

DNA EXONERATION TESTING

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Butters

House Sponsor: _____

LONG TITLE**General Description:**

This bill modifies the functions of the Commission on Criminal and Juvenile Justice and modifies the Judicial Code regarding postconviction DNA testing.

Highlighted Provisions:

This bill:

- ▶ provides that the Commission on Criminal and Juvenile Justice:
 - shall pay the costs of postconviction DNA tests that the state laboratory is unable to perform; and
 - shall include the costs of these tests in the commission's base budget.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2006.

Utah Code Sections Affected:**AMENDS:**

78-35a-301, as enacted by Chapter 261, Laws of Utah 2001

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

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

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

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

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

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

(5) 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.

(6) (a) A person who files a petition under this section shall serve notice upon the

office of the prosecutor who obtained the conviction, and upon the state attorney general. 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 is given an opportunity to respond to a petition for postconviction DNA testing, the court shall order DNA testing if it finds by a preponderance of the evidence that all criteria of Subsection (2) have been met.

(7) (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 person 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 under reasonable conditions designed to protect the state's interests in the integrity of the evidence, and that the testing be performed according to accepted scientific standards and procedures.

(8) DNA testing under this section shall be paid for by the Commission on Criminal and Juvenile Justice if:

(a) the court ordered that the DNA testing be done;

(b) 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

(c) the petitioner who has filed for postconviction DNA testing under Section 78-35a-201 is serving a sentence of imprisonment and is indigent.

~~[(8)]~~ (9) If the person 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 person the court may order the person to reimburse the state for the costs of the testing, pursuant to the provisions of Subsections 78-35a-302(4) and 78-35a-304(1)(b).

~~[(9)]~~ (10) Any victim of the crime regarding which the person 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

90 proceeding.

91 (11) The Commission on Criminal and Juvenile Justice shall submit an annual request
92 to the Legislature to fund the ongoing costs of DNA testing under Subsection (8) as part of its
93 base budget.

94 Section 2. **Effective date.**

95 This bill takes effect on July 1, 2006.

Legislative Review Note

as of 2-8-06 10:11 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0264

Dna Exoneration Testing*14-Feb-06**11:08 AM*

State Impact

Passage of SB 264 will require \$8,800 in ongoing General Fund for the Commission on Criminal and Juvenile Justice.

	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2007</u> <u>Revenue</u>	<u>FY 2008</u> <u>Revenue</u>
General Fund	\$8,800	\$8,800	\$0	\$0
TOTAL	\$8,800	\$8,800	\$0	\$0

Individual and Business Impact

May have a fiscal impact on individuals that are exonerated as a result of DNA testing.

Office of the Legislative Fiscal Analyst