

CHAPTER NO. 731

HOUSE BILL NO. 2490

By Representatives Jackson, Buck, Towns

Substituted for: Senate Bill No. 2964

By Senators Springer, Cohen

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 26, relative to the use of fingerprint or forensic DNA analysis by persons convicted of first degree murder and sentenced to death.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 26, is amended by adding the following as a new section:

Section 40-26-106.

(a) A defendant convicted of the offense of first degree murder and sentenced to death may make a motion before the trial court that entered the judgment of conviction in such defendant's case for the performance of fingerprint or forensic DNA analysis, as defined in Tennessee Code Annotated, Section 24-7-117, on evidence that was secured in relation to the trial which resulted in such defendant's conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of the trial or the results of DNA analysis were not admissible in evidence at the time of the trial. Reasonable notice of the motion shall be served upon the state.

(b) The defendant must present a prima facie case that:

(1) Identity was the issue in the trial which resulted in the defendant's conviction; and

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) The trial court shall allow the testing under reasonable conditions designed to protect the state's interest in the integrity of the evidence and the testing process upon a determination that:

(1) The result of the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

(2) The testing requested employs a scientific method generally accepted within the relevant scientific community.

(d) The provisions of this section shall apply without presumption to any defendant committing the offense of first degree murder and sentenced to death prior to July 1, 1998.

(e)(1) Because DNA analysis was available and admissible in evidence pursuant to Tennessee Code Annotated, Section 24-7-117 at the time of the trial of defendants specified in subpart (2) of this subsection, there is a presumption that such analysis should have been conducted and such evidence presented at the time of trial and therefore that the provisions of this section are not applicable to such defendant. A defendant may overcome such presumption by showing that there was a valid reason or reasons beyond the defendant's control why DNA analysis was not conducted or presented at the time of trial and that the interests of justice would best be served by making the provisions of this section applicable to such defendant.

(2) The presumption set out in subpart (e)(1) shall apply to any defendant committing the offense of first degree murder and sentenced to death on or after July 1, 1998.

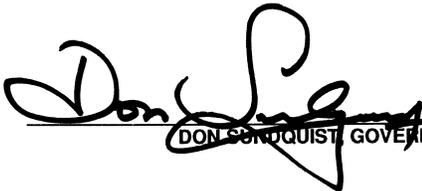
SECTION 2. This act shall take effect July 1, 2000, the public welfare requiring it.

PASSED: May 8, 2000

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this 17<sup>th</sup> day of May 2000

  
DON SUNDQUIST, GOVERNOR