

POST-CONVICTION DNA TESTING AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Steve Eliason

LONG TITLE

General Description:

This bill modifies the Judicial Code regarding postconviction remedies.

Highlighted Provisions:

This bill:

- ▶ modifies the requirements to obtain postconviction DNA testing by providing that the new evidence shall establish by a reasonable probability that the petitioner would not have been convicted, or would have received a lesser sentence, rather than requiring that the evidence will establish factual innocence;

- ▶ removes the provision denying postconviction DNA testing if DNA testing was available and the defendant did not request or present DNA testing at trial for tactical reasons; and

- ▶ provides that after the Utah attorney general responds to a petition for postconviction DNA testing, the petitioner may reply to the attorney general's response before the court makes a determination regarding allowing the testing.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 **78B-9-301**, as last amended by Laws of Utah 2010, Chapter 405



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

31 Section 1. Section **78B-9-301** is amended to read:

32 **78B-9-301. Postconviction testing of DNA -- Petition -- Sufficient allegations --**
33 **Notification of victim.**

34 (1) As used in this part:

35 (a) "DNA" means deoxyribonucleic acid.

36 (b) "Factually innocent" has the same definition as in Section **78B-9-402**.

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

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

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

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

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

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

52 (f) the evidence that is the subject of the request for testing:

53 (i) has the potential to produce new, noncumulative evidence [~~that will establish the~~
54 ~~person's factual innocence~~]; and

55 (ii) there is a reasonable probability that the defendant would not have been convicted
56 or would have received a lesser sentence if the evidence had been presented at the original trial;
57 and

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

59 (i) those specified in Sections 78B-9-302 and 78B-9-304; and
60 (ii) that the person is waiving any statute of limitations in all jurisdictions as to any
61 felony offense the person has committed which is identified through DNA database
62 comparison.

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

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

68 [(5)] (4) After a petition is filed under this section, prosecutors, law enforcement
69 officers, and crime laboratory personnel have a duty to cooperate in preserving evidence and in
70 determining the sufficiency of the chain of custody of the evidence which may be subject to
71 DNA testing.

72 [(6)] (5) (a) A person who files a petition under this section shall serve notice upon the
73 office of the prosecutor who obtained the conviction, and upon the Utah attorney general. The
74 attorney general shall, within 30 days after receipt of service of a copy of the petition, or within
75 any additional period of time the court allows, answer or otherwise respond to all proceedings
76 initiated under this part.

77 (b) After the attorney general [~~is given an opportunity to respond to a petition for~~
78 ~~postconviction DNA testing,~~] responds under Subsection (5)(a), the petitioner has the right to
79 reply to the response of the attorney general within 10 days after receipt of the response.

80 (c) After the attorney general and the petitioner have filed a response and reply in
81 compliance with Subsection (5)(b), the court shall order DNA testing if it finds by a
82 preponderance of the evidence that all criteria of Subsection (2) have been met.

83 [(7)] (6) (a) If the court grants the petition for testing, the DNA test shall be performed
84 by the Utah State Crime Laboratory within the Criminal Investigations and Technical Services
85 Division created in Section 53-10-103, unless the person establishes that the state crime
86 laboratory has a conflict of interest or does not have the capability to perform the necessary
87 testing.

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

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

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

93 ~~[(8)]~~ (7) (a) DNA testing under this section shall be paid for from funds appropriated to
94 the Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen
95 Restricted Account created in Section 53-10-407 if:

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

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

100 (iii) the petitioner who has filed for postconviction DNA testing under Section
101 78B-9-201 is serving a sentence of imprisonment and is indigent.

102 (b) Under this Subsection ~~[(8)]~~ (7), costs of DNA testing include those necessary to
103 transport the evidence, prepare samples for analysis, analyze the evidence, and prepare reports
104 of findings.

105 ~~[(9)]~~ (8) If the person is serving a sentence of imprisonment and is indigent, the state
106 shall pay for the costs of the testing under this part, but if the result is not favorable to the
107 person the court may order the person to reimburse the state for the costs of the testing,
108 pursuant to the provisions of Subsections 78B-9-302(4) and 78B-9-304(1)(b).

109 ~~[(10)]~~ (9) Any victim of the crime regarding which the person petitions for DNA
110 testing, who has elected to receive notice under Section 77-38-3 shall be notified by the state's
111 attorney of any hearing regarding the petition and testing, even though the hearing is a civil
112 proceeding.