

1                   **FACTUAL INNOCENCE ASSISTANCE AMENDMENTS**

2                                   2013 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Gage Froerer**

5                           Senate Sponsor: Todd Weiler

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7 **LONG TITLE**

8 **General Description:**

9           This bill modifies the Judicial Code regarding postconviction determinations of factual  
10 innocence.

11 **Highlighted Provisions:**

12           This bill:

13           ▶ modifies provisions regarding financial assistance to a person found to have been  
14 wrongfully convicted, to provide that if the person dies, the financial assistance  
15 payment shall be paid to the person's surviving spouse if the spouse was married to  
16 the person from the time of the conviction until the person's death; and

17           ▶ provides that if the spouse has caused the death of the person by the commission of  
18 a disqualifying homicide, the survivor forfeits all right to payments.

19 **Money Appropriated in this Bill:**

20           None

21 **Other Special Clauses:**

22           None

23 **Utah Code Sections Affected:**

24 AMENDS:

25           **78B-9-402**, as last amended by Laws of Utah 2012, Chapter 220

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

28           Section 1. Section **78B-9-402** is amended to read:

29           **78B-9-402. Petition for determination of factual innocence -- Sufficient**

30 **allegations -- Notification of victim -- Payment to surviving spouse.**

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

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

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

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

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

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

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

44 (b) The court shall review the petition in accordance with the procedures in Subsection  
45 (9)(b), and make a finding that the petition has satisfied the requirements of Subsection (2)(a).  
46 If the court finds the petition does not meet all the requirements of Subsection (2)(a), it shall  
47 dismiss the petition without prejudice and send notice of the dismissal to the petitioner and the  
48 attorney general.

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

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

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

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

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

- 64 (i) was not discovered by the petitioner or the petitioner's counsel;
- 65 (ii) is material upon the issue of factual innocence; and
- 66 (iii) has never been presented to a court.

67 (4) If the conviction for which the petitioner asserts factual innocence was based upon  
68 a plea of guilty, the petition shall contain the specific nature and content of the evidence that  
69 establishes factual innocence. The court shall review the evidence and may dismiss the petition  
70 at any time in the course of the proceedings, if the court finds that the evidence of factual  
71 innocence relies solely upon the recantation of testimony or prior statements made by a witness  
72 against the petitioner, and the recantation appears to the court to be equivocal or self-serving.

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

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

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

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

84 (9) (a) A person who files a petition under this section shall serve notice of the petition  
85 and a copy of the petition upon the office of the prosecutor who obtained the conviction and

86 upon the Utah attorney general.

87 (b) The assigned judge shall conduct an initial review of the petition. If it is apparent  
88 to the court that the petitioner is either merely relitigating facts, issues, or evidence presented in  
89 previous proceedings or presenting issues that appear frivolous or speculative on their face, the  
90 court shall dismiss the petition, state the basis for the dismissal, and serve notice of dismissal  
91 upon the petitioner and the attorney general. If, upon completion of the initial review, the court  
92 does not dismiss the petition, it shall order the attorney general to file a response to the petition.  
93 The attorney general shall, within 30 days after receipt of the court's order, or within any  
94 additional period of time the court allows, answer or otherwise respond to all proceedings  
95 initiated under this part.

96 (c) After the time for response by the attorney general under Subsection (9)(b) has  
97 passed, the court shall order a hearing if it finds the petition meets the requirements of  
98 Subsections (2) and (3) and finds there is a bona fide and compelling issue of factual innocence  
99 regarding the charges of which the petitioner was convicted. No bona fide and compelling  
100 issue of factual innocence exists if the petitioner is merely relitigating facts, issues, or evidence  
101 presented in a previous proceeding or if the petitioner is unable to identify with sufficient  
102 specificity the nature and reliability of the newly discovered evidence that establishes the  
103 petitioner's factual innocence.

104 (d) If the parties stipulate that the evidence establishes that the petitioner is factually  
105 innocent, the court may find the petitioner is factually innocent without holding a hearing. If  
106 the state will not stipulate that the evidence establishes that the petitioner is factually innocent,  
107 no determination of factual innocence may be made by the court without first holding a hearing  
108 under this part.

109 (10) The court may not grant a petition for a hearing under this part during the period  
110 in which criminal proceedings in the matter are pending before any trial or appellate court,  
111 unless stipulated to by the parties.

112 (11) Any victim of a crime that is the subject of a petition under this part, and who has  
113 elected to receive notice under Section 77-38-3, shall be notified by the state's attorney of any

114 hearing regarding the petition.

115 (12) A petition to determine factual innocence under this part, or Part 3, Postconviction  
116 Testing of DNA, shall be filed separately from any petition for postconviction relief under Part  
117 1, General Provisions. Separate petitions may be filed simultaneously in the same court.

118 (13) The procedures governing the filing and adjudication of a petition to determine  
119 factual innocence apply to all petitions currently filed or pending in the district court and any  
120 new petitions filed on or after June 1, 2012.

121 (14) (a) As used in this Subsection (14) and in Subsection (15):

122 (i) "Married" means the legal marital relationship established between a man and a  
123 woman and as recognized by the laws of this state; and

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

127 (b) A claim for determination of factual innocence under this part is not extinguished  
128 upon the death of the petitioner. [~~The assistance payment provisions of Section 78B-9-405~~  
129 may not apply, and financial payments may not be made, if]

130 (c) If any payments are already being made to the petitioner under this part at the time  
131 of the death of the petitioner, or if the finding of factual innocence occurs after the death of the  
132 petitioner[~~. In addition, any payments already being made under Section 78B-9-405 shall cease~~  
133 upon the death of the petitioner.], the payments due under Section 78B-9-405 shall be paid  
134 according to the schedule under Section 78B-9-405 to the petitioner's surviving spouse.  
135 Payments cease upon the death of the spouse.

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

