


INNOCENCE PROJECT



House Bill 65 Preserving Crucial Evidence in Utah

EVIDENCE PRESERVATION IS KEY TO CORRECTING WRONGFUL CONVICTIONS & SOLVING COLD CASES

Utah is one of only 15 states in the country without an evidence preservation law. Nearby, Arizona, Colorado, Nevada, and New Mexico each have a statutory duty to preserve biological evidence for serious crimes.

The ability to test evidence is key to many exonerations. Three people in Utah have relied on DNA evidence to exonerate them and false or misleading forensic evidence contributed to 39% of Utah's wrongful convictions. Proper evidence preservation can mean the difference between someone proving their innocence or spending the rest of their life in prison for a crime they did not commit. It can also mean the difference between identifying a perpetrator of a cold case or leaving a crime unsolved forever.

Identifying wrongful convictions is crucial to public safety as the real perpetrators of serious crimes remain at liberty with no one looking for them. Of the first 375 exonerations based on DNA evidence, the true perpetrators of those crimes were subsequently detected in 50% of the cases. While the wrongfully convicted were incarcerated, **these 165 real perpetrators remained at liberty and committed an additional 154 violent crimes that could have been prevented if the actual perpetrator had been identified originally.**

INCONSISTENT ACCESS TO JUSTICE

Depending on where in the state a crime occurs, the evidence in the case may be destroyed before it can be tested or reexamined. A wrongfully convicted person and victims of unsolved cases should have equal access to justice in their cases regardless of location.

In Utah, evidence retention procedures are governed by local rules and vary by county. Evidence is managed by a variety of different entities, depending on the type of evidence and county of the case.

Utah has the technology and systems in place to store evidence, but in order to have even access to justice across the state, there needs to be uniformity in practice.



Bruce Dallas Goodman, Utah Exoneree
Charge: Murder
Sentence: 5 Years to Life
Year Exonerated: 2004
State Compensation Awarded:
\$100,000

Bruce Dallas Goodman spent 18 years in prison for a murder he did not commit. He was convicted in 1986 of murdering his girlfriend in Beaver, Utah.

Mr. Goodman's case was the first in Utah to utilize DNA evidence to exonerate an innocent person. With the help of the Rocky Mountain Innocence Center, Mr. Goodman was able to petition the court to test DNA found in a rape kit and on a cigarette from the murder, which were originally used to implicate him. When tested, the evidence from nearly 20 years before showed he was innocent of the crime.

On the recommendation of the Utah Attorney General's Office, Mr. Goodman's conviction was vacated and the case was dismissed on November 3, 2004. Tragically, Mr. Goodman passed away in 2014 and didn't live to see his full exoneration. In early January 2015, the State agreed to a posthumous declaration of actual innocence and posthumous compensation to be paid to Mr. Goodman's children.

Mr. Goodman was fortunate that the evidence was preserved in his case but other potentially innocent people in Utah have not been.

THE FAILURE TO PRESERVE EVIDENCE LOCKS JUSTICE TO THE SCIENCE OF YESTERDAY

Case In Point: Robin Lovitt, Virginia Death Row Inmate

Robin Lovitt was convicted of the capital murder and robbery of a pool hall employee in Arlington, Virginia and was sentenced to death in 2000. When Mr. Lovitt sought to appeal the decision, it came to light that the evidence associated with his case had been destroyed -- a court clerk discarded the murder weapon, a blood-stained pair of scissors. The DNA testing available at the time of the trial could only conclusively tie the blood on the weapon to the victim and not to anyone else.

By the time Mr. Lovitt sought an appeal, more sophisticated and modern DNA testing was available, but the evidence – which could have proven guilt or innocence, and/or informed the appropriateness of the death penalty – was lost along with the clear truth. The Supreme Court declined to address this issue, and Mr. Lovitt was ultimately scheduled to become the 1,000th person executed since capital punishment resumed in 1977.

The wrongful destruction of the evidence, which could have proven innocence or guilt, denied a conclusive answer.

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HOUSE BILL 65: A STRAIGHTFORWARD SOLUTION

House Bill 65, sponsored by Representative Bryan King, would ensure evidence that biological evidence from violent crimes, as defined in law, is preserved and kept as long as a case remains unsolved or as long as the person convicted remains incarcerated. The bill would:

- Require only the preservation of biological evidence from violent crimes.
- Establish parameters for the preservation of the chain of custody of the evidence, the early destruction of evidence, and the ability to reduce the size of evidence.
- Allow the courts to consider the unlawful destruction of evidence that could have been impactful when examining cases of potential wrongful conviction, but not require any action be taken. If evidence was unlawfully destroyed which would not impact the outcome of an appeal, no remedy is allowed.

The language was crafted in consultation with the Rocky Mountain Innocence Center and insight from the Utah Attorney General's Office and other stakeholders.

PRESERVATION NATIONALLY

Utah would be following in the footsteps of the majority of states which have required the preservation of evidence. Its neighboring states of Arizona, Colorado, and Nevada each require the preservation of evidence for at least homicides and sex offenses while New Mexico requires the preservation of evidence in all felony cases.

FUNDING OPPORTUNITIES

The preservation of evidence is not cost-neutral but it does help prevent the costs brought on by convicting the wrong person and being unable to solve cold cases once new technologies are available. Further, Utah misses out on national funding opportunities because of the lack of a statewide evidence preservation policy.

In order to qualify for the U.S. Department of Justice, Bureau of Justice Assistance Postconviction DNA Testing Program, a certification is required from the chief legal officer of the State (typically the Attorney General) confirming preservation of evidence by all jurisdictions within the State.

In FY 2021, the Bureau of Justice granted a total of 14 awards totaling \$7,207,787 to states, local governments, and public higher education institutions across the country to assist with costs of post-conviction DNA testing in potential wrongful conviction cases. On average, awardees have received nearly \$500,000 through this program in recent years.