

POSTCONVICTION REMEDIES ACT

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: _____

LONG TITLE

General Description:

This bill adds the definition of factual innocence to the part on postconviction DNA testing.

Highlighted Provisions:

This bill:

- ▶ adds the definition of factually innocent in Section 78B-9-301, dealing with postconviction DNA testing;
- ▶ requires the attorney general's office to respond to a petition only after being directed to respond by the court; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-9-104, as last amended by Laws of Utah 2008, Chapter 288 and renumbered and amended by Laws of Utah 2008, Chapter 3

78B-9-107, as last amended by Laws of Utah 2008, Chapters 288, 358 and renumbered



28 and amended by Laws of Utah 2008, Chapter 3

29 **78B-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 RENUMBERS AND AMENDS:

31 **78B-9-305**, (Renumbered from 78B-9-405, as enacted by Laws of Utah 2008, Chapter
32 358)

33 REPEALS:

34 **78B-9-401**, as enacted by Laws of Utah 2008, Chapter 358

35 **78B-9-402**, as last amended by Laws of Utah 2009, Chapter 301

36 **78B-9-403**, as enacted by Laws of Utah 2008, Chapter 358

37 **78B-9-404**, as enacted by Laws of Utah 2008, Chapter 358



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

40 Section 1. Section **78B-9-104** is amended to read:

41 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

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

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

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

51 (c) the sentence was imposed or probation was revoked in violation of the controlling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

53 (d) the petitioner had ineffective assistance of counsel in violation of the United States
54 Constitution or Utah Constitution;

55 (e) newly discovered material evidence exists that requires the court to vacate the
56 conviction or sentence, because:

57 (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of
58 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or

59 post-conviction proceeding, and the evidence could not have been discovered through the
60 exercise of reasonable diligence;

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

62 (iii) the material evidence is not merely impeachment evidence; and

63 (iv) viewed with all the other evidence, the newly discovered material evidence
64 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the
65 offense or subject to the sentence received; or

66 (f) the petitioner can prove entitlement to relief under a rule announced by the United
67 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction
68 and sentence became final on direct appeal, and that:

69 (i) the rule was dictated by precedent existing at the time the petitioner's conviction or
70 sentence became final; or

71 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for
72 which the petitioner was convicted.

73 (2) The court may not grant relief from a conviction or sentence unless the petitioner
74 establishes that there would be a reasonable likelihood of a more favorable outcome in light of
75 the facts proved in the post-conviction proceeding, viewed with the evidence and facts
76 introduced at trial or during sentencing.

77 (3) The court may not grant relief from a conviction based on a claim that the petitioner
78 is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3,
79 Postconviction Testing of DNA [~~or Part 4, Post-Conviction Determination of Factual~~
80 ~~Innocence~~].

81 Section 2. Section **78B-9-107** is amended to read:

82 **78B-9-107. Statute of limitations for postconviction relief.**

83 (1) A petitioner is entitled to relief only if the petition is filed within one year after the
84 cause of action has accrued.

85 (2) For purposes of this section, the cause of action accrues on the latest of the
86 following dates:

87 (a) the last day for filing an appeal from the entry of the final judgment of conviction, if
88 no appeal is taken;

89 (b) the entry of the decision of the appellate court which has jurisdiction over the case,

90 if an appeal is taken;

91 (c) the last day for filing a petition for writ of certiorari in the Utah Supreme Court or
92 the United States Supreme Court, if no petition for writ of certiorari is filed;

93 (d) the entry of the denial of the petition for writ of certiorari or the entry of the
94 decision on the petition for certiorari review, if a petition for writ of certiorari is filed;

95 (e) the date on which petitioner knew or should have known, in the exercise of
96 reasonable diligence, of evidentiary facts on which the petition is based; or

97 (f) the date on which the new rule described in Subsection 78B-9-104(1)(f) is
98 established.

99 (3) The limitations period is tolled for any period during which the petitioner was
100 prevented from filing a petition due to state action in violation of the United States
101 Constitution, or due to physical or mental incapacity. The petitioner has the burden of proving
102 by a preponderance of the evidence that the petitioner is entitled to relief under this Subsection
103 (3).

104 (4) The statute of limitations is tolled during the pendency of the outcome of a petition
105 asserting[~~-(a)~~] exoneration through DNA testing or factual innocence under [~~Section~~
106 ~~78B-9-303; or~~] Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA.

107 [~~(b) factual innocence under Section 78B-9-401.~~]

108 (5) Sections 77-19-8, 78B-2-104, and 78B-2-111 do not extend the limitations period
109 established in this section.

110 Section 3. Section **78B-9-301** is amended to read:

111 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
112 **Notification of victim.**

113 (1) As used in this part:

114 (a) "DNA" means deoxyribonucleic acid.

115 (b) "Factually innocent" [~~has the same definition as in Section 78B-9-402.~~] means a
116 person did not:

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

118 (ii) engage in conduct relating to any lesser included offenses; or

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

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

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

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

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

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

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

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

138 (f) the evidence that is the subject of the request for testing has the potential to produce
139 new, noncumulative evidence that will establish the person's factual innocence; and

140 (g) the person is aware of the consequences of filing the petition, including:

141 (i) those specified in Sections 78B-9-302 and 78B-9-304; and

142 (ii) that the person is waiving any statute of limitations in all jurisdictions as to any
143 felony offense the person has committed which is identified through DNA database
144 comparison.

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

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

150 (5) After a petition is filed under this section, prosecutors, law enforcement officers,
151 and crime laboratory personnel have a duty to cooperate in preserving evidence and in

152 determining the sufficiency of the chain of custody of the evidence which may be subject to
153 DNA testing.

154 (6) (a) A person who files a petition under this section shall serve notice upon the
155 office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The
156 court shall first review the petition for sufficiency in accordance with Utah Rules of Civil
157 Procedure, Rule 65C(g). If directed by the court, the attorney general shall, within 30 days
158 after [receipt of service of a copy of the petition,] notice from the court to proceed or within
159 any additional period of time the court allows, answer or otherwise respond to all proceedings
160 initiated under this part.

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

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

169 (b) If the court orders that the testing be conducted by any laboratory other than the
170 state crime laboratory, the court shall require that the testing be performed:

171 (i) under reasonable conditions designed to protect the state's interests in the integrity
172 of the evidence; and

173 (ii) according to accepted scientific standards and procedures.

174 (8) (a) DNA testing under this section shall be paid for from funds appropriated to the
175 Department of Corrections under Subsection 53-10-407(4)(a) from the DNA Specimen
176 Restricted Account created in Section 53-10-407 if:

177 (i) the court ordered the DNA testing under this section;

178 (ii) the Utah State Crime Laboratory within the Criminal Investigations and Technical
179 Services Division has a conflict of interest or does not have the capability to perform the
180 necessary testing; and

181 (iii) the petitioner who has filed for postconviction DNA testing under Section
182 78B-9-201 is serving a sentence of imprisonment and is indigent.

183 (b) Under this Subsection (8), costs of DNA testing include those necessary to
184 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
185 of findings.

186 (9) If the person is serving a sentence of imprisonment and is indigent, the state shall
187 pay for the costs of the testing under this part, but if the result is not favorable to the person the
188 court may order the person to reimburse the state for the costs of the testing, pursuant to the
189 provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

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

193 Section 4. Section **78B-9-305**, which is renumbered from Section 78B-9-405 is
194 renumbered and amended to read:

195 ~~[78B-9-405].~~ **78B-9-305. Judgment and assistance payment.**

196 (1) (a) If a court finds a petitioner factually innocent under [~~Title 78B, Chapter 9, Part~~
197 ~~3, Postconviction DNA Testing, or under~~] this part, and if the petitioner has served a period of
198 incarceration, the court shall order that, as provided in Subsection (2), the petitioner shall
199 receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of
200 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah,
201 as determined by the data most recently published by the Department of Workforce Services at
202 the time of the petitioner's release from prison.

203 (b) As used in this Subsection (1), "petitioner" means a United States citizen or an
204 individual who was otherwise lawfully present in this country at the time of the incident that
205 gave rise to the underlying conviction.

206 (2) Payments pursuant to this section shall be made as follows:

207 (a) The Office of Crime Victim Reparations shall pay from the Crime Victim
208 Reparations Fund to the petitioner within 45 days of the court order under Subsection (1) an
209 initial sum equal to either 20% of the total financial assistance payment as determined under
210 Subsection (1) or an amount equal to two years of incarceration, whichever is greater, but not
211 to exceed the total amount owed.

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

214 Subsection (1):

215 (i) to the Crime Victim Reparations Fund, the amount that was paid out of the fund
216 under Subsection (2)(a); and

217 (ii) to the Commission on Criminal and Juvenile Justice, as a separate line item, the
218 amount ordered by the court for payments under Subsection (1), minus the amount reimbursed
219 to the Crime Victim Reparations Fund under Subsection (2)(b)(i).

220 (c) Payments to the petitioner under this section, other than the payment under
221 Subsection (2)(a), shall be made by the Commission on Criminal and Juvenile Justice quarterly
222 on or before the last day of the month next succeeding each calendar quarterly period.

223 (d) Payments under Subsection (2)(c) shall:

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

226 (ii) be made to the petitioner for the balance of the amount ordered by the court after
227 the initial payment under Subsection (2)(a); and

228 (iii) be allocated so that the entire amount due to the petitioner under this section has
229 been paid no later than 10 years after the effective date of the appropriation made under
230 Subsection (2)(b).

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

234 (b) [(f)] Payments pursuant to this section shall be tolled upon the commencement of
235 any period of incarceration due to the petitioner's subsequent conviction of a felony and shall
236 resume upon the conclusion of that period of incarceration.

237 [~~(ii) As used in this section, "felony" means a criminal offense classified as a felony
238 under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed
239 in Utah.~~]

240 (c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments
241 pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be
242 factually innocent under [~~Title 78B, Chapter 9, Part 3, Postconviction DNA Testing, or~~] this
243 part.

244 (4) (a) A person is ineligible for any payments under this part if the person was already

245 serving a prison sentence in another jurisdiction at the time of the conviction of the crime for
246 which that person has been found factually innocent pursuant to [~~Title 78B, Chapter 9, Part 3,~~
247 ~~Postconviction DNA Testing, or~~] this part, and that person is to be returned to that other
248 jurisdiction upon release for further incarceration on the prior conviction.

249 (b) Ineligibility for any payments pursuant to this Subsection (4) shall be determined by
250 the same court that finds a person to be factually innocent under [~~Title 78B, Chapter 9, Part 3,~~
251 ~~Postconviction DNA Testing, or~~] this part.

252 (5) Payments pursuant to this section:

253 (a) are not subject to any Utah state taxes; and

254 (b) may not be offset by any expenses incurred by the state or any political subdivision
255 of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or
256 provide medical services for the petitioner.

257 (6) If a court finds a petitioner to be factually innocent under [~~Title 78B, Chapter 9,~~
258 ~~Part 3, Postconviction DNA Testing, or~~] this part, the court shall also:

259 (a) issue an order of expungement of the petitioner's criminal record for all acts in the
260 charging document upon which the payment under this part is based; and

261 (b) provide a letter to the petitioner explaining that the petitioner's conviction has been
262 vacated on the grounds of factual innocence and indicating that the petitioner did not commit
263 the crime or crimes for which the petitioner was convicted and was later found to be factually
264 innocent under [~~Title 78B, Chapter 9, Part 3, Postconviction DNA Testing, or~~] this part.

265 (7) A petitioner found to be factually innocent under [~~Title 78B, Chapter 9, Part 3,~~
266 ~~Postconviction DNA Testing, or~~] this part shall have access to the same services and programs
267 available to Utah citizens generally as though the conviction for which the petitioner was found
268 to be factually innocent had never occurred.

269 (8) Payments pursuant to this part constitute a full and conclusive resolution of the
270 petitioner's claims on the specific issue of factual innocence.

271 **Section 5. Repealer.**

272 This bill repeals:

273 Section **78B-9-401, Title.**

274 Section **78B-9-402, Petition for determination of factual innocence -- Sufficient**
275 **allegations -- Notification of victim.**

276 Section **78B-9-403, Requests for appointment of counsel -- Appeals --**
277 **Postconviction petitions.**
278 Section **78B-9-404, Hearing upon petition -- Procedures -- Court determination of**
279 **factual innocence.**

Legislative Review Note
as of **2-4-10 8:31 AM**

Office of Legislative Research and General Counsel

S.B. 154 - Postconviction Remedies Act Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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