

POSTCONVICTION DNA TESTING

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act amends the Judicial Code to provide for postconviction DNA testing of a person, and provides for procedures, if the test is favorable, to declare the person actually innocent.

The act also provides procedures if the result is unfavorable.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

78-35a-301, Utah Code Annotated 1953

78-35a-302, Utah Code Annotated 1953

78-35a-303, Utah Code Annotated 1953

78-35a-304, Utah Code Annotated 1953

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

Section 1. Section **78-35a-301** is enacted to read:

Part 3. Postconviction Testing of DNA

78-35a-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --

Notification of victim.

(1) As used in this part, "DNA" means deoxyribonucleic acid.

(2) A person 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 against him if the person asserts his actual innocence under oath and the petition alleges:

(a) evidence has been obtained regarding the person's case which 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 person identifies the specific evidence to be tested and states a theory of defense,



28 not inconsistent with theories previously asserted at trial, that the requested DNA testing would
29 support;

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

33 (e) the evidence that is the subject of the request for testing has the potential to produce
34 new, noncumulative evidence that will establish the person's actual innocence; and

35 (f) the person is aware of the consequences of filing the petition, including those specified
36 in Sections 78-35a-302 and 78-35a-304, and that the person is waiving any statute of limitations
37 in all jurisdictions as to any felony offense he has committed which is identified through DNA
38 database comparison.

39 (3) The petition under Subsection (2) shall be in compliance with Rule 65C, Utah Rules
40 of Civil Procedure, including providing the underlying criminal case number.

41 (4) The court may not order DNA testing in cases in which DNA testing was available at
42 the time of trial and the person did not request DNA testing or present DNA evidence for tactical
43 reasons.

44 (5) After a petition is filed under this section, prosecutors, law enforcement officers, and
45 crime laboratory personnel have a duty to cooperate in preserving evidence and in determining the
46 sufficiency of the chain of custody of the evidence which may be subject to DNA testing.

47 (6) (a) A person who files a petition under this section shall serve notice upon the office
48 of the prosecutor who obtained the conviction, and upon the state attorney general. The attorney
49 general shall, within 30 days after receipt of service of a copy of the petition, or within any
50 additional period of time the court allows, answer or otherwise respond to all proceedings initiated
51 under this part.

52 (b) After the attorney general is given an opportunity to respond to a petition for
53 postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of
54 the evidence that all criteria of Subsection (2) have been met.

55 (7) (a) If the court grants the petition for testing, the DNA test shall be performed by the
56 Utah State Crime Laboratory within the Criminal Investigations and Technical Services Division
57 created in Section 53-10-103, unless the person establishes that the state crime laboratory has a
58 conflict of interest or does not have the capability to perform the necessary testing.

59 (b) If the court orders that the testing be conducted by any laboratory other than the state
60 crime laboratory, the court shall require that the testing be performed under reasonable conditions
61 designed to protect the state's interests in the integrity of the evidence, and that the testing be
62 performed according to accepted scientific standards and procedures.

63 (8) If the person is serving a sentence of imprisonment and is indigent, the state shall pay
64 for the costs of the testing under this part, but if the result is not favorable to the person the court
65 may order the person to reimburse the state for the costs of the testing, pursuant to the provisions
66 of Subsections 78-35a-302(4) and 78-35a-304(1)(b).

67 (9) Any victim of the crime regarding which the person petitions for DNA testing, who
68 has elected to receive notice under Section 77-38-3 shall be notified by the state's attorney of any
69 hearing regarding the petition and testing, even though the hearing is a civil proceeding.

70 Section 2. Section **78-35a-302** is enacted to read:

71 **78-35a-302. Effect of petition for postconviction DNA testing -- Requests for**
72 **appointment of counsel -- Appeals -- Subsequent postconviction petitions.**

73 (1) The filing of a petition for DNA testing constitutes the person's consent to provide
74 samples of body fluids for use in the DNA testing.

75 (2) The data from any DNA samples or test results obtained as a result of the petition may
76 be entered into law enforcement DNA databases.

77 (3) The filing of a petition for DNA testing constitutes the person's waiver of any statute
78 of limitations in all jurisdictions as to any felony offense the person has committed which is
79 identified through DNA database comparison.

80 (4) The person filing the petition for postconviction DNA testing bears the cost of the
81 testing unless the person:

82 (a) is serving a sentence of imprisonment;

83 (b) is indigent; and

84 (c) the DNA test is favorable to the petitioner.

85 (5) (a) Subsections 78-35a-109(1) and (2), regarding the appointment of pro bono counsel,
86 apply to any request for the appointment of counsel under this part.

87 (b) Subsection 78-35a-109(3), regarding effectiveness of counsel, applies to subsequent
88 postconviction petitions and to appeals under this part.

89 Section 3. Section **78-35a-303** is enacted to read:

90 **78-35a-303. Consequences of postconviction DNA testing when result is favorable to**
91 **person -- Procedures.**

92 (1) (a) If the result of postconviction DNA testing is favorable to the person, the person
93 may file a motion to vacate his conviction. The court shall give the state 30 days to respond in
94 writing, to present evidence, and to be heard in oral argument prior to issuing an order to vacate
95 the conviction. The state may by motion request an extension of the 30 days, which the court may
96 grant upon good cause shown.

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

102 (2) (a) If the result of postconviction DNA testing is favorable to the person and the state
103 opposes vacating the conviction, the court shall consider all the evidence presented at the original
104 trial and at the hearing under Subsection (1)(b), including the new DNA test result. Evidence that
105 would otherwise have been suppressed at criminal trial is admissible, unless the evidence is an
106 unconstitutionally coerced statement from the person.

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

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

119 (d) If the court, after considering all the evidence presented at the original trial and at the
120 hearing under Subsection (1)(b), including the new DNA test result, does not find by clear and

121 convincing evidence that the person is actually innocent of the offense or offenses the person is
122 challenging, the court shall deny the person's petition regarding the offense or offenses.

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

124 Section 4. Section **78-35a-304** is enacted to read:

125 **78-35a-304. Consequences of postconviction DNA testing when result is unfavorable**
126 **to person -- Procedures.**

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

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

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

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

Legislative Review Note
as of 2-1-01 3:14 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel