

**HOUSE BILL NO. 325**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE LEDOUX**

**Introduced: 1/9/06**

**Referred: Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules**  
2 **of Criminal Procedure."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1.** AS 12.72 is amended by adding new sections to read:

5 **Article 2. Post-Conviction DNA Testing.**

6 **Sec. 12.72.200. Procedure for application for DNA testing; appointment of**  
7 **counsel.** (a) An incarcerated person may apply to the superior court in the district  
8 where the person was convicted for an order for DNA testing of biological evidence  
9 from the conviction and sentence the person is currently serving.

10 (b) An application filed under (a) of this section must include specific facts  
11 sufficient to support a prima facie showing that post-conviction relief is warranted  
12 under the criteria set out in AS 12.72.210. The application must include the results of  
13 all prior DNA tests, regardless of whether a test was performed by the defense or the  
14 prosecution.

1 (c) If the application, files, and record of the case show to the satisfaction of  
2 the court that the petitioner is not entitled to relief based on the criteria specified in  
3 AS 12.72.210, the court shall deny the application without a hearing and without  
4 appointment of counsel. The court may deny a second or subsequent application  
5 requesting relief under this section.

6 (d) If the court does not deny the petitioner's application for testing, the court  
7 shall appoint the public defender or the office of public advocacy if the court  
8 determines the petitioner is indigent and has requested counsel. The court shall  
9 forward a copy of the application for DNA testing to the attorney general.

10 (e) Counsel for the defendant may file a supplement to the application and  
11 may ask the court to set the matter for a hearing if, on investigation of the petitioner's  
12 application for testing, counsel believes sufficient grounds exist to support an order for  
13 DNA testing. If the petitioner is not represented by counsel, the court may set the  
14 matter for a hearing on petitioner's request.

15 (f) Following a request for a hearing, the court shall allow the attorney general  
16 a reasonable amount of time, but not less than 30 days, to respond to the application  
17 and any supplement filed by the petitioner's counsel and to prepare for the hearing.

18 (g) A court may not order DNA testing without a hearing, except on written  
19 stipulation of the attorney general.

20 (h) The court shall deny a motion for production of transcripts unless the  
21 petitioner makes a prima facie showing that a transcript will be necessary at a hearing  
22 conducted under this section.

23 **Sec. 12.72.210. Content of application for DNA testing.** A court may not  
24 order DNA testing unless the petitioner shows, by a preponderance of the evidence,  
25 that

26 (1) favorable results of the DNA testing will demonstrate the  
27 petitioner's actual innocence;

28 (2) a law enforcement agency collected biological evidence pertaining  
29 to the offense and retains actual or constructive possession of the evidence that allows  
30 for reliable DNA testing;

31 (3) conclusive DNA test results were not available before the

1 petitioner's conviction, and the petitioner did not secure DNA testing before the  
 2 petitioner's conviction because DNA testing was not reasonably available or for  
 3 reasons that constitute justifiable excuse, ineffective assistance of counsel, or  
 4 excusable neglect; and

5 (4) the petitioner consents to provide a biological sample for DNA  
 6 testing.

7 **Sec. 12.72.220. Preservation of evidence.** (a) A petitioner is not entitled to  
 8 relief on an allegation that a law enforcement agency failed to preserve biological  
 9 evidence.

10 (b) A court granting a motion for hearing under AS 12.72.200 shall order the  
 11 appropriate law enforcement agency to preserve existing biological evidence for DNA  
 12 testing.

13 (c) This section does not create a duty to preserve biological evidence except  
 14 as ordered in (b) of this section. This section does not create a liability on the part of a  
 15 law enforcement agency for failing to preserve biological evidence.

16 **Sec. 12.72.230. Testing; payment.** Testing shall be performed at a law  
 17 enforcement or correctional facility, and the petitioner shall pay for the testing. If the  
 18 petitioner is indigent and represented by court-appointed counsel, with the approval of  
 19 that counsel, the costs of the testing shall be paid by the Public Defender Agency or  
 20 the office of public advocacy, as appropriate.

21 **Sec. 12.72.240. Results of the DNA test.** (a) Notwithstanding any law or rule  
 22 of procedure that bars an application for post-conviction relief as untimely, a petitioner  
 23 may use the results of a DNA test ordered under AS 12.72.200 as the grounds for  
 24 filing a motion for post-conviction review under AS 12.72.010 - 12.72.040 and the  
 25 Alaska Rules of Criminal Procedure.

26 (b) The testing laboratory shall make the results of a DNA test ordered under  
 27 AS 12.72.200 available to the DNA identification registration system under  
 28 AS 44.41.035 and to any other law enforcement DNA databases.

29 **Sec. 12.72.250. Definitions.** In AS 12.72.200 - 12.72.250,

30 (1) "actual innocence" means clear and convincing evidence such that  
 31 no reasonable juror would have convicted the defendant;

1                   (2) "actual or constructive possession" means the biological evidence  
2 is maintained or stored on the premises of the law enforcement agency or at another  
3 location or facility under the custody or control of the law enforcement agency,  
4 including under an agreement or contract with the law enforcement agency and a  
5 third-party service provider, in this state or elsewhere;

6                   (3) "DNA" means deoxyribonucleic acid;

7                   (4) "incarcerated" means physically housed in a correctional facility  
8 following a felony conviction, or in a juvenile facility following adjudication for an  
9 offense that would have been a felony if committed by an adult, or under parole or  
10 probation supervision for a felony conviction.

11       \* **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13               INDIRECT COURT RULE CHANGE. AS 12.72.240, added by sec. 1 of this Act, has  
14 the effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, relating to the filing of  
15 applications for post-conviction relief.