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Code of Alabama [Currentness](#)

Title 15. Criminal Procedure. ([Refs & Annos](#))

▢ [Chapter 18](#). Sentence and Punishment. ([Refs & Annos](#))

▢ [Article 10](#). . Forensic DNA Testing of Evidence. ([Refs & Annos](#))

➔ **§ 15-18-200. Motion by persons convicted of capital offense for forensic DNA testing and analysis.**

(a) An individual convicted of a capital offense who is serving a term of imprisonment or awaiting execution of a sentence of death, through written motion to the circuit court that entered the judgment of sentence, may apply for the performance of forensic deoxyribonucleic acid (DNA) testing on specific evidence, if that evidence was secured in relation to the investigation or prosecution that resulted in the conviction of the applicant, is still available for testing as of the date of the motion, forensic DNA testing was not performed on the case at the time of the initial trial, and the results of the forensic DNA testing, on its face, would demonstrate the convicted individual's factual innocence of the offense convicted. The filing of a motion as provided in this subsection shall not automatically stay an execution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The costs of any testing ordered under this section shall be paid by the applicant, or in the case of an applicant who is indigent, and if the testing is not performed by the Department of Forensic Sciences, by the State Fair Trial Tax Fund as ordered by the court. If an applicant is deemed by the circuit court to be indigent and the circuit court orders the Department of Forensic Sciences to perform the forensic DNA testing and analysis, then the costs of testing ordered under this section shall be paid from the Alabama DNA Database Fund, as created in [Section 36-18-32](#).

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

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

(2) If the DNA testing conducted under this section produces conclusive evidence of the petitioner's factual innocence of the offense convicted, the petitioner, during a 60-day period beginning on the date on which the petitioner is notified of the test results, may file a petition to the circuit court that ordered the testing for post-

conviction relief pursuant to [Rule 32.1 of the Alabama Rules of Criminal Procedure](#). Upon receipt of a petition, the circuit court that ordered the testing shall consider the petition pursuant to Rule 32, et seq. of the Alabama Rules of Criminal Procedure.

CREDIT(S)

[\(Act 2009-768, § 1.\)](#)

Current through End of 2009 Regular and First Special Sessions.

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