

Senator Lyle W. Hillyard proposes the following substitute bill:

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; 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:

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



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

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

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

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

(1) As used in this part:

(a) "DNA" means deoxyribonucleic acid.

(b) "Factually innocent" has the same definition as in Section [78B-9-402](#).

(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 if the person asserts factual 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 proposed DNA testing is generally accepted as valid in the scientific field or is otherwise admissible under Utah law;

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

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

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

and

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

(i) those specified in Sections [78B-9-302](#) and [78B-9-304](#); and

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

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

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

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

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

74 (b) After the attorney general [~~is given an opportunity to respond to a petition for~~
75 ~~postconviction DNA testing,~~] responds under Subsection (6)(a), the petitioner has the right to
76 reply to the response of the attorney general.

77 (c) After the attorney general and the petitioner have filed a response and reply in
78 compliance with Subsection (6)(b), the court shall order DNA testing if it finds by a
79 preponderance of the evidence that all criteria of Subsection (2) have been met.

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

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

87 (i) under reasonable conditions designed to protect the state's interests in the integrity

88 of the evidence; and

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

90 (8) (a) DNA testing under this section shall be paid for from funds appropriated to the
91 Department of Public Safety under Subsection 53-10-407(4)(d)(ii) from the DNA Specimen
92 Restricted Account created in Section 53-10-407 if:

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

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

97 (iii) the petitioner who has filed for postconviction DNA testing under Section
98 78B-9-201 is serving a sentence of imprisonment and is indigent.

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

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

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