

JUDICIAL CODE AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Douglas C. Aagard

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill clarifies which provisions of Rule 65C of the Utah Rules of Civil Procedure apply to a petition for a determination of factual innocence.

Highlighted Provisions:

This bill:

- provides that, except for the notice and answer provisions, Rule 65C of the Utah Rules of Civil Procedure apply to petitions to determine factual innocence.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-9-402, as enacted by Laws of Utah 2008, Chapter 358

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-9-402** is amended to read:

78B-9-402. Petition for determination of factual innocence -- Sufficient allegations -- Notification of victim.

As used in this part:

(1) "Factually innocent" means a person did not:

(a) engage in the conduct for which the person was convicted;

30 (b) engage in conduct relating to any lesser included offenses; or

31 (c) commit any other felony arising out of or reasonably connected to the facts
32 supporting the indictment or information upon which the person was convicted.

33 (2) (a) A person who has been convicted of a felony offense may petition the district
34 court in the county in which the person was convicted for a hearing to establish that the person
35 is factually innocent of the crime or crimes of which the person was convicted, if the person
36 asserts factual innocence under oath and the petition alleges:

37 (i) newly discovered material evidence exists that establishes that the petitioner is
38 factually innocent;

39 (ii) the petitioner identifies the specific evidence the petitioner claims establishes
40 innocence;

41 (iii) the material evidence is not merely cumulative of evidence that was known;

42 (iv) the material evidence is not merely impeachment evidence;

43 (v) viewed with all the other evidence, the newly discovered evidence demonstrates
44 that the petitioner is factually innocent; and

45 (vi) (A) neither the petitioner nor petitioner's counsel knew of the evidence at the time
46 of trial or sentencing or in time to include the evidence in any previously filed post-trial
47 motion or postconviction motion, and the evidence could not have been discovered by the
48 petitioner or the petitioner's counsel through the exercise of reasonable diligence;

49 (B) a court has found ineffective assistance of counsel for failing to exercise
50 reasonable diligence in uncovering the evidence; or

51 (C) the court waives the requirements of Subsection (2)(a)(vi)(A) or (2)(a)(vi)(B) in
52 the interest of justice.

53 (b) A person who has already obtained postconviction relief that vacated or reversed
54 the person's conviction may also file a petition under this part if no retrial or appeal regarding
55 this offense is pending.

56 (3) If some or all of the evidence alleged to be exonerating is biological evidence
57 subject to DNA testing, the petitioner shall seek DNA testing pursuant to Section 78B-9-301.

58 (4) ~~[The]~~ Except as provided in Subsection (6), the petition shall be in compliance
59 with and governed by Rule 65C, Utah Rules of Civil Procedure, and shall include the
60 underlying criminal case number.

61 (5) After a petition is filed under this section, prosecutors, law enforcement officers,
62 and crime laboratory personnel shall cooperate in preserving evidence and in determining the
63 sufficiency of the chain of custody of the evidence which is the subject of the petition.

64 (6) (a) ~~[A]~~ Notwithstanding paragraphs (g) and (h) of Rule 65C, Utah Rules of Civil
65 Procedure, a person who files a petition under this section shall serve notice of the petition and
66 a copy of the petition upon the office of the prosecutor who obtained the conviction and upon
67 the Utah attorney general. The attorney general shall, within 30 days after receipt of service of
68 the notice, or within any additional period of time the court allows, answer or otherwise
69 respond to all proceedings initiated under this part.

70 (b) (i) After the time for response by the attorney general under Subsection (6)(a) has
71 passed, the court shall order a hearing if it finds there is a bona fide issue as to whether the
72 petitioner is factually innocent of the charges of which the petitioner was convicted.

73 (ii) If the parties stipulate that the evidence establishes that the petitioner is factually
74 innocent, the court may find the petitioner is factually innocent without holding a hearing.

75 (7) The court may not grant a petition for a hearing under this part during the period in
76 which criminal proceedings in the matter are pending before any trial or appellate court, unless
77 stipulated to by the parties.

78 (8) Any victim of a crime that is the subject of a petition under this part, and who has
79 elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any
80 hearing regarding the petition.