Chapter 9
Postconviction Remedies Act

Part 1
General Provisions

78B-9-101 Title.

This chapter is known as the "Post-Conviction Remedies Act."

Renumbered and Amended by Chapter 3, 2008 General Session
Amended by Chapter 288, 2008 General Session

78B-9-102 Replacement of prior remedies.

(1)

(a) This chapter establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal except as provided in Subsection (2). This chapter replaces all prior remedies for review, including extraordinary or common law writs. Proceedings under this chapter are civil and are governed by the rules of civil procedure. Procedural provisions for filing and commencement of a petition are found in Rule 65C, Utah Rules of Civil Procedure.

(b) A court may not enter an order to withdraw, modify, vacate or otherwise set aside a plea unless it is in conformity with this chapter or Section 77-13-6.

(2) This chapter does not apply to:

(a) habeas corpus petitions that do not challenge a conviction or sentence for a criminal offense;

(b) motions to correct a sentence pursuant to Rule 22(e), Utah Rules of Criminal Procedure; or

(c) actions taken by the Board of Pardons and Parole.

Amended by Chapter 450, 2017 General Session

78B-9-103 Applicability -- Effect on petitions.

Except for the limitation period established in Section 78B-9-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-104 Grounds for relief -- Retroactivity of rule.

(1) Unless precluded by Section 78B-9-106 or 78B-9-107, an individual who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for postconviction relief to vacate or modify the conviction or sentence upon the following grounds:

(a) the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution;

(b) the conviction was obtained or the sentence was imposed under a statute that is in violation of the United States Constitution or Utah Constitution, or the conduct for which the petitioner was prosecuted is constitutionally protected;

(c) the sentence was imposed or probation was revoked in violation of the controlling statutory provisions;

(d) the petitioner had ineffective assistance of counsel in violation of the United States Constitution or Utah Constitution;
(e) newly discovered material evidence exists that requires the court to vacate the conviction or sentence, because:
(i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or postconviction proceeding, and the evidence could not have been discovered through the exercise of reasonable diligence;
(ii) the material evidence is not merely cumulative of evidence that was known;
(iii) the material evidence is not merely impeachment evidence; and
(iv) viewed with all the other evidence, the newly discovered material evidence demonstrates that no reasonable trier of fact could have found the petitioner guilty of the offense or subject to the sentence received;
(f) the petitioner can prove that:
(i) biological evidence, as that term is defined in Section 77-11c-101, relevant to the petitioner's conviction was not preserved in accordance with Title 77, Chapter 11c, Part 4, Preservation of Biological Evidence for Violent Felony Offenses;
(ii)
(A) the biological evidence described in Subsection (1)(f)(i) was not tested previously; or
(B) if the biological evidence described in Subsection (1)(f)(i) was tested previously, there is a material change in circumstance, including a scientific or technological advance, that would make it plausible that a test of the biological evidence described in Subsection (1)(f)(i) would produce a favorable test result for the petitioner; and
(iii) a favorable result described in Subsection (1)(f)(ii), which is presumed for purposes of the petitioner's action under this section, when viewed with all the other evidence, demonstrates a reasonable probability of a more favorable outcome at trial for the petitioner;
(g) the petitioner can prove entitlement to relief under a rule announced by the United States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction and sentence became final on direct appeal, and that:
(i) the rule was dictated by precedent existing at the time the petitioner's conviction or sentence became final; or
(ii) the rule decriminalizes the conduct that comprises the elements of the crime for which the petitioner was convicted; or
(h) the petitioner committed any of the following offenses while subject to force, fraud, or coercion, as defined in Section 76-5-308:
(i) Section 76-18-207, possession of a controlled substance, or an offense described in a statute previously in effect in this state that is the same or substantially similar to a violation of Section 76-18-207;
(ii) Section 76-5d-206, aiding prostitution;
(iii) Section 76-6-206, criminal trespass;
(iv) Section 76-6-413, theft;
(v) Section 76-6-502, possession of forged writing or device for writing;
(vi) any offense in Title 76, Chapter 6, Part 6, Retail Theft;
(vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification document;
(viii) Section 76-5-419, lewdness;
(ix) Section 76-5d-202, engaging in prostitution;
(x) Section 76-5d-209, sexual solicitation by an actor offering to engage in sexual activity for compensation; or

(xi) Section 76-5d-210, sexual solicitation of a child.

(2) The court may not grant relief from a conviction or sentence unless in light of the facts proved in the postconviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing:

(a) the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome; or

(b) if the petitioner challenges the conviction or the sentence on grounds that the prosecutor knowingly failed to correct false testimony at trial or at sentencing, the petitioner establishes that the false testimony, in any reasonable likelihood, could have affected the judgment of the fact finder.

(3)

(a) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

(b) Claims under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence, of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 362, 2026 General Session

78B-9-105 Burden of proof.

(1)

(a) Except for claims raised under Subsection 78B-9-104(1)(h), the petitioner has the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle the petitioner to relief.

(b) For claims raised under Subsection 78B-9-104(1)(h), the petitioner has the burden of pleading and proving by clear and convincing evidence the facts necessary to entitle the petitioner to relief.

(c) The court may not grant relief without determining that the petitioner is entitled to relief under the provisions of this chapter and in light of the entire record, including the record from the criminal case under review.

(2) The respondent has the burden of pleading any ground of preclusion under Section 78B-9-106, but once a ground has been pled, the petitioner has the burden to disprove its existence by a preponderance of the evidence.

Amended by Chapter 120, 2022 General Session

78B-9-106 Preclusion of relief -- Exception.

(1) A petitioner is not eligible for relief under this chapter upon any ground that:

(a) may still be raised on direct appeal or by a post-trial motion;

(b) was raised or addressed in the trial court, at trial, or on appeal;

(c) could have been but was not raised in the trial court, at trial, or on appeal;

(d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for postconviction relief; or

(e) is barred by the limitation period established in Section 78B-9-107.

(2)

(a) The state may raise any of the procedural bars or time bar at any time, including during an appeal from an order granting or denying postconviction relief, unless the court determines that the state should have raised the time bar or procedural bar at an earlier time.
(b) Any court may raise a procedural bar or time bar on the court's own motion, provided that the court gives the parties notice and an opportunity to be heard.
(3)
(a) Notwithstanding Subsection (1)(c), a petitioner may be eligible for relief on a basis that the ground could have been but was not raised in the trial court, at trial, or on appeal, if the failure to raise that ground was due to ineffective assistance of counsel.
(b) Notwithstanding Subsections (1)(c) and (1)(d), a petitioner may be eligible for relief on a basis that the ground could have been but was not raised in the trial court, at trial, on appeal, or in a previous request for postconviction relief, if the failure to raise that ground was due to force, fraud, or coercion as defined in Section 76-5-308.
(4) This section authorizes a merits review only to the extent required to address the exception set forth in Subsection (3).
(5) This section does not apply to a petition filed under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 46, 2021 General Session

78B-9-107 Statute of limitations for postconviction relief.
(1) A petitioner is entitled to relief only if the petition is filed within one year after the day on which the cause of action has accrued.
(2) For purposes of this section, the cause of action accrues on the later of the following dates:
(a) the last day for filing an appeal from the entry of the final judgment of conviction, if no appeal is taken;
(b) the entry of the decision of the appellate court that has jurisdiction over the case, if an appeal is taken;
(c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or the United States Supreme Court, if no petition for writ of certiorari is filed;
(d) the entry of the denial of the petition for writ of certiorari or the entry of the decision on the petition for certiorari review, if a petition for writ of certiorari is filed;
(e) the date on which petitioner knew or should have known, in the exercise of reasonable diligence, of evidentiary facts on which the petition is based; or
(f) the date on which the new rule described in Subsection 78B-9-104(1)(g) is established.
(3)
(a) The limitations period is tolled for any period during which the petitioner was prevented from filing a petition due to state action in violation of the United States Constitution, due to physical or mental incapacity, or for claims arising under Subsection 78B-9-104(1)(h), due to force, fraud, or coercion as defined in Section 76-5-308.
(b) The petitioner has the burden of proving by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection (3).
(4) The statute of limitations is tolled during the pendency of the outcome of a petition asserting:
(a) exoneration through DNA testing under Section 78B-9-303; or
(b) factual innocence under Section 78B-9-402.
(5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period established in this section.

(6) This section does not apply to a petition filed under Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

Amended by Chapter 120, 2022 General Session

78B-9-108 Effect of granting relief -- Notice.

(1) If the court grants the petitioner's request for relief, except requests for relief under Subsection 78B-9-104(1)(h), the court shall either:
  (a) modify the original conviction or sentence; or
  (b) vacate the original conviction or sentence and order a new trial or sentencing proceeding as appropriate.
(2) If the court grants the petitioner's request for relief under Subsection 78B-9-104(1)(h), the court shall:
  (a) vacate the original conviction and sentence; and
  (b) order the petitioner's records expunged in accordance with Section 77-40a-402.
(3)
  (a) If the petitioner is serving a felony sentence, the order shall be stayed for five days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial or sentencing proceedings, appeal the order, or take no action.
  (b) If the respondent fails to provide notice or gives notice at any time during the stay period that it intends to take no action, the court shall lift the stay and deliver the order to the custodian of the petitioner.
  (c) If the respondent gives notice of intent to appeal the court's decision, the stay provided for by Subsection (3)(a) shall remain in effect until the appeal concludes, including any petitions for rehearing or for discretionary review by a higher court. The court may lift the stay if the petitioner can make the showing required for a certificate of probable cause under Section 77-20-302 and Utah Rules of Criminal Procedure, Rule 27.
  (d) If the respondent gives notice that it intends to retry or resentence the petitioner, the trial court may order any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary.

Amended by Chapter 120, 2022 General Session
Amended by Chapter 250, 2022 General Session

78B-9-109 Appointment of pro bono counsel or counsel from Indigent Appellate Defense Division.

(1)
  (a) If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis or from the Indigent Appellate Defense Division, created in Section 75E-10-602, to represent the petitioner in the postconviction court or on postconviction appeal.
  (b) Counsel who represented the petitioner at trial or on the direct appeal may not be appointed to represent the petitioner under this section.
(2) In determining whether to appoint counsel, the court may consider:
  (a) whether the petitioner is incarcerated;
  (b) the likelihood that an evidentiary hearing will be necessary;
  (c) the likelihood that an investigation will be necessary;

(d) the complexity of the factual and legal issues; and
(e) any other factor relevant to the particular case.
(3) An allegation that counsel appointed under this section was ineffective cannot be the basis for relief in any subsequent postconviction petition.

Amended by Chapter 291, 2026 General Session

78B-9-110 Appeal -- Jurisdiction.

Any party may appeal from the trial court's final judgment on a petition for post-conviction relief to the appellate court having jurisdiction pursuant to Section 78A-3-102 or 78A-4-103.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 2
Capital Sentence Cases

78B-9-201 Post-conviction remedies -- 30 days.

A post-conviction remedy may not be applied for or entertained by any court within 30 days prior to the date set for execution of a capital sentence, unless the grounds for application are based on facts or circumstances which developed or first became known within that period of time.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-202 Appointment and payment of counsel in a death penalty case.

(1)
(a) Within 30 days after the day on which the Supreme Court remits a case after affirming an individual's conviction and sentence of death, the sentencing court shall:
(i) advise the individual, in open court and on the record, of the provisions of this chapter allowing challenges to the individual's conviction and sentence; and
(ii) appoint counsel to represent the individual on a petition for postconviction relief in accordance with this section and Rule 8 of the Utah Rules of Criminal Procedure.
(b) Subject to Subsection (1)(c), Subsection (1)(a)(ii) does not prevent an individual from obtaining private counsel or waiving the appointment of counsel.
(c) If an individual wishes to reject the appointment of counsel under Subsection (1)(a)(ii), the sentencing court shall make a finding regarding the individual's understanding of the legal consequences of proceeding without the appointment of postconviction counsel.
(d) The sentencing court may not appoint counsel who represented the individual at trial, or on the direct appeal, under Subsection (1)(a)(ii).
(e) For purposes of Subsection (1)(a)(ii), the Supreme Court shall maintain a list of postconviction counsel qualified to represent an individual who has been sentenced to death on a petition for postconviction relief.
(2) For a second or successive petition for postconviction relief, a court may not appoint postconviction counsel for an individual sentenced to death at the expense of the public, except for a claim:
(a) based on newly discovered evidence as defined in Subsection 78B-9-104(1)(e)(i); or

(b) based on Subsection 78B-9-104(1)(g) that could not have been raised in any previously filed post trial motion or postconviction proceeding.

(3)

(a) Attorney fees and litigation expenses incurred in providing the representation provided for in this section and that the court has determined are reasonable shall be paid from state funds by the Division of Finance according to rules established pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(b) In determining whether the requested funds are reasonable, the court should consider:

(i) the extent to which the petitioner requests funds to investigate and develop evidence and legal arguments that duplicate the evidence presented and arguments raised in the criminal proceeding; and

(ii) whether the petitioner has established that the requested funds are necessary to develop evidence and legal arguments that are reasonably likely to support postconviction relief.

(c)

(i) The court may authorize payment of attorney fees at a rate of $250 per hour up to a maximum of $120,000.

(ii) The court may exceed the maximum amount described in Subsection (3)(c)(i) only upon a showing of good cause as established in Subsections (3)(f) and (g).

(d)

(i) The court may authorize litigation expenses up to a maximum of $40,000.

(ii) Litigation expenses under Subsection (3)(d)(i) may include payment for an investigator, a mitigation specialist, a mental health and forensic science expert, and support personnel.

(iii) The court may exceed the maximum amount described in Subsection (3)(d)(i) only upon a showing of good cause as established in Subsections (3)(f) and (g).

(e)

(i) The court may authorize the petitioner to apply ex parte for the funds permitted in Subsections (3)(c) and (d) upon a motion to proceed ex parte and if the petitioner establishes the need for confidentiality.

(ii) The motion to proceed ex parte must be served on counsel representing the state.

(iii) The court may not grant the motion without giving the state an opportunity to respond.

(f) In determining whether good cause exists to exceed the maximum sums established in Subsections (3)(c) and (d), the court shall consider:

(i) the extent to which the work done to date and the further work identified by the petitioner duplicates work and investigation performed during the criminal case under review; and

(ii) whether the petitioner has established that the work done to date and the further work identified is reasonably likely to develop evidence or legal arguments that will support postconviction relief.

(g) The court may permit payment in excess of the maximum amounts established in Subsections (3)(c) and (d) only on the petitioner's motion, provided that:

(i) if the court has granted a motion to file ex parte applications under Subsection (3)(e), the petitioner serves the motion to exceed the maximum amounts on an assistant attorney general employed in a division other than the one in which the attorney is employed who represents the state in the postconviction case;

(ii) if the court has not granted a motion to file ex parte applications, the petitioner serves the attorney representing the state in the postconviction matter with the motion to exceed the maximum funds;

(iii) if the motion proceeds under Subsection (3)(g)(i), the designated assistant attorney general does not disclose to the attorney representing the state in the postconviction matter any

material the petitioner provides in support of the motion except upon a determination by the court that the material is not protected by or that the petitioner has waived the attorney client privilege or work product doctrine; and

(iv) the court gives the state an opportunity to respond to the request for funds in excess of the maximum amounts provided in Subsections (3)(c) and (d).

(4)

(a) Nothing in this chapter shall be construed as creating the right to the effective assistance of postconviction counsel.

(b) Relief may not be granted on any claim that postconviction counsel was ineffective.

(5) The appointment of counsel under this section does not constitute an application for postconviction or other collateral review and does not toll the statute of limitations under Section 78B-9-107.

Amended by Chapter 345, 2026 General Session

Part 3
Postconviction Testing of DNA

78B-9-301 Postconviction testing of DNA -- Petition -- Sufficient allegations -- Notification of victim -- Investigative genetic genealogy.

(1) As used in this part:

(a) "DNA" means deoxyribonucleic acid.

(b) "Factually innocent" means the same as that term is defined in Section 78B-9-401.5.

(c) "Genetic genealogy database utilization" means the same as that term is defined in Section 53-10-403.7.

(d) "Investigative genetic genealogy service" means the same as that term is defined in Section 53-10-403.7.

(2) An individual convicted of a felony offense may at any time file a petition for postconviction DNA testing in the trial court that entered the judgment of conviction if the individual asserts factual innocence under oath and the petition alleges:

(a) evidence has been obtained regarding the individual's case that is still in existence and is in a condition that allows DNA testing to be conducted;

(b) the chain of custody is sufficient to establish that the evidence has not been altered in any material aspect;

(c) the individual identifies the specific evidence to be tested and states a theory of defense, not inconsistent with theories previously asserted at trial, that the requested DNA testing would support;

(d) the evidence was not previously subjected to DNA testing, or if the evidence was tested previously, the evidence was not subjected to the testing that is now requested, and the new testing may resolve an issue not resolved by the prior testing;

(e) the proposed DNA testing is generally accepted as valid in the scientific field or is otherwise admissible under Utah law;

(f) the evidence that is the subject of the request for testing:

(i) has the potential to produce new, noncumulative evidence; and

(ii) there is a reasonable probability that the defendant would not have been convicted or would have received a lesser sentence if the evidence had been presented at the original trial; and

(g) the individual is aware of the consequences of filing the petition, including:
(i) the consequences specified in Sections 78B-9-302 and 78B-9-304; and
(ii) that the individual is waiving any statute of limitations in all jurisdictions as to any felony offense the individual has committed which is identified through DNA database comparison.
(3) The petition under Subsection (2) shall comply with Utah Rules of Civil Procedure, Rule 65C, including providing the underlying criminal case number.
(4) After a petition is filed under this section, prosecutors, law enforcement officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the sufficiency of the chain of custody of the evidence which may be subject to DNA testing.
(5)
(a)
(i) An individual who files a petition under this section shall serve notice upon the office of the prosecutor who obtained the conviction, and upon the Utah attorney general.
(ii) The attorney general shall, within 30 days after receipt of service of a copy of the petition, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.
(b) After the attorney general responds under Subsection (5)(a), the petitioner has the right to reply to the response of the attorney general.
(c) After the attorney general and the petitioner have filed a response and reply in compliance with Subsection (5)(b), the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.
(6)
(a) If the court grants the petition for testing, the DNA test shall be performed by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division created in Section 53-10-103, unless the individual establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.
(b) If the court orders that the testing be conducted by any laboratory other than the state crime laboratory, the court shall require that the testing be performed:
(i) under reasonable conditions designed to protect the state's interests in the integrity of the evidence; and
(ii) according to accepted scientific standards and procedures.
(7)
(a) DNA testing under this section shall be paid for from funds appropriated to the Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen Restricted Account created in Section 53-10-407 if:
(i) the court ordered the DNA testing under this section;
(ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division has a conflict of interest or does not have the capability to perform the necessary testing; and
(iii) the petitioner who has filed for postconviction DNA testing under Section 78B-9-201 is serving a sentence of imprisonment and is indigent.
(b) Under this Subsection (7), costs of DNA testing include costs that are necessary to transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports of findings.
(8) If the individual is serving a sentence of imprisonment and is indigent, the state shall pay for the costs of the testing under this part, but if the result is not favorable to the individual, the court may order the individual to reimburse the state for the costs of the testing, in accordance with Subsections 78B-9-302(4) and 78B-9-304(1)(b).

(9) Any victim of the crime regarding which the individual petitions for DNA testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any hearing regarding the petition and testing, even though the hearing is a civil proceeding.
(10) A court order requiring DNA testing under this section may include an order to perform an investigative genetic genealogy service or a genetic genealogy database utilization only if:
(a) the individual requests an investigative genetic genealogy service or a genetic genealogy database utilization;
(b) the individual demonstrates no other available DNA test can provide:
(i) a conclusive result; or
(ii) any result due to the nature or quantity of the DNA evidence;
(c) the individual demonstrates that an investigative genetic genealogy service or a genetic genealogy database utilization may reasonably be expected to provide meaningful information about the identity of the perpetrator;
(d) the investigative genetic genealogy service or genetic genealogy database utilization will be performed in accordance with the requirements described in Subsection (6); and
(e) if applicable, the individual or a third party agrees to pay for additional investigative expenses that may occur subsequent to the investigative genetic genealogy service or genetic genealogy database utilization.

Amended by Chapter 500, 2023 General Session

78B-9-302 Effect of petition for postconviction DNA testing -- Requests for appointment of counsel -- Appeals -- Subsequent postconviction petitions.
(1) The filing of a petition for DNA testing constitutes the person's consent to provide samples of body fluids for use in the DNA testing.
(2) The data from any DNA samples or test results obtained as a result of the petition may be entered into law enforcement DNA databases.
(3) The filing of a petition for DNA testing constitutes the person's waiver of any statute of limitations in all jurisdictions as to any felony offense the person has committed which is identified through DNA database comparison.
(4) The person filing the petition for postconviction DNA testing bears the cost of the testing unless:
(a) the person is serving a sentence of imprisonment;
(b) the person is indigent; and
(c) the DNA test is favorable to the petitioner.
(5)
(a) Subsections 78B-9-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.
(b) Subsection 78B-9-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-303 Consequences of postconviction DNA testing when result is favorable to person -- Procedures.
(1)
(a) If the result of postconviction DNA testing is favorable to the person, the person may file a motion to vacate the conviction. The court shall give the state 30 days to respond in writing, to present evidence, and to be heard in oral argument prior to issuing an order to vacate the

conviction. The state may by motion request an extension of the 30 days, which the court may grant upon good cause shown.

(b) The state may stipulate to the conviction being vacated, or may request a hearing and attempt to demonstrate through evidence and argument that, despite the DNA test results, the state possesses sufficient evidence of the person's guilt so that the person is unable to demonstrate by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, and all the lesser included offenses related to those offenses.

(2)

(a)

(i) If the result of postconviction DNA testing is favorable to the person and the state opposes vacating the conviction, the court shall consider all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result.

(ii) The court may consider:

(A) evidence that was suppressed or would be suppressed at a criminal trial; and

(B) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.

(b) If the court, after considering all the evidence, determines that the DNA test result demonstrates by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, the court shall order that those convictions be vacated with prejudice and those convictions be expunged from the person's record.

(c) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, finds by clear and convincing evidence that the person did not commit one or more offenses of which the person was convicted, but the court does not find by clear and convincing evidence that the person did not commit any lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the person as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.

(d) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, does not find by clear and convincing evidence that the person is factually innocent of the offense or offenses the person is challenging and does not find that Subsection (2)(c) applies, the court shall deny the person's petition regarding the offense or offenses.

(e) Any party may appeal from the trial court's final ruling on the petition under this part.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-9-304 Consequences of postconviction DNA testing when result is unfavorable to person -- Procedures.

(1) If the result of postconviction DNA testing is not favorable to the person, the court shall deny the person's petition, and the court shall:

(a) report the unfavorable result to the Board of Pardons and Parole; and

(b) order the person to pay for the costs of the DNA testing unless the petitioner has already paid that cost.

(2) This section does not apply if the DNA test is inconclusive.

Renumbered and Amended by Chapter 3, 2008 General Session

Part 4
Postconviction Determination of Factual Innocence

78B-9-401 Title.

This part is known as "Postconviction Determination of Factual Innocence."

Enacted by Chapter 358, 2008 General Session

78B-9-401.5 Definitions.

As used in this part:

(1) "Bona fide and compelling issue of factual innocence" means that the newly discovered material evidence presented by the petitioner, if credible, would clearly establish the factual innocence of the petitioner.

(2) "Factual innocence" or "factually innocent" means a person did not:

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

(b) engage in conduct relating to any lesser included offenses of the crime for which the person was convicted; or

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

(3) "Newly discovered material evidence" means evidence that was not available to the petitioner at trial or during the resolution on the merits by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is relevant to the determination of the issue of factual innocence, and may also include:

(a) evidence which was discovered prior to or in the course of any appeal or postconviction proceedings that served in whole or in part as the basis for vacatur or reversal of the conviction of petitioner; or

(b) evidence that supports the claims within a petition filed under Part 1, General Provisions, which is pending at the time of the court's determination of factual innocence.

(4) "Period of incarceration" means any sentence of imprisonment, including jail, which was served after judgement of conviction.

Enacted by Chapter 153, 2010 General Session

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

(1) An individual who has been convicted of a felony offense may petition the district court in the county in which the individual was convicted for a hearing to establish that the individual is factually innocent of the crime or crimes of which the individual was convicted.

(2)

(a) The petition shall contain an assertion of factual innocence under oath by the petitioner and shall aver, with supporting affidavits or other credible documents, that:

(i) newly discovered material evidence exists that, if credible, establishes that the petitioner is factually innocent;

(ii) the specific evidence identified by the petitioner in the petition establishes innocence;

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

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

(v) viewed with all the other evidence, the newly discovered evidence demonstrates that the petitioner is factually innocent.

(b)

(i) The court shall review the petition in accordance with the procedures in Subsection (9)(b), and make a finding that the petition has satisfied the requirements of Subsection (2)(a).

(ii) If the court finds the petition does not meet all the requirements of Subsection (2)(a), the court shall dismiss the petition without prejudice and send notice of the dismissal to the petitioner and the attorney general.

(3)

(a) The petition shall also contain an averment that:

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

(ii) a court has found ineffective assistance of counsel for failing to exercise reasonable diligence in uncovering the evidence.

(b)

(i) Upon entry of a finding that the petition is sufficient under Subsection (2)(a), the court shall then review the petition to determine if Subsection (3)(a) has been satisfied.

(ii) If the court finds that the requirements of Subsection (3)(a) have not been satisfied, the court may dismiss the petition without prejudice and give notice to the petitioner and the attorney general of the dismissal, or the court may waive the requirements of Subsection (3)(a) if the court finds the petition should proceed to hearing based upon the strength of the petition, and that there is other evidence that could have been discovered through the exercise of reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:

(A) was not discovered by the petitioner or the petitioner's counsel;

(B) is material upon the issue of factual innocence; and

(C) has never been presented to a court.

(4)

(a) If the conviction for which the petitioner asserts factual innocence was based upon a plea of guilty, the petition shall contain the specific nature and content of the evidence that establishes factual innocence.

(b) The court shall review the evidence and may dismiss the petition at any time in the course of the proceedings, if the court finds that the evidence of factual innocence relies solely upon the recantation of testimony or prior statements made by a witness against the petitioner, and the recantation appears to the court to be equivocal or self serving.

(5) An individual who has already obtained postconviction relief that vacated or reversed the individual's conviction or sentence may also file a petition under this part in the same manner and form as described above, if no retrial or appeal regarding this offense is pending.

(6) If some or all of the evidence alleged to be exonerating is biological evidence subject to DNA testing, the petitioner shall seek DNA testing in accordance with Section 78B-9-301.

(7) Except as provided in Subsection (9), the petition and all subsequent proceedings shall be in compliance with and governed by Utah Rules of Civil Procedure, Rule 65C and shall include the underlying criminal case number.

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

(9)
(a) An individual who files a petition under this section shall serve notice of the petition and a copy of the petition upon the office of the prosecuting attorney who obtained the conviction and upon the attorney general.
(b)
(i) The assigned judge shall conduct an initial review of the petition.
(ii) If it is apparent to the court that the petitioner is either merely relitigating facts, issues, or evidence presented in previous proceedings or presenting issues that appear frivolous or speculative on their face, the court shall dismiss the petition, state the basis for the dismissal, and serve notice of dismissal upon the petitioner and the attorney general.
(iii) If, upon completion of the initial review, the court does not dismiss the petition, the court shall order the attorney general to file a response to the petition.
(iv) The attorney general shall, within 30 days after the day on which the attorney general receives the court's order, or within any additional period of time the court allows, answer or otherwise respond to all proceedings initiated under this part.
(c)
(i) After the time for response by the attorney general under Subsection (9)(b) has passed, the court shall order a hearing if the court finds the petition meets the requirements of Subsections (2) and (3) and finds there is a bona fide and compelling issue of factual innocence regarding the charges of which the petitioner was convicted.
(ii) No bona fide and compelling issue of factual innocence exists if the petitioner is merely relitigating facts, issues, or evidence presented in a previous proceeding or if the petitioner is unable to identify with sufficient specificity the nature and reliability of the newly discovered evidence that establishes the petitioner's factual innocence.
(d)
(i) If the parties stipulate that the evidence establishes that the petitioner is factually innocent, the court may find the petitioner is factually innocent without holding a hearing.
(ii) If the state will not stipulate that the evidence establishes that the petitioner is factually innocent, no determination of factual innocence may be made by the court without first holding a hearing under this part.
(10) The court may not grant a petition for a hearing under this part during the period in which criminal proceedings in the matter are pending before any trial or appellate court, unless stipulated to by the parties.
(11) Any victim of a crime that is the subject of a petition under this part, and who has elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any hearing regarding the petition.
(12)
(a) A petition to determine factual innocence under this part, or Part 3, Postconviction Testing of DNA, shall be filed separately from any petition for postconviction relief under Part 1, General Provisions.
(b) Separate petitions may be filed simultaneously in the same court.
(13) The procedures governing the filing and adjudication of a petition to determine factual innocence apply to all petitions currently filed or pending in the district court and any new petitions filed on or after June 1, 2012.
(14)
(a) As used in this Subsection (14) and in Subsection (15):
(i) "Married" means the legal marital relationship established between two individuals and as recognized by the law; and

(ii) "Spouse" means an individual married to the petitioner at the time the petitioner was found guilty of the offense regarding which a petition is filed and who has since then been continuously married to the petitioner until the petitioner's death.

(b) A claim for determination of factual innocence under this part is not extinguished upon the death of the petitioner.

(c)

(i) If any payments are already being made to the petitioner under this part at the time of the death of the petitioner, or if the finding of factual innocence occurs after the death of the petitioner, the payments due under Section 78B-9-405 shall be paid in accordance with Section 78B-9-405 to the petitioner's surviving spouse.

(ii) Payments cease upon the death of the spouse.

(15) The spouse under Subsection (14) forfeits all rights to receive any payment under this part if the spouse is charged with a homicide established by a preponderance of the evidence that meets the elements of any felony homicide offense in Title 76, Chapter 5, Offenses Against the Individual, except automobile homicide under Section 76-5-207, applying the same principles of culpability and defenses as in Title 76, Criminal Offenses, including Title 76, Chapter 2, Principles of Criminal Responsibility.

Amended by Chapter 291, 2026 General Session

78B-9-403 Requests for appointment of counsel -- Appeals -- Postconviction petitions.

(1) Subsections 78B-9-109(1) and (2), regarding the appointment of pro bono counsel, apply to any request for the appointment of counsel under this part.

(2) Subsection 78B-9-109(3), regarding effectiveness of counsel, applies to subsequent postconviction petitions and to appeals under this part.

Enacted by Chapter 358, 2008 General Session

78B-9-404 Hearing upon petition -- Procedures -- Court determination of factual innocence.

(1)

(a) In any hearing conducted under this part, the Utah attorney general shall represent the state.

(b) The burden is upon the petitioner to establish the petitioner's factual innocence by clear and convincing evidence.

(2) The court may consider:

(a) evidence that was suppressed or would be suppressed at a criminal trial; and

(b) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.

(3) In making its determination the court shall consider, in addition to the evidence presented at the hearing under this part, the record of the original criminal case and at any postconviction proceedings in the case.

(4) If the court, after considering all the evidence, determines by clear and convincing evidence that the petitioner:

(a) is factually innocent of one or more offenses of which the petitioner was convicted, the court shall order that those convictions:

(i) be vacated with prejudice; and

(ii) be expunged from the petitioner's record; or

(b) did not commit one or more offenses of which the petitioner was convicted, but the court does not find by clear and convincing evidence that the petitioner did not commit any lesser

included offenses relating to those offenses, the court shall modify the original conviction and sentence of the petitioner as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.

(5)

(a) If the court, after considering all the evidence, does not determine by clear and convincing evidence that the petitioner is factually innocent of the offense or offenses the petitioner is challenging and does not find that Subsection (4)(b) applies, the court shall deny the petition regarding the offense or offenses.

(b) If the court finds that the petition was brought in bad faith, it shall enter the finding on the record, and the petitioner may not file a second or successive petition under this section without first applying to and obtaining permission from the court which denied the prior petition.

(6) At least 30 days prior to a hearing on a petition to determine factual innocence, the petitioner and the respondent shall exchange information regarding the evidence each intends to present at the hearing. This information shall include:

(a) a list of witnesses to be called at the hearing; and

(b) a summary of the testimony or other evidence to be introduced through each witness, including any expert witnesses.

(7) Each party is entitled to a copy of any expert report to be introduced or relied upon by that expert or another expert at least 30 days prior to hearing.

(8) The court, after considering all the evidence, may not find the petitioner to be factually innocent unless:

(a) the court determines by clear and convincing evidence that the petitioner did not commit one or more of the offenses of which the petitioner was convicted, as defined in Subsection 78B-9-401.5(2); and

(b) the determination is based upon the newly discovered material evidence described in the petition, pursuant to Section 78B-9-402, and as defined in Subsection 78B-9-401.5(3).

Amended by Chapter 220, 2012 General Session

78B-9-405 Judgment and assistance payment.

(1) As used in this section:

(a) "Felony" means a criminal offense classified as a felony under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed in Utah.

(b) "Petitioner" means a United States citizen or an individual who was otherwise lawfully present in this country at the time of the incident that gave rise to the underlying conviction.

(2)

(a) If a court finds a petitioner factually innocent under Part 3, Postconviction Testing of DNA, or under this part, and if the petitioner has served a period of incarceration, the court shall order that the petitioner receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah, as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison.

(b) The court's determination of the monetary equivalent of the average annual nonagricultural payroll wage shall be included in the order declaring that the petitioner is factually innocent.

(3) If a court orders that a petitioner is to receive payment under Subsection (2):

(a) the Office for Victims of Crime shall pay from the Crime Victim Compensation Fund to the petitioner within 45 days of the court order under Subsection (2) an initial sum equal to either

20% of the total financial assistance payment as determined under Subsection (2) or an amount equal to two years of incarceration, whichever is greater, but not to exceed the total amount owed;

(b) the Legislature shall appropriate as nonlapsing funds from the General Fund, and no later than the next general session following the issuance of the court order under Subsection (2):

(i) to the Crime Victim Compensation Fund, the amount that was paid out of the fund under Subsection (3)(a); and

(ii) to the Department of Criminal Justice, as a separate line item, the amount ordered by the court for payments under Subsection (2), minus the amount reimbursed to the Crime Victim Compensation Fund under Subsection (3)(b)(i); and

(c) the Department of Criminal Justice shall pay the amount ordered by the court under Subsection (2), minus the amount paid by the Office for Victims of Crime under Subsection (3)(a), to the petitioner:

(i) quarterly on or before the last day of the month next succeeding each calendar quarterly period; or

(ii) in one lump sum payment no later than the next succeeding July 31 after the day on which the court ordered the payment.

(4)

(a) For a payment under Subsection (3)(c):

(i) the petitioner shall choose, within 90 days after the day on which the payment under Subsection (3)(a) is made, whether the payment is disbursed under Subsection (3)(c)(i) or (ii); and

(ii) the Department of Criminal Justice shall disburse the payment in accordance with the petitioner's choice under Subsection (4)(a)(i).

(b) If the petitioner fails to make a choice under Subsection (4)(a)(i) within 90 days after the day on which the payment under Subsection (3)(a) is made, the Department of Criminal Justice shall pay the amount under Subsection (3)(c) in accordance with Subsection (3)(c)(i).

(c)

(i) If a court ordered a petitioner to receive a payment under this section on or before May 5, 2021, the petitioner may request that the Department of Criminal Justice disburse the remaining balance of the payment owed to the petitioner under Subsection (3)(c) in one lump sum payment.

(ii) If a petitioner submits a request under Subsection (4)(c)(i), the Department of Criminal Justice shall disburse the remaining balance of the payment owed to the petitioner in one lump sum payment.

(5) Payments under Subsection (3)(c)(i) shall:

(a) commence no later than one year after the effective date of the appropriation for the payments;

(b) be made to the petitioner for the balance of the amount ordered by the court after the initial payment under Subsection (3)(a); and

(c) be allocated so that the entire amount due to the petitioner under this section has been paid no later than 10 years after the effective date of the appropriation made under Subsection (3)(b).

(6)

(a) Payments under this section shall be reduced to the extent that the period of incarceration for which the petitioner seeks payment was attributable to a separate and lawful conviction.

(b) Payments under this section shall:

(i) be tolled upon the commencement of any period of incarceration due to the petitioner's subsequent conviction of a felony; and
(ii) resume upon the conclusion of that period of incarceration.
(c) The reduction of payments under Subsection (6)(a) or the tolling of payments in accordance with Subsection (6)(b) shall be determined by the same court that finds a petitioner to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
(7)
(a) An individual is ineligible for any payments under this part if the individual was already serving a prison sentence in another jurisdiction at the time of the conviction of the crime for which that individual has been found factually innocent in accordance with Part 3, Postconviction Testing of DNA, or this part, and that individual is to be returned to that other jurisdiction upon release for further incarceration on the prior conviction.
(b) Ineligibility for any payments under this Subsection (7) shall be determined by the same court that finds an individual to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
(8) Payments under this section:
(a) are not subject to any Utah state taxes; and
(b) may not be offset by any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or provide medical services for the petitioner.
(9) If a court finds a petitioner to be factually innocent under Part 3, Postconviction Testing of DNA, or this part, the court shall also:
(a) issue an order of expungement of the petitioner's criminal record for all acts in the charging document upon which the payment under this part is based; and
(b) provide a letter to the petitioner explaining that the petitioner's conviction has been vacated on the grounds of factual innocence and indicating that the petitioner did not commit the crime or crimes for which the petitioner was convicted and was later found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
(10) A petitioner found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part shall have access to the same services and programs available to Utah citizens generally as though the conviction for which the petitioner was found to be factually innocent had never occurred.
(11)
(a) Payments under this part constitute a full and conclusive resolution of the petitioner's claims on the specific issue of factual innocence.
(b) Pre-judgment interest may not be awarded in addition to the payments provided under this part.

Amended by Chapter 291, 2026 General Session

Part 5
Conviction Integrity Units Act

78B-9-501 Title.

This part is known as the "Conviction Integrity Units Act."

Enacted by Chapter 203, 2020 General Session

78B-9-502 Definitions.

As used in this part:

(1) "Bona fide and compelling evidence" means that the evidence presented by the petitioning prosecutor establishes by a preponderance of the evidence that:

(a) the convicted person is significantly likely to be factually innocent;

(b) newly discovered material evidence, if presented at or before the time of trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(c) there exists information discovered or received by the petitioning prosecution agency after a judgment of conviction and sentencing that:

(i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

(2) "Convicted person" means the person whose conviction or sentence is under review.

(3) "Conviction Integrity Unit" means a program established by a prosecution agency to conduct extrajudicial, fact-based reviews of criminal convictions and sentences.

(4) "Establishing office" means the prosecution agency establishing a conviction integrity unit.

(5) "Factually innocent" means the same as that term is defined in Section 78B-9-401.5.

(6) "Legitimacy" means consistent with the United States and Utah constitutions, federal and state law, and all rules and principles of a fair and just legal system.

(7) "Newly discovered material evidence" means the same as that term is defined in Section 78B-9-401.5.

(8) "Petitioning prosecutor" means the prosecutor who files a civil petition seeking relief under this part.

(9) "Prosecution agency" means a county attorney, district attorney, the Office of the Attorney General, or other prosecution agency.

(10) "Significant" or "significantly likely," for purposes of this part, means to a large degree or of a noticeably or measurably large amount.

Enacted by Chapter 203, 2020 General Session

78B-9-503 Conviction Integrity Unit.

(1) A prosecution agency may establish a conviction integrity unit to investigate:

(a) plausible allegations of factual innocence;

(b) newly discovered material evidence; or

(c) information discovered or received by the prosecution agency after trial, judgment of conviction, or sentencing that:

(i) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or

(ii) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

(2) A conviction integrity unit may review a conviction or sentence if the conviction and sentence:

(a)

(i) occurred within the judicial district of the establishing office; and

(ii) was prosecuted by the establishing office or another prosecution agency under the direct control and supervision of the establishing office; or

(b)

(i) occurred within a different judicial district or was prosecuted by another prosecution agency not under the direct control and supervision of the establishing office;

(ii)

(A) the prosecution agency that prosecuted the case has not established a conviction integrity unit; or

(B) the prosecution agency that prosecuted the case has established a conviction integrity unit but determines that review of the conviction or sentence should be conducted by a conviction integrity unit established by another prosecution agency; and

(iii) the district attorney, county attorney, attorney general, or other prosecutor that directly oversees and supervises the requesting agency requests the review.

(3)

(a) An individual convicted of a crime may submit an application to a conviction integrity unit requesting review of the individual's conviction or sentence as provided in Subsection (2).

(b) If a convicted person submits an application for review of a conviction that resulted in a sentence of death, and the application is submitted to any conviction integrity unit other than a conviction integrity unit established by the Office of the Attorney General, the conviction integrity unit that receives the application shall forward copies of the application to the Office of the Attorney General and to the convicted person's current counsel of record.

(c) If a conviction integrity unit other than a conviction integrity unit established by the Office of the Attorney General, undertakes any review of a conviction that resulted in a sentence of death, the conviction integrity unit shall send the findings and recommendations promptly upon completion to the Office of the Attorney General and to the convicted person's current counsel of record.

(d) If a conviction integrity unit other than a conviction integrity unit established by the Office of the Attorney General discovers or receives any information relevant to a conviction that resulted in a sentence of death, the conviction integrity unit that discovers or receives the information shall promptly notify the Office of the Attorney General and the convicted person's current counsel of record.

(4) The form of the application for review and its contents shall be determined by the establishing office.

(5) Once the review is complete, the conviction integrity unit shall present its findings and recommendations to:

(a) the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office; or

(b) if the review was requested by another prosecution agency under Subsection (2)(b), the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the prosecution agency that requested the review.

(6) The district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested review under Subsection (2)(b), is not required to accept or follow the findings and recommendations of the conviction integrity unit.

(7) The district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested review under Subsection (2)(b), may commence a civil proceeding by filing a petition in the district court with jurisdiction over the case seeking a court order to:

(a) vacate the conviction;
(b) vacate the conviction and order a new trial;
(c) vacate the sentence and order further proceedings; or
(d) modify the conviction or sentence.

(8) The decision to petition the district court under Subsection (7) is solely within the discretion of the district attorney, county attorney, attorney general, or other prosecutor who directly oversees and supervises the establishing office, or who requested the review under Subsection (2)(b).

(9) Except as otherwise provided in this part, a petition filed with the district court shall comply with the Utah Rules of Civil Procedure, Rule 65C, and shall include the number of the underlying criminal case that resulted in the judgment of conviction or sentence in connection with which the petitioning prosecutor seeks relief from the court.

(10) If a petition is filed under Subsection (7), the petitioning prosecutor shall promptly:
(a) notify the convicted person, in writing, that the petition has been filed and provide the convicted person with a copy of the petition and all other documents filed in support of the petition;
(b) notify the victim or the victim's representative, if any, in writing, that a petition has been filed, provide the victim or the victim's representative, if any, with a copy of the petition and all other documents filed in support, and advise the victim or the victim's representative of the victim's right to be heard by the court under Subsection (13); and
(c) if the underlying conviction was a felony offense, notify the Office of the Attorney General, in writing, that the petition has been filed and provide the attorney general with a copy of the petition and all other documents filed in support.

(11) If a petition is filed pursuant to Subsection (7), the Office of the Attorney General has standing to intervene as of right and to participate as a party in the district court proceeding if:
(a) the convicted person submitted an application under Subsection (3)(a) requesting review of the person's conviction or sentence by the conviction integrity unit;
(b) the conviction integrity unit undertook review of the convicted person's conviction or sentence as a result of the convicted person's application; and
(c) the Office of the Attorney General reasonably believes the relief requested by the petitioning prosecutor would be barred if the petition were filed or the relief were requested directly by the convicted person under Part 1, General Provisions.

(12) Upon review of the petition, the district court may:
(a) dismiss the petition as provided in Subsection (14);
(b) require that additional evidence be submitted;
(c) conduct an evidentiary hearing; or
(d) grant the relief requested by the petitioning prosecution agency, or any other relief expressly permitted by this part, if by a preponderance of the evidence the petition presents:
(i) bona fide and compelling evidence that the convicted person is significantly likely to be factually innocent;
(ii) bona fide and compelling newly discovered material evidence; or
(iii) bona fide and compelling information discovered or received by the petitioning prosecution agency after the trial, judgment of conviction, and sentencing that:
(A) if disclosed to the convicted person prior to trial, judgment of conviction, or sentencing, would have resulted in a significant probability that the result would have been different; or
(B) significantly calls into question the legitimacy of the jury verdict, judgment of conviction, or sentence.

(13) If the court requests additional information or holds an evidentiary hearing, the convicted person, and the victim or the victim's representative, if any, and, if notice to the Office of the Attorney General was required under Subsection (10)(c), the attorney general, shall have the right to be heard by the district court, through written submissions or testimony.
(14) A district court may dismiss a petition without a hearing if the court finds by a preponderance of the evidence that the petition fails to assert grounds on which relief may be granted.
(15) In granting relief under this part, the district court may:
(a) vacate the conviction;
(b) vacate the conviction and order a new trial;
(c) vacate the sentence and order further proceedings; or
(d) modify the conviction or sentence.
(16) The district court shall state on the record the reasons for the court's decision.
(17)
(a) An appeal may be taken by the petitioning prosecutor from a final order entered under this part.
(b) If notice to the Office of the Attorney General was required under Subsection (10)(c), the petitioning prosecutor shall consult with the attorney general prior to filing an appeal and, if an appeal is filed by the petitioning prosecutor, the Office of the Attorney General has standing to intervene as of right and to participate as a party in all appellate proceedings.
(18) Attorney fees, costs, orders of restitution, or any other form of monetary relief are not available under this part.
(19) Nothing in this section:
(a) precludes a conviction integrity unit from reviewing a conviction or sentence based on information discovered or received directly by the establishing office or received from an individual other than the convicted individual;
(b) prohibits an establishing office from adopting additional written criteria for the convictions or sentences the establishing office will review or will decline to review; or
(c) requires a conviction integrity unit to review any conviction or sentence.
(20) Nothing in this part:
(a) including review by a conviction integrity unit or the filing of a petition under Subsection (7), may operate to stay any other proceeding, or to extend, toll, or otherwise alter any other deadline or limitation period under Title 78B, Chapter 9, Postconviction Remedies Act;
(b) may revive a claim or cause of action or implicate a defense otherwise available to the state under any other provision of Title 78B, Chapter 9, Postconviction Remedies Act, or any other applicable provision of law; or
(c) confers standing or creates a private right of action for a convicted person or victim of a convicted person.
(21) Relief under this part does not exclude any other available remedy.

Enacted by Chapter 203, 2020 General Session