

1 **FACTUAL INNOCENCE ASSISTANCE AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Gage Froerer**

5 Senate Sponsor: Todd Weiler

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; and

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

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78B-9-402**, as last amended by Laws of Utah 2012, Chapter 220

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

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



28 **78B-9-402. Petition for determination of factual innocence -- Sufficient**
29 **allegations -- Notification of victim.**

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

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

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

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

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

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

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

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

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

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

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

55 (b) Upon entry of a finding that the petition is sufficient under Subsection (2)(a), the
56 court shall then review the petition to determine if Subsection (3)(a) has been satisfied. If the
57 court finds that the requirements of Subsection (3)(a) have not been satisfied, it may dismiss
58 the petition without prejudice and give notice to the petitioner and the attorney general of the

59 dismissal, or the court may waive the requirements of Subsection (3)(a) if the court finds the
60 petition should proceed to hearing based upon the strength of the petition, and that there is
61 other evidence that could have been discovered through the exercise of reasonable diligence by
62 the petitioner or the petitioner's counsel at trial, and the other evidence:

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

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

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

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

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

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

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

86 (b) The assigned judge shall conduct an initial review of the petition. If it is apparent
87 to the court that the petitioner is either merely relitigating facts, issues, or evidence presented in
88 previous proceedings or presenting issues that appear frivolous or speculative on their face, the
89 court shall dismiss the petition, state the basis for the dismissal, and serve notice of dismissal

90 upon the petitioner and the attorney general. If, upon completion of the initial review, the court
91 does not dismiss the petition, it shall order the attorney general to file a response to the petition.
92 The attorney general shall, within 30 days after receipt of the court's order, or within any
93 additional period of time the court allows, answer or otherwise respond to all proceedings
94 initiated under this part.

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

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

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

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

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

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

120 (14) (a) As used in this Subsection (14), "spouse" means the legal relationship:

121 (i) established between a man and a woman as recognized by the laws of this state; and
122 (ii) existing at the time of the petitioner's death.

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

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

131 Payments cease upon the death of the spouse.

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

Legislative Review Note
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Office of Legislative Research and General Counsel