

By: Senator(s) Albritton

To: Judiciary, Division B

SENATE BILL NO. 2831

1 AN ACT TO AUTHORIZE POST-CONVICTION DNA TESTING UPON  
2 APPLICATION OF A DEFENDANT; AND FOR RELATED PURPOSES.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

4 **SECTION 1.** (1) Upon a written motion by an individual under  
5 a sentence of imprisonment or death, the court that entered the  
6 judgment of conviction shall order DNA testing of specific  
7 evidence if the court finds that all of the following apply:

8 (a) The applicant asserts, under penalty of perjury,  
9 that the applicant is actually innocent of:

10 (i) The offense for which the applicant is under a  
11 sentence of imprisonment or death; or

12 (ii) Another offense, if:

13 1. Evidence of offense was admitted in a  
14 court proceeding and exoneration of such offense would entitle the  
15 applicant to a reduced sentence or new sentencing hearing; and

16 2. To the extent available, the applicant has  
17 exhausted all remedies available under state law for requesting  
18 DNA testing of specified evidence relating to the offense.

19 (b) The specific evidence to be tested was secured in  
20 relation to the investigation or prosecution of the offense  
21 referenced in the applicant's assertion under paragraph (a).

22 (c) The specific evidence to be tested:

23 (i) Was not previously subjected to DNA testing  
24 and the applicant did not:

25 1. Knowingly and voluntarily waive the right  
26 to request DNA testing of that evidence in a court proceeding  
27 after the effective date of this act; or

28                   2. Knowingly fail to request DNA testing of  
29 that evidence in a prior motion for postconviction DNA testing; or  
30                   (ii) Was previously subjected to DNA testing and  
31 the applicant is requesting DNA testing using a new method or  
32 technology that is substantially more probative than the prior DNA  
33 testing.

34                   (d) The specific evidence to be tested is in the  
35 possession of the state and has been subject to a chain of custody  
36 and retained under conditions sufficient to ensure that such  
37 evidence has not been substituted, contaminated, tampered with,  
38 replaced or altered in any respect material to the proposed DNA  
39 testing.

40                   (e) The proposed DNA testing is reasonable in scope,  
41 uses scientifically sound methods, and is consistent with accepted  
42 forensic practices.

43                   (f) The applicant identifies a theory of defense that:

44                   (i) Is not inconsistent with an affirmative  
45 defense presented at trial; and

46                   (ii) Would establish the actual innocence of the  
47 applicant of the offense referenced in the applicant's assertion  
48 under paragraph (a).

49                   (g) If the applicant was convicted following a trial,  
50 the identity of the perpetrator was at issue in the trial.

51                   (h) The proposed DNA testing of the specific evidence  
52 may produce new material evidence that would:

53                   (i) Support the theory of defense referenced in  
54 paragraph (f); and

55                   (ii) Raise a reasonable probability that the  
56 applicant did not commit the offense.

57                   (i) The applicant certifies that the applicant will  
58 provide a DNA sample for purposes of comparison.

59                   (j) The motion is made in a timely fashion, subject to  
60 the following conditions;

61 (i) There shall be a rebuttable presumption of  
62 timeliness if the motion is made within sixty (60) months of the  
63 effective date of this act or within thirty-six (36) months of  
64 conviction, whichever comes later. Such presumption may be  
65 rebutted upon a showing:

66 1. That the applicant's motion for a DNA test  
67 is based solely upon information used in a previously denied  
68 motion; or

69 2. Clear and convincing evidence that the  
70 applicant's filing is done solely to cause delay or harassment.

71 (ii) There shall be a rebuttable presumption  
72 against timeliness for any motion not satisfying subparagraph (i)  
73 above. Such presumption may be rebutted upon the court's finding:

74 1. That the applicant was or is incompetent  
75 and such incompetence substantially contributed to the delay in  
76 the applicant's motion for a DNA test;

77 2. The evidence to be tested is newly  
78 discovered DNA evidence;

79 3. That the applicant's motion is not based  
80 solely upon the applicant's own assertion of innocence and, after  
81 considering all relevant facts and circumstances surrounding the  
82 motion, a denial would result in a manifest injustice; or

83 4. Upon good cause shown.

84 (2) (a) Upon the receipt of a motion filed under subsection  
85 (1), the court shall:

86 (i) Notify the prosecution; and

87 (ii) Allow the prosecution a reasonable time  
88 period to respond to the motion.

89 (b) To the extent necessary to carry out proceedings  
90 under this section, the court shall direct the state to preserve  
91 the specific evidence relating to a motion under subsection (1).

92 (c) The court may appoint counsel for an indigent  
93 applicant under this section.

94 (3) (a) The court shall direct that any DNA testing ordered  
95 under this section be carried out by any qualified laboratory if  
96 the court makes all necessary orders to ensure the integrity of  
97 the specific evidence and the reliability of the testing process  
98 and test results.

99 (b) The costs of any DNA testing ordered under this  
100 section shall be paid:

101 (i) By the applicant; or

102 (ii) In the case of an applicant who is indigent,  
103 by the state.

104 (4) In any case in which the applicant is sentenced to  
105 death:

106 (a) Any DNA testing ordered under this section shall be  
107 completed not later than sixty (60) days after the date on which  
108 the prosecution responds to the motion filed under subsection (1);  
109 and

110 (b) Not later than one hundred twenty (120) days after  
111 the date on which the DNA testing ordered under this section is  
112 completed, the court shall order any post-testing procedures under  
113 subsection (6) or (7), as appropriate.

114 (5) (a) The results of any DNA testing ordered under this  
115 section shall be simultaneously disclosed to the court, the  
116 applicant, and the prosecutor.

117 (b) If the DNA test results obtained under this section  
118 exclude the applicant as the source of the DNA evidence, and a  
119 comparison of the DNA sample of the applicant does not result in a  
120 match between the DNA sample of the applicant and another offense,  
121 the Attorney General shall destroy the DNA sample of the applicant  
122 and ensure that such information is not retained if there is no  
123 other legal authority to retain the DNA sample of the applicant.

124 (6) (a) If DNA test results obtained under this section are  
125 inconclusive, the court may order further testing, if appropriate,  
126 or may deny the applicant relief.

127           (b) If DNA test results obtained under this section  
128 show that the applicant was the source of the DNA evidence, the  
129 court shall:

130                   (i) Deny the applicant relief; and

131                   (ii) On motion of the state:

132                           1. Make a determination whether the  
133 applicant's assertion of actual innocence was false, and, if the  
134 court makes such a finding, the court may hold the applicant in  
135 contempt; and

136                           2. Assess against the applicant the cost of  
137 any DNA testing carried out under this section.

138           (7) (a) Notwithstanding any law that would bar a motion  
139 under this paragraph as untimely, if DNA test results obtained  
140 under this section exclude the applicant as the source of the DNA  
141 evidence, the applicant may file a motion for a new trial or  
142 resentencing, as appropriate. The court shall establish a  
143 reasonable schedule for the applicant to file such a motion and  
144 for the prosecution to respond to the motion.

145                   (b) The court shall grant the motion of the applicant  
146 for a new trial or resentencing, as appropriate, if the DNA test  
147 results, when considered with all other evidence in the case  
148 (regardless of whether such evidence was introduced at trial),  
149 establish by compelling evidence that a new trial would result in  
150 an acquittal of:

151                           (i) In the case of a motion for a new trial the  
152 offense for which the applicant is under a sentence of  
153 imprisonment or death; and

154                           (ii) In the case of a motion for resentencing,  
155 another offense, if evidence of such offense was admitted during a  
156 sentencing hearing and exoneration of such offense would entitle  
157 the applicant to a reduced sentence or a new sentencing  
158 proceeding.

159           (8) (a) Nothing in this section shall affect the  
160 circumstances under which a person may obtain DNA testing or  
161 post-conviction relief under any other law.

162           (b) Nothing in this section shall provide a basis for  
163 relief in any habeas corpus proceeding.

164           **SECTION 2.** This act shall take effect and be in force from  
165 and after July 1, 2006.