**South Carolina General Assembly**

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**H. 4975**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Tallon, Allison, Patrick, D.C. Moss, Pope and G.R. Smith

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Introduced in the House on March 8, 2012

Currently residing in the House Committee on **Judiciary**

Summary: DNA testing

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/8/2012 House Introduced and read first time ([House Journal‑page 19](file:///h:\hj%20archive\2012\03-08-12.docx))

3/8/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 19](file:///h:\hj%20archive\2012\03-08-12.docx))

**VERSIONS OF THIS BILL**

[3/8/2012](file:///p:\pprever\2011-12\4975_20120308.docx)

**A** **BILL**

TO AMEND SECTION 17‑28‑30, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO OFFENSES FOR WHICH POST‑CONVICTION DNA TESTING IS AVAILABLE, SO AS TO LIMIT THE OFFENSES FOR WHICH A PERSON MAY APPLY FOR FORENSIC DNA TESTING TO PROVE HIS INNOCENCE; TO AMEND SECTION 17‑28‑50, RELATING TO APPLICATIONS FOR DNA TESTING AND NOTIFICATION, SO AS TO REQUIRE NOTIFICATION OF THE APPLICATION FOR DNA TESTING TO BE MADE BY THE APPLICANT TO CERTAIN LAW ENFORCEMENT AGENCIES; TO AMEND SECTION 17‑28‑90, RELATING TO AN APPLICANT FOR DNA TESTING’S HEARING AND ORDERS RELATED TO DNA SAMPLES, SO AS TO LIMIT COSTS PAID FOR BY THE STATE TO APPLICANTS FOR DNA TESTING WHO ARE FOUND BY A COURT TO BE INDIGENT; TO AMEND SECTION 17‑28‑120, RELATING TO FUNDING OF POST‑CONVICTION DNA TESTING, SO AS TO REDUCE THE AMOUNT THAT MAY BE EXPENDED FROM THE GENERAL FUND FROM ONE‑HUNDRED‑FIFTY‑THOUSAND DOLLARS TO FIFTY THOUSAND DOLLARS; TO AMEND SECTION 17‑28‑320, RELATING TO OFFENSES FOR WHICH DNA EVIDENCE IS PRESERVED, SO AS TO LIMIT THE OFFENSES FOR WHICH DNA EVIDENCE MUST BE PRESERVED AND PROVIDE EVIDENCE NEED NOT BE PRESERVED AFTER APPEALS ARE EXHAUSTED; AND TO AMEND SECTION 17‑28‑350, RELATING TO WILFUL DESTRUCTION OR TAMPERING WITH DNA EVIDENCE, SO AS TO ADD THE INTENTIONAL DESTRUCTION OR TAMPERING WITH DNA EVIDENCE TO THE PURVIEW OF THE STATUTE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 17‑28‑30 of the 1976 Code, as added by Act 413 of 2008, is amended to read:

“Section 17‑28‑30. (A) A person who pled not guilty to at least one of the following offenses, was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication:

(1) murder (Section 16‑3‑10);

(2) ~~killing by poison (Section 16‑3‑30);~~

~~(3)~~ ~~killing by stabbing or thrusting (Section 16‑3‑40);~~

~~(4)~~ voluntary manslaughter (Section 16‑3‑50) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(5)~~(3) homicide by child abuse (Section 16‑3‑85(A)(1));

~~(6)~~(4) aiding and abetting a homicide by child abuse (Section 16‑3‑85(A)(2));

~~(7)~~ ~~lynching in the first degree (Section 16‑3‑210);~~

~~(8)~~ ~~killing in a duel (Section 16‑3‑430);~~

~~(9)~~ ~~spousal sexual battery (Section 16‑3‑615);~~

~~(10)~~(5) criminal sexual conduct in the first degree (Section 16‑3‑652);

~~(11)~~(6) criminal sexual conduct in the second degree (Section 16‑3‑653) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(12)criminal sexual conduct in the third degree (Section 16‑3‑654);~~

~~(13)~~(7) criminal sexual conduct with a minor (Section 16‑3‑655) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(14)~~ ~~arson in the first degree resulting in death (Section 16‑11‑110(A));~~

~~(15)~~(8) burglary in the first degree for which the person is sentenced to ~~ten~~ fifteen years or more (Section 16‑11‑311(B));

~~(16)~~(9) armed robbery for which the person is sentenced to ten years or more (Section 16‑11‑330(A)) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(17)~~(10) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16‑11‑540);

~~(18)~~(11) abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(19)~~ ~~sexual misconduct with an inmate, patient, or offender (Section 44‑23‑1150);~~

~~(20)~~(12) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55‑1‑30 (3));

~~(21)~~ ~~interference with traffic‑control devices or railroad signs or signals resulting in death (Section 56‑5‑1030(B)(3));~~

~~(22)~~ ~~driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56‑5‑2945);~~

~~(23)~~ ~~obstruction of railroad resulting in death (Section 58‑17‑4090);~~ or

~~(24)~~(13) accessory before the fact (Section 16‑1‑40) to any offense enumerated in this subsection.

(B) A person who pled guilty or nolo contendere to at least one of the offenses enumerated in subsection (A), was subsequently convicted of or adjudicated delinquent for the offense, is currently incarcerated for the offense, and asserts he is innocent of the offense may apply for forensic DNA testing of his DNA and any physical evidence or biological material related to his conviction or adjudication no later than seven years from the date of sentencing or before all appeals including, but not limited to, post‑conviction relief appeals are exhausted or the statute of limitations has run for all appeals.”

SECTION 2. Section 17‑28‑50(A) of the 1976 Code, as added by Act 413 of 2008, is amended to read:

“(A) The clerk shall file the application upon its receipt and promptly bring it to the attention of the court ~~and deliver for docketing a copy to the solicitor of the circuit in which the applicant was convicted or adjudicated~~. The applicant shall deliver a clocked copy of the application to the solicitor for the circuit in which the applicant was convicted or adjudicated. The Attorney General and the appropriate custodian of evidence ~~shall~~ also must be notified by the ~~solicitor~~ applicant. The victim ~~shall~~ must be notified pursuant to the provisions of Article 15, Chapter 3, Title 16.”

SECTION 3. Section 17‑28‑90(E) of the 1976 Code, as added by Act 413 of 2008, is amended to read:

“(E) The court shall order that the applicant pay the costs of the DNA testing. If the applicant is found by a court of competent jurisdiction to be indigent, the costs of the DNA testing ~~shall~~ must be paid by the State.”

SECTION 4. Section 17‑28‑120 of the 1976 Code, as added by Act 413 of 2008, is amended to read:

“Section 17‑28‑120. No more than ~~one hundred~~ fifty thousand dollars may be expended from the general fund in any fiscal year to administer the provisions of this article.”

SECTION 5. Section 17‑28‑320 of the 1976 Code, as added by Act 413 of 2008, is amended to read:

“Section 17‑28‑320. (A) A custodian of evidence must preserve all physical evidence and biological material related to the conviction or adjudication of a person for at least one of the following offenses:

(1) murder (Section 16‑3‑10);

(2) ~~killing by poison (Section 16‑3‑30);~~

~~(3)~~ ~~killing by stabbing or thrusting (Section 16‑3‑40);~~

~~(4)~~ voluntary manslaughter (Section 16‑3‑50) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(5)~~(3) homicide by child abuse (Section 16‑3‑85(A)(1));

~~(6)~~(4) aiding and abetting a homicide by child abuse (Section 16‑3‑85(A)(2));

~~(7)~~ ~~lynching in the first degree (Section 16‑3‑210);~~

~~(8)~~ ~~killing in a duel (Section 16‑3‑430);~~

~~(9)~~ ~~spousal sexual battery (Section 16‑3‑615);~~

~~(10)~~(5) criminal sexual conduct in the first degree (Section 16‑3‑652);

~~(11)~~(6) criminal sexual conduct in the second degree (Section 16‑3‑653) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(12)criminal sexual conduct in the third degree (Section 16‑3‑654);~~

~~(13)~~(7) criminal sexual conduct with a minor (Section 16‑3‑655) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(14)~~ ~~arson in the first degree resulting in death (Section 16‑11‑110(A));~~

~~(15)~~(8) burglary in the first degree for which the person is sentenced to ~~ten~~ fifteen years or more (Section 16‑11‑311(B));

~~(16)~~(9) armed robbery for which the person is sentenced to ten years or more (Section 16‑11‑330(A)) sentenced to life without parole pursuant to Section 17‑25‑45;

~~(17)~~(10) damaging or destroying a building, vehicle, or property by means of an explosive incendiary resulting in death (Section 16‑11‑540);

~~(18)~~(11) abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)) if sentenced to life without parole pursuant to Section 17‑25‑45;

~~(19)~~ ~~sexual misconduct with an inmate, patient, or offender (Section 44‑23‑1150);~~

~~(20)~~(12) unlawful removing or damaging of an airport facility or equipment resulting in death (Section 55‑1‑30 (3));

~~(21)~~ ~~interference with traffic‑control devices or railroad signs or signals resulting in death (Section 56‑5‑1030(B)(3));~~

~~(22)~~ ~~driving a motor vehicle under the influence of alcohol or drugs resulting in death (Section 56‑5‑2945);~~

~~(23)~~ ~~obstruction of railroad resulting in death (Section 58‑17‑4090);~~ or

~~(24)~~(13) accessory before the fact (Section 16‑1‑40) to any offense enumerated in this subsection.

(B) The physical evidence and biological material must be preserved:

(1) subject to a chain of custody as required by South Carolina law;

(2) with sufficient documentation to locate the physical evidence and biological material; and

(3) under conditions reasonably designed to preserve the forensic value of the physical evidence and biological material.

(C) The physical evidence and biological material must be preserved until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A). However, if the person is convicted or adjudicated on a guilty or nolo contendere plea for the offense enumerated in subsection (A), the physical evidence and biological material must be preserved for seven years from the date of sentencing, or until the person is released from incarceration, dies while incarcerated, or is executed for the offense enumerated in subsection (A), whichever comes first. Preservation of the physical and biological material is not required after a person’s appeals including, but not limited to, post‑conviction relief actions are exhausted.”

SECTION 6. Section 17‑28‑350 of the 1976 Code, as added by Act 418 of 2008, is amended to read:

“Section 17‑28‑350. A person who wilfully, intentionally, and maliciously destroys, alters, conceals, or tampers with physical evidence or biological material that is required to be preserved pursuant to this article with the intent to impair the integrity of the physical evidence or biological material, prevent the physical evidence or biological material from being subjected to DNA testing, or prevent the production or use of the physical evidence or biological material in an official proceeding, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars for a first offense, and not more than five thousand dollars or imprisoned for not more than one year, or both, for each subsequent violation.”

SECTION 7. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 8. This act takes effect upon approval by the Governor.

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