

**JOINT RESOLUTION - CHALLENGING THE  
LEGALITY OF A CONVICTION OR  
SENTENCE**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Kevin S. Garn

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**LONG TITLE**

**General Description:**

This joint resolution of the Legislature proposes to amend the Utah Constitution to enact a provision relating to challenges to the legality of a conviction or sentence.

**Highlighted Provisions:**

This resolution proposes to amend the Utah Constitution to:

- ▶ provide that, following a direct appeal, a person may challenge the legality of the conviction or sentence only as provided by statute; and
- ▶ provide that a person may not be barred from obtaining relief from a conviction or sentence under certain circumstances.

**Special Clauses:**

This resolution directs the lieutenant governor to submit this proposal to voters.

This resolution provides a contingent effective date of January 1, 2011 for this proposal.

**Utah Constitution Sections Affected:**

ENACTS:

**ARTICLE I, SECTION 30**

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*Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:*



28 Section 1. It is proposed to enact Utah Constitution Article I, Section 30, to read:

29 **Article I, Section 30. [Challenging the legality of a conviction or sentence.]**

30 (1) After a person's conviction and sentence have been affirmed in a direct appeal  
31 under Article I, Section 12, or the time to file a direct appeal has expired, and notwithstanding  
32 any other provision of this Constitution, the person may challenge the legality of the conviction  
33 or sentence only in the manner and to the extent provided by statute, subject to Subsection (2).

34 (2) ~~§~~ (a) ~~§~~ A person ~~§~~, including a person sentenced to death, ~~§~~ may not be  
34a barred from obtaining relief from a conviction or sentence if ~~§~~ [:

35 — (a) ~~§~~ the person can prove by clear and convincing evidence that the person did not:

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

37 (ii) engage in conduct relating to a lesser included offense; and

38 (iii) commit any other felony arising out of or reasonably connected to the facts

39 supporting the indictment or information upon which the person was convicted; or

40 (b) ~~§~~ [~~in the case of a~~] A ~~§~~ person sentenced to death ~~§~~ [:] **may not be barred from**

40a **obtaining relief from a conviction or sentence if ~~§~~ the person can prove with newly**

41 **discovered evidence that the person lacked the mental state necessary for conviction of a**

42 **capital offense.**

43 Section 2. **Submittal to voters.**

44 The lieutenant governor is directed to submit this proposed amendment to the voters of  
45 the state at the next regular general election in the manner provided by law.

46 Section 3. **Effective date.**

47 If the amendment proposed by this joint resolution is approved by a majority of those

48 voting on it at the next regular general election, the amendment shall take effect on January 1,

49 2011.

**Legislative Review Note**  
as of 2-4-09 12:19 PM

**Office of Legislative Research and General Counsel**

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**Fiscal Note****S.J.R. 14 - Joint Resolution - Challenging the Legality of a Conviction or Sentence**

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**State Impact**

Publication and distribution costs to put this resolution on the ballot will require a one-time FY 2011 appropriation of \$14,700 from the General Fund.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$0	\$14,700	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$14,700</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.