

106TH CONGRESS
1ST SESSION

S. 1700

To amend the Federal Rules of Criminal Procedure to allow a defendant to make a motion for forensic testing not available at trial regarding actual innocence.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 1999

Mr. DURBIN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Federal Rules of Criminal Procedure to allow a defendant to make a motion for forensic testing not available at trial regarding actual innocence.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “The Right to Use Tech-
5 nology in the Hunt for Truth Act” or “TRUTH Act”.

1 **SEC. 2. MOTION FOR FORENSIC TESTING NOT AVAILABLE**
 2 **AT TRIAL REGARDING ACTUAL INNOCENCE.**

3 (a) IN GENERAL.—The Federal Rules of Criminal
 4 Procedure are amended by inserting after rule 33 the fol-
 5 lowing:

6 **“Rule 33.1. Motion for forensic testing not available**
 7 **at trial regarding actual innocence**

8 “(a) MOTION BY DEFENDANT.—A court on a motion
 9 of a defendant may order the performance of forensic
 10 DNA testing on evidence that was secured in relation to
 11 the trial of that defendant which resulted in the defend-
 12 ant’s conviction, but which was not subject to the testing
 13 which is now requested because the technology for the
 14 testing was not available at the time of trial. Reasonable
 15 notice of the motion shall be served upon the Government.

16 “(b) PRIMA FACIE CASE.—The defendant shall
 17 present a prima facie case that—

18 “(1) identity was an issue in the trial which re-
 19 sulted in the conviction of the defendant; and

20 “(2) the evidence to be tested has been subject
 21 to a chain of custody sufficient to establish that the
 22 evidence has not been substituted, tampered with,
 23 replaced, or altered in any material aspect.

24 “(c) DETERMINATION OF THE COURT.—The court
 25 shall allow the testing under reasonable conditions de-
 26 signed to protect the interests of the Government in the

1 evidence and the testing process upon a determination
 2 that—

3 “(1) the result of the testing has the scientific
 4 potential to produce new, noncumulative evidence
 5 materially relevant to the defendant’s assertion of
 6 actual innocence; and

7 “(2) the testing requested employs a scientific
 8 method generally accepted within the relevant sci-
 9 entific community.”.

10 (b) TABLE OF CONTENTS.—The table of contents for
 11 the Federal Rules of Criminal Procedure are amended by
 12 adding after the item for rule 33 the following:

“33.1. Motion for forensic testing not available at trial regarding actual inno-
 cence.”.

