

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 83rd General Assembly  
3 Regular Session, 2001  
4

As Engrossed: S2/19/01 S3/16/01 H4/4/01

# A Bill

SENATE BILL 4

5 By: Senator K. Smith  
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## For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR *AN ALTERNATE MEANS OF*  
10 *SATISFACTION OF* THE STATUTE OF LIMITATIONS FOR  
11 PROSECUTIONS BASED ON DNA AND OTHER SCIENTIFIC  
12 EVIDENCE; FOR POST-CONVICTION APPEALS BASED ON  
13 DNA AND OTHER SCIENTIFIC EVIDENCE; FOR CHAIN OF  
14 CUSTODY PROTECTION FOR DNA AND OTHER SCIENTIFIC  
15 EVIDENCE; AND FOR OTHER PURPOSES.

## Subtitle

18 AN ACT TO PROVIDE METHODS FOR PRESERVING  
19 DNA AND OTHER SCIENTIFIC *EVIDENCE AND TO*  
20 *PROVIDE A REMEDY FOR INNOCENT PERSONS WHO*  
21 *MAY BE EXONERATED BY THIS EVIDENCE.*

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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. *The General Assembly finds that the mission of the criminal*  
27 *justice system is to punish the guilty and to exonerate the innocent. The*  
28 *General Assembly further finds that Arkansas laws and procedures should be*  
29 *changed in order to accommodate the advent of new technologies enhancing the*  
30 *ability to analyze scientific evidence.*

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32 SECTION 2. *Arkansas Code 5-1-109, concerning statutes of limitations*  
33 *for felonies, is amended to add an additional subsection to read as follows:*

34 *(i) If there is biological evidence connecting a person with the*  
35 *commission of an offense and that person's identity is unknown, the*  
36 *prosecution is commenced if an indictment or information is filed against the*

1 unknown person and the indictment contains the genetic information of the  
2 unknown person, which is accepted to be likely to be applicable only to the  
3 unknown person.

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5 SECTION 3. Arkansas Code 16-112-103(a), concerning writ of habeas  
6 corpus, is amended to read as follows:

7 (a)(1) The writ of habeas corpus shall be granted forthwith by any of  
8 the officers enumerated in § 16-112-102(a) to any person who shall apply for  
9 the writ by petition showing, by affidavit or other evidence, probable cause  
10 to believe he is detained without lawful authority, ~~or~~ is imprisoned when by  
11 law he is entitled to bail, or who has alleged actual innocence of the offense  
12 or offenses for which the person was convicted.

13 (2) The procedures for persons who allege actual innocence shall  
14 be in accordance with §§ 16-112-124 through 16-112-129.

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16 SECTION 4. Arkansas Code Title 16, Chapter 112, Subchapter 1 is amended  
17 by adding an additional section to read as follows:

18 16-112-124. Appeals -- New Scientific Evidence.

19 (a) Except when direct appeal is available, a person convicted of a  
20 crime may commence a proceeding to secure relief by filing a petition in the  
21 court in which the conviction was entered to vacate and set aside the judgment  
22 and to discharge the petitioner or to resentence the petitioner or grant a new  
23 trial or correct the sentence or make other disposition as may be appropriate,  
24 if the person claims that:

25 (1) Scientific evidence not available at trial establishes the  
26 petitioner's actual innocence; or

27 (2) The scientific predicate for the claim could not have been  
28 previously discovered through the exercise of due diligence and the facts  
29 underlying the claim, if proven and viewed in light of the evidence as a  
30 whole, would be sufficient to establish by clear and convincing evidence that  
31 no reasonable fact-finder would find the petitioner guilty of the underlying  
32 offense.

33 (b) Nothing contained in this act shall prevent the Supreme Court or the  
34 Court of Appeals, upon application by a party, from granting a stay of an  
35 appeal to allow an application to the trial court for an evidentiary hearing  
36 under this act.

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2           SECTION 5. Arkansas Code Title 16, Chapter 12, Subchapter 1 is amended  
3 by adding an additional section to read as follows:

4           16-112-125. Form of motion.

5           (a)(1) Except when direct appeal is available, a person convicted of a  
6 crime may make a motion for the performance of fingerprinting, forensic DNA  
7 testing, or other tests which may become available through advances in  
8 technology to demonstrate the person's actual innocence if:

9                   (A) The testing is to be performed on evidence secured in  
10 relation to the trial which resulted in the conviction; and

11                   (B) The evidence was not subject to the testing because  
12 either the technology for the testing was not available at the time of the  
13 trial or the testing was not available as evidence at the time of the trial.

14           (2) The motion shall be filed before the court in which the  
15 conviction was entered.

16           (3) Reasonable notice of the motion shall be served on the  
17 prosecuting attorney who represented the state at trial.

18           (b) A person who makes a motion for the performance of fingerprinting,  
19 forensic DNA testing, or other tests which may become available through  
20 advances in technology to demonstrate the person's actual innocence must  
21 present a prima facie case that:

22                   (1) Identity was an issue in the trial; and

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

26           (c)(1) The court shall order that the testing be performed if:

27                   (A) A prima facie case has been established under  
28 subsection (b);

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

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

34           (2) The court shall impose reasonable conditions on the testing  
35 designed to protect the state's interests in the integrity of the evidence and  
36 the testing process.

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2           SECTION 6. *Arkansas Code Title 16, Chapter 12, Subchapter 1 is amended*  
3 *by adding an additional section to read as follows:*

4           16-112-126. Contents of motion.

5           (a) The petition filed under this act shall be entitled in the name of  
6 the petitioner versus the State of Arkansas and shall contain:

7                   (1)(A) A statement of the facts and the grounds upon which the  
8 petition is based and relief desired;

9                   (B) All grounds for relief shall be stated in the petition  
10 or any amendment to the petition unless the grounds could not reasonably have  
11 been set forth in the petition; and

12                   (C) The petition may contain argument or citation of  
13 authorities;

14                   (2) An identification of the proceedings in which the petitioner  
15 was convicted including the date of the entry of conviction and sentence or  
16 other disposition complained of;

17                   (3) An identification of any previous proceeding, together with  
18 the grounds asserted in the previous proceeding, which sought to secure relief  
19 for the petitioner from the conviction and sentence or other disposition; and

20                   (4)(A) The name and address of any attorney representing the  
21 petitioner; or

22                   (B) If the petitioner is without counsel, the circuit clerk  
23 shall immediately transmit a copy of the petition to the judge and shall  
24 advise the petitioner of that referral.

25           (b) The filing of the petition and any related documents and any  
26 proceedings pursuant to the petition shall be without any costs or fees  
27 charged to the petitioner.

28           (c) The petition shall be:

29                   (1) Verified by the petitioner or signed by the petitioner's  
30 attorney; and

31                   (2) Addressed to the court in which the conviction was entered.

32           (d) The circuit clerk shall deliver a copy of the petition to the  
33 prosecuting attorney and to the Attorney General.

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35           SECTION 7. *Arkansas Code Title 16, Chapter 12, Subchapter 1 is amended*  
36 *by adding an additional section to read as follows:*

1 16-112-127. Other pleadings.

2 (a) Within twenty (20) days after the filing of the petition, the  
3 prosecuting attorney or the Attorney General shall respond to the petition by  
4 answer or motion which shall be filed with the court and served on the  
5 petitioner if unrepresented or on the petitioner's attorney.

6 (b)(1) No further pleadings are necessary except as the court may order.

7 (2) However, the court may at any time prior to its decision on  
8 the merits permit:

9 (A) A withdrawal of the petition;

10 (B) Amendments to the petition; and

11 (C) Amendments to the answer.

12 (3) The court shall examine the substance of the pleading and  
13 shall waive any irregularities or defects in form.

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15 *SECTION 8. Arkansas Code Title 16, Chapter 12, Subchapter 1 is amended*  
16 *by adding an additional section to read as follows:*

17 16-112-128. Hearing.

18 (a) Unless the petition and the files and records of the proceeding  
19 conclusively show that the petitioner is entitled to no relief, the court  
20 shall promptly set an early hearing on the petition and response, promptly  
21 determine the issues, make findings of fact and conclusions of law, and either  
22 deny the petition or enter an order granting the appropriate relief.

23 (b) Hearings on a petition filed pursuant to this act shall be open and  
24 shall be held in the court in which the conviction was entered.

25 (c)(1) The court may order the petitioner to be present at the hearing.

26 (2) If the petitioner is represented by an attorney, the attorney  
27 shall be present at any hearing.

28 (3) A verbatim record of any hearing shall be made and kept.

29 (4) Unless otherwise ordered by the court, the petitioner shall  
30 bear the burden of proving the facts alleged in the petition by a  
31 preponderance of the evidence.

32 (5) The court may receive evidence in the form of affidavit,  
33 deposition, or oral testimony.

34 (d) The court may summarily deny a second or successive petition for  
35 similar relief on behalf of the same petitioner and may summarily deny a  
36 petition if the issues raised in it have previously been decided by the Court

1 of Appeals or The Supreme Court in the same case.

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3 SECTION 9. Arkansas Code Title 16, Chapter 12, Subchapter 1 is amended  
4 by adding an additional section to read as follows:

5 16-112-129. Appeals.

6 (a) The appealing party shall, within thirty (30) calendar days after  
7 the entry of the order, file a notice of appeal if the party wishes to appeal.

8 (b)(1) If the appeal is by the petitioner, the service shall be on the  
9 prosecuting attorney and the Attorney General.

10 (2) If the appeal is by the state, the service shall be on the  
11 petitioner or the petitioner's attorney.

12 (c) No fees or bond for costs shall be required for the appeal.

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14 SECTION 10. (a) A person financially unable to obtain counsel who  
15 desires to pursue the remedy provided in this act may apply for representation  
16 by the Public Defender Commission or appointed private attorneys.

17 (b) The trial public defenders or appointed private attorneys may  
18 represent indigent persons who apply for representation under this section.

19 (c)(1) With the approval of the court, petitioners may use the services  
20 of the State Crime Laboratory for latent fingerprinting identification, DNA  
21 testing and other tests which may become available through advances in  
22 technology.

23 (2)(A) If approved by the court, the State Crime Laboratory shall  
24 provide the requested services.

25 (B) Samples shall be of sufficient quantity to allow testing  
26 by both the prosecution and the defense.

27 (C) Neither the prosecution nor defense shall consume the  
28 entire sample in testing in the absence of a court order allowing the sample  
29 to be entirely consumed in testing.

30 (d) Subsection (c) of this section shall not apply to any tests before  
31 trial of a matter that will be governed by relevant constitutional provisions,  
32 statutory law, or court rules.

33 (e) The executive director and the State Crime Laboratory shall give  
34 priority to claims based on factors including:

35 (1) The opportunity for conclusive or near conclusive proof  
36 through scientific evidence that the person is actually innocent; and

1           (2) A lengthy sentence of imprisonment or a death sentence.

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3           SECTION 11. (a) In a prosecution for a sex offense or a violent offense,  
4 the law enforcement agency shall preserve, subject to a continuous chain of  
5 custody, any physical evidence secured in relation to a trial and sufficient  
6 official documentation to locate that evidence.

7           (b)(1) After a trial resulting in conviction, the evidence shall be  
8 impounded and securely retained by a law enforcement agency.

9           (2) Retention shall be the greater of:

10           (A) Permanent following any conviction for a violent  
11 offense;

12           (B) For twenty-five (25) years following any conviction for  
13 a sex offense; and

14           (C) For seven (7) years following any conviction for any  
15 other felony for which the defendant's genetic profile may be taken by a law  
16 enforcement agency and submitted for comparison to the State DNA Data Base for  
17 unsolved offenses.

18           (c) After a conviction is entered, the prosecuting attorney or law  
19 enforcement agency having custody of the evidence may petition the court with  
20 notice to the defendant for entry of an order allowing disposition of the  
21 evidence if, after a hearing and a reasonable period of time in which to  
22 respond, the court determines by a preponderance of the evidence that:

23           (1) The evidence has no significant value for forensic analysis  
24 and must be returned to its rightful owner; or

25           (2) The evidence has no significant value for forensic analysis  
26 and is of a size, bulk, or physical character not usually retained by the law  
27 enforcement agency and cannot practicably be retained by the agency.

28           (d) The court may order the disposition of the evidence if the defendant  
29 is allowed the opportunity to take reasonable measures to remove or preserve  
30 portions of the evidence in question for future testing.

31           (e)(1) It is unlawful for any person to purposely fail to comply with  
32 the provisions of this section.

33           (2) A person who violates this section is guilty of a Class A  
34  misdemeanor.

35           (f) As used in this section:

36           (1) "Law enforcement agency" means any police force or

1 organization whose primary responsibility as established by statute or  
2 ordinance is the enforcement of the criminal, traffic, or highway laws of this  
3 state;

4 (2) "Sex offense" means a sex offense as defined in Arkansas Code  
5 12-12-1103; and

6 (3) "Violent offense" means a violent offense as defined in  
7 Arkansas Code 12-12-1103.

8 /s/ K. Smith

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