

By: Senator(s) Turner

To: Judiciary, Division B

SENATE BILL NO. 2901

1 AN ACT TO CREATE THE MISSISSIPPI POST CONVICTION DNA TESTING
2 ACT; TO PROVIDE THAT CONVICTED FELONS MAY APPLY FOR DNA TESTING
3 FOR EXCULPATORY PURPOSES UNDER CERTAIN CIRCUMSTANCES; TO PROVIDE
4 FOR NOTICE TO VARIOUS PARTIES; TO PROVIDE FOR COURT REVIEW; TO
5 PROVIDE FOR LABORATORY SELECTION; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** The following shall be codified as Section
8 99-39-5.1, Mississippi Code of 1972:

9 99-39-5.1. A person convicted of a felony may file an
10 application under the provisions of this section of the
11 Mississippi Uniform Post Conviction Collateral Relief Act
12 requesting DNA testing of evidence containing biological material.
13 The application must be signed by the applicant and must allege
14 the following:

15 (a) That the applicant is factually innocent of the
16 crime for which he was convicted, regardless of whether the
17 applicant pled guilty or nolo contendere; and

18 (b) That evidence potentially suitable for DNA testing
19 was secured in relation to the offense that is the basis of the
20 challenged conviction, whether or nor it was used at trial; and

21 (c) (i) DNA testing was not performed on the evidence
22 secured in relation to the offense either because DNA testing was
23 not available, or was available but not technologically capable of
24 providing probative results, or for any other reason that was not
25 the fault of the convicted person; or

26 (ii) Although the evidence was previously
27 subjected to DNA testing, it can now be subjected to newer testing
28 techniques that provide a reasonable likelihood of results that

29 are more accurate and probative than the results of the previous
30 test.

31 (2) The application shall be filed in the trial court where
32 the applicant was convicted and served on the Attorney General,
33 the district attorney of the county where the applicant was
34 convicted, and the law enforcement agency in possession of the
35 evidence. After service of the application, no evidence shall be
36 destroyed that is relevant to a case in which an application for
37 DNA testing has been filed until the case has finally been
38 resolved by the courts.

39 (3) After service of the motion, the court shall hold a
40 hearing to determine that:

41 (a) The evidence still exists and is in a condition
42 making DNA testing possible; and

43 (b) It has been subjected to a chain of custody
44 sufficient to establish that it has not been substituted, tampered
45 with, replaced or altered in any material aspect. For purposes of
46 this section, evidence that has been in the custody of law
47 enforcement, other government officials, or a public or private
48 hospital, shall be presumed to satisfy the chain of custody
49 requirement of this subsection; and

50 (c) There is a reasonable doubt based on competent
51 evidence, whether or not introduced at trial, as to the guilt of
52 the applicant; and

53 (d) There is a reasonable likelihood that the requested
54 DNA testing will resolve the doubt and establish the innocence or
55 guilt of the applicant.

56 (4) If the court finds that all criteria have been met, the
57 court shall order that the requested forensic DNA testing be
58 conducted. A copy of the order shall be served on the Attorney
59 General, the district attorney of the county where the applicant
60 was convicted, and the law enforcement agency which has possession
61 of the evidence to be tested, including, but not limited to,

62 sheriffs, the Department of Public Safety, local police agencies
63 and crime laboratories. If the court finds that the applicant did
64 not satisfy all of the above requirements, it shall dismiss the
65 application. An applicant may appeal the dismissal of the
66 application for DNA testing to the Mississippi Supreme Court.

67 (5) Testing shall be conducted by a laboratory mutually
68 agreed upon by the applicant and the district attorney. In the
69 event that the two (2) parties cannot agree, the court shall
70 designate a laboratory that is accredited by the American Society
71 of Crime Laboratory Directors/Laboratory Accreditation Board
72 (ASCLD/LAB) in forensic DNA analysis to perform the tests.

73 (6) (a) The costs of testing shall be borne by the
74 applicant, unless the applicant is found to be indigent, in which
75 case the costs of testing shall be borne by the state. No other
76 public money may be used to pay for the DNA testing authorized
77 under the provisions of this section.

78 (b) There is created in the State Treasury a special
79 fund to be known as the Indigent Inmates' Post Conviction DNA
80 Testing Fund. The purpose of the fund shall be to provide funding
81 for the DNA testing under Senate Bill No. 2901, 2005 Regular
82 Session. The fund shall be a continuing fund, not subject to
83 fiscal-year limitations, shall be administered by the
84 Administrative Office of the Courts, and shall consist of:

85 (i) Monies appropriated by the Legislature for the
86 purposes of funding post conviction DNA testing for indigent
87 inmates;

88 (iii) Monies received from the federal government;

89 (iv) Donations; and

90 (v) Monies received from such other sources as may
91 be provided by law.

92 (7) The results of the testing shall be forwarded to the
93 applicant, the trial court, and the district attorney. The trial
94 court shall hold a hearing to determine whether it is reasonably

95 probable that, had the results been available at the time of
96 trial, the person would not have been convicted. If the trial
97 court determines that it is reasonably probable that the person
98 would not have been convicted, the court shall grant post
99 conviction relief to the prisoner and vacate the prisoner's
100 conviction and sentence.

101 (8) Filing an application under this section shall not
102 preclude or substitute for an application for post conviction
103 relief based on any other provision of the Uniform Post Conviction
104 Relief Act.

105 (9) Applications for DNA testing under this section may be
106 made on or before December 31, 2010. After December 31, 2010,
107 applications shall be subject to the three-year statute of
108 limitations and its exceptions that apply to all Applications for
109 Post Conviction Relief as provided in Section 99-39-5.

110 **SECTION 2.** This act shall take effect and be in force from
111 and after July 1, 2005.