SB190

7PZKEE2-1

By Senators Stewart, Singleton, Coleman-Madison, Coleman, Smitherman, Beasley, Hatcher

RFD: Judiciary

First Read: 05-Mar-24

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

TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§15-18-200

(a)(1) An individual convicted of a capital or non-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 as provided in this section~~, 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~~the motion ~~as provided in this subsection~~ shall not automatically stay an execution of a death sentence.

(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)~~ (c) 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~~motion

without prejudice.

~~(c)~~ (d) 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, would demonstrate the factual innocence of the ~~applicant~~petitioner of the offense for which the petitioner was convicted.

~~(f)~~ (e)(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~~that all of the following conditions have been satisfied:

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

been met.

b. ~~That the~~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~~c. 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.

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the Rule 32.2(c) of the Alabama Rules of Criminal Procedure is in conflict with this subdivision, that rule is hereby superseded.

(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~~petitioner, or in the case of ~~an applicant~~a petitioner 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~~a petitioner 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)~~ (h) The circuit court may appoint counsel for an indigent petitioner solely for the purpose of proceeding under this section; provided nothing in this subsection shall~~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)~~ (i)(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."

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

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