Rules of Criminal~~  
24 ~~Procedure. Upon receipt of a petition, the circuit court that~~  
25 ~~ordered the testing shall consider the petition pursuant to~~  
26 ~~Rule 32, et seq. of the Alabama Rules of Criminal Procedure.~~  
27 that is favorable to the petitioner, the court shall enter an

1 order with respect to the conviction or sentence, and shall  
2 conduct any applicable hearing and shall enter any orders  
3 regarding rearraignment, retrial, custody, bail, discharge,  
4 correction of sentence, or other matters the court may deem  
5 necessary. The court shall make specific findings of fact and  
6 expressly state its conclusions of law relating to each issue  
7 presented.

8 "(i) Notwithstanding any law to the contrary, a  
9 motion to request forensic DNA testing of biological evidence  
10 shall not be subject to a statute of limitations, even if the  
11 petitioner pled guilty, confessed, or admitted to a crime, as  
12 long as the petitioner can satisfy the requirements of  
13 paragraphs (a) (1)a. through (a) (1)d.

14 "(j) The petitioner and the state shall have the  
15 right to appeal a court decision regarding post-conviction DNA  
16 testing."

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