

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1275

By: Daniels

4
5
6 AS INTRODUCED

7 An Act relating to post-conviction relief; defining
8 terms; authorizing motion for forensic analysis under
9 certain circumstances; construing provision;
10 establishing requirements and procedures for filing
11 of motion for forensic analysis; establishing
12 jurisdiction; requiring certain service; authorizing
13 appointment of counsel under certain circumstances;
14 requiring hearing; requiring court to submit written
15 findings; requiring court to allow forensic analysis
16 upon certain showing; establishing burden of proof;
17 authorizing certain discovery; authorizing court to
18 specify conditions of certain analysis; requiring
19 agreement on certain provider; directing payment for
20 cost of analysis; stating effect of certain
21 proceedings; requiring certain disclosure;
22 authorizing order for additional analysis; requiring
23 certain victim notification; prohibiting waiver of
24 certain right; requiring retention and preservation
of certain evidence; limiting liability for certain
act; establishing time limit for certain appeal;
providing for codification; and providing an
effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1081a of Title 22, unless there
is created a duplication in numbering, reads as follows:

As used in this act:

1 1. "Analysis" means the process by which a forensic or
2 scientific technique is applied to evidence or biological material
3 to identify the perpetrator of a crime;

4 2. "Biological material" means a sexual assault forensic
5 examination kit, semen, blood, saliva, hair, skin tissue or other
6 identified biological substance;

7 3. "Conviction" means a verdict or finding of guilty, a plea of
8 guilty, a plea of nolo contendere or an adjudication of delinquency
9 as a juvenile entered by the trial court;

10 4. "Exhaustive testing" means analysis of a particular item of
11 evidence or biological material that precludes replicate analysis of
12 the evidence or biological material;

13 5. "Factually innocent" means a person convicted of a criminal
14 offense who did not commit that offense;

15 6. "Governmental entity" means an official body of the state,
16 or of a county, city or town within the state;

17 7. "Identity" means the moving party's identity as the
18 perpetrator of the offense for which the moving party was convicted
19 in the underlying case;

20 8. "Moving party" means a person who files a motion under this
21 act;

22 9. "Post-conviction" means any time after which a conviction
23 has been entered;

24

1 10. "Prosecuting attorney" means the district attorney for the
2 district in which the moving party was convicted or the attorney
3 general of the state;

4 11. "Replicate analysis" means the duplication of an analysis
5 performed on a particular item of evidence or biological material;

6 12. "Underlying case" means the trial court proceedings that
7 resulted in the conviction of the moving party; and

8 13. "Victim" means any natural person who suffered direct or
9 threatened physical, emotional or financial harm as the result of
10 the commission or attempted commission of the crime or delinquency
11 case that is the subject of the underlying case. "Victim" shall
12 also include the parent, guardian, legal representative or
13 administrator or executor of the estate of such person if that
14 person is a minor, incompetent or deceased.

15 SECTION 2. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1082a of Title 22, unless there
17 is created a duplication in numbering, reads as follows:

18 A. A person may file a motion for forensic or scientific
19 analysis under this act if that person:

20 1. Has been convicted of a criminal offense in a court of this
21 state;

22 2. Is incarcerated in a state prison, house of correction, is
23 on parole or probation or whose liberty has been otherwise
24 restrained as the result of a conviction; and

1 3. Asserts factual innocence of the crime for which the person
2 has been convicted.

3 B. This act shall not be construed to prohibit the performance
4 of forensic or scientific analysis under any other circumstances,
5 including by agreement between the person convicted of a criminal
6 offense and the prosecuting attorney.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1083a of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A person seeking relief under this act shall file a motion
11 in the court in which the conviction was entered, using the same
12 caption and docket number as identified the underlying case.

13 B. The motion shall include the following information, and when
14 relevant, shall include specific references to the record in the
15 underlying case or to affidavits that are filed in support of the
16 motion that are signed by a person with personal knowledge of the
17 factual basis of the motion:

18 1. The name and a description of the requested forensic or
19 scientific analysis;

20 2. Information demonstrating that the requested analysis is
21 admissible as evidence in courts of this state;

22 3. A description of the evidence or biological material that
23 the moving party seeks to have analyzed or tested, including its
24 location and chain of custody if known;

1 4. Information demonstrating that the analysis has the
2 potential to result in evidence that is material to the moving
3 party's identification as the perpetrator of the crime in the
4 underlying case; and

5 5. Information demonstrating that the evidence or biological
6 material has not been subjected to the requested analysis because:

7 a. the requested analysis had not yet been developed at
8 the time of the conviction,

9 b. the results of the requested analysis were not
10 admissible in the courts of this state at the time of
11 the conviction,

12 c. the moving party and the moving party's attorney were
13 not aware of and did not have reason to be aware of
14 the existence of the evidence or biological material
15 at the time of the underlying case and conviction,

16 d. the moving party's attorney in the underlying case was
17 aware at the time of the conviction of the existence
18 of the evidence or biological material, the results of
19 the requested analysis were admissible as evidence in
20 courts of this state, a reasonably effective attorney
21 would have sought the analysis and either the moving
22 party's attorney failed to seek the analysis or the
23 judge denied the request, or

1 e. the evidence or biological material was otherwise
2 unavailable at the time of the conviction.

3 C. If the moving party is unable to include for filing with the
4 motion any of the items or information described in subsection B of
5 this section, or if the moving party lacks items or information
6 necessary to establish any of the factors listed in subsection B of
7 Section 7 of this act, the moving party shall include a description
8 of efforts made to obtain such items and information and may move
9 for discovery of such items or information from the prosecuting
10 attorney or any third party.

11 D. The moving party shall file with the motion an affidavit
12 stating that the moving party is factually innocent of the offense
13 of conviction and that the requested forensic or scientific analysis
14 will support the claim of innocence. A person who pleaded guilty or
15 nolo contendere in the underlying case may file a motion. The court
16 shall not find that identity was not or could not have been a
17 material issue in the underlying case because of the plea. A person
18 who is alleged to have, or admits to having, made a statement that
19 is or could be incriminating may file a motion under this act. The
20 court shall not find that identity was not or should not have been a
21 material issue in the underlying case because the moving party made,
22 or is alleged to have made, an incriminating statement. If the
23 moving party entered a plea of guilty or nolo contendere to the
24 offense of conviction or made an incriminating statement, the moving

1 party shall state in the affidavit that the claim of factual
2 innocence is made notwithstanding the plea or incriminating
3 statement.

4 E. The court shall expeditiously review all motions filed and
5 shall dismiss, without prejudice, any such motion without a hearing
6 if the court determines, based on the information contained in the
7 motion, that the motion does not meet the requirements set forth in
8 this section. The prosecuting attorney may provide a response to
9 the motion, to assist the court in considering whether the motion
10 meets the requirements under this section. The court shall notify
11 the moving party and the prosecuting attorney as to whether the
12 motion is sufficient to proceed under this act or is dismissed.

13 SECTION 4. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1084a of Title 22, unless there
15 is created a duplication in numbering, reads as follows:

16 A. The moving party shall file a motion under Section 3 of this
17 act with the court that adjudicated the underlying case and shall
18 serve a copy of the motion on the prosecuting attorney.

19 B. If the motion is not dismissed by the court under subsection
20 E of Section 3 of this act, the prosecuting attorney shall file a
21 response with the court within sixty (60) days after the date upon
22 which the court issues notice under subsection E of Section 3 of
23 this act, and shall simultaneously serve the response on the moving
24 party. The prosecuting attorney may request additional time in

1 which to file the response, which the court may grant for good cause
2 shown.

3 C. The prosecuting attorney's response shall include any
4 specific legal or factual objections that the prosecuting attorney
5 has to the requested analysis.

6 SECTION 5. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1085a of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 The court may assign or appoint counsel to represent a moving
10 party who meets the definition of indigency in the preparation and
11 presentation of motions filed under this act.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1086a of Title 22, unless there
14 is created a duplication in numbering, reads as follows:

15 A. The court shall order a hearing on the motion if the motion
16 meets the requirements of Section 3 of this act. The moving party
17 shall be present for the hearing unless the moving party waives the
18 party's presence at the hearing.

19 B. The judge who conducted the trial or accepted the moving
20 party's plea of guilty or nolo contendere in the underlying case
21 shall conduct the hearing, if possible.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1087a of Title 22, unless there
24 is created a duplication in numbering, reads as follows:

1 A. After reviewing the motion, the prosecuting attorney's
2 response, and after holding a hearing, the court shall state
3 findings of fact and conclusions of law on the record, or shall make
4 written findings of fact and conclusions of law that support the
5 decision to allow or deny a motion brought under Section 3 of this
6 act.

7 B. The court shall allow the requested forensic or scientific
8 analysis if each of the following has been demonstrated by a
9 preponderance of the evidence:

10 1. That the evidence or biological material exists;

11 2. That the evidence or biological material has been subject to
12 a chain of custody that is sufficient to establish that it has not
13 deteriorated, been substituted, tampered with, replaced, handled or
14 altered such that the results of the requested analysis would lack
15 any probative value;

16 3. That the evidence or biological material has not been
17 subjected to the requested analysis for any of the reasons in
18 subparagraphs a through e of paragraph 5 of subsection B of Section
19 3 of this act;

20 4. That the requested analysis has the potential to result in
21 evidence that is material to the moving party's identification as
22 the perpetrator of the crime in the underlying case;

23 5. That the purpose of the motion is not the obstruction of
24 justice or delay; and

1 6. That the results of the particular type of analysis being
2 requested have been found to be admissible in courts of the
3 commonwealth.

4 C. The court on motion of any party, after notice to the
5 opposing party and any third party from whom discovery is sought,
6 and an opportunity to be heard, may authorize such discovery as
7 provided for under the Oklahoma Discovery Code, from either party or
8 any third party as is deemed appropriate, subject to appropriate
9 protective orders or an order to the party seeking discovery to
10 produce reciprocal discovery. Such discovery may include items and
11 biological materials from third parties, provided the party seeking
12 discovery demonstrates that analysis of these items or biological
13 material will, by a preponderance of the evidence, provide evidence
14 material to the identification of a perpetrator of the crime. If,
15 in response to a motion made under subsection C of Section 3 of this
16 act, the court finds good cause for the moving party's inability to
17 obtain items or information required under subsection B of Section 3
18 and subsection B of this section, the court may order discovery to
19 assist the moving party in identifying the location and condition of
20 evidence or biological material that was obtained in relation to the
21 underlying case, regardless of whether it was introduced at trial or
22 would be admissible. The court, when considering such discovery
23 requests, shall not require the establishment of a prima facie case
24 for relief.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1088a of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 A. In allowing a motion under Section 3 of this act, the court
5 shall specify conditions on the analysis, including, but not limited
6 to, the transportation, handling and return of evidence or
7 biological materials, to protect the integrity of the evidence or
8 biological material and the analysis.

9 B. The prosecuting attorney and the moving party shall agree on
10 a forensic services provider accredited by an accreditation body
11 that is a signatory to the International Laboratory Accreditation
12 Cooperation Mutual Recognition Agreement and offers forensic
13 laboratory accreditation services to conduct the analysis, which,
14 except in the case of exhaustive testing, may include the forensic
15 and technology center of the state police crime laboratory.

16 C. If the prosecuting attorney and the moving party are unable
17 to agree on a forensic services provider, the prosecuting attorney
18 and the moving party shall submit to the court a list of not more
19 than three (3) forensic services providers who are accredited by an
20 accreditation body that is a signatory to the International
21 Laboratory Accreditation Cooperation Mutual Recognition Agreement
22 and offers forensic laboratory accreditation services and have the
23 capability to perform the requested analysis. The court shall
24 select a forensic services provider from either list. For purposes

1 of this section, "laboratory" shall refer to the forensic services
2 provider selected under this subsection or subsection B of this
3 section.

4 D. The laboratory shall give equal access to its personnel,
5 opinions, conclusions, reports and other documentation to the
6 prosecuting attorney and the moving party.

7 E. The laboratory shall retain and maintain the integrity of a
8 sufficient portion of the evidence or biological material for
9 replicate analysis. If, after initial examination of the evidence
10 or biological material, but before the actual analysis, the
11 laboratory determines that there is insufficient material for
12 replicate analysis, it shall simultaneously notify in writing the
13 prosecuting attorney, the moving party and the court. Exhaustive
14 testing shall not occur except by specific order of the court. In
15 the event that exhaustive testing is so authorized, upon request of
16 either party, the court shall make such orders to ensure that
17 representatives of the moving party and the prosecuting attorney
18 have the opportunity to observe the analysis, unless such
19 observation is inconsistent with the practices or protocols of the
20 laboratory conducting the analysis.

21 F. The moving party shall cooperate with the laboratory. At
22 the laboratory's or the prosecuting attorney's request and upon
23 court order, the moving party shall provide biological samples to
24 the laboratory or to law enforcement personnel. If the moving party

1 unreasonably fails to cooperate with such orders, the court may deny
2 the motion with prejudice.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1089a of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 Upon allowance of a motion under Section 3 of this act, analysis
7 shall take place as soon as practicable.

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1090a of Title 22, unless there
10 is created a duplication in numbering, reads as follows:

11 The costs of the analysis shall be paid:

12 1. By the moving party if the moving party does not meet the
13 definition of indigency and has sufficient means to make such
14 payment;

15 2. If the moving party meets the definition of indigency, as an
16 extra fee or cost; or

17 3. If a person is indigent, but has the ability to pay a
18 reduced fee, by the moving party to the maximum feasible amount
19 possible given the financial resources of the moving party as the
20 court deems equitable.

21 SECTION 11. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1091a of Title 22, unless there
23 is created a duplication in numbering, reads as follows:

24

1 Proceedings under this act shall not stay or otherwise interfere
2 with a term of incarceration, parole, probation or other sentence
3 imposed.

4 SECTION 12. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1092a of Title 22, unless there
6 is created a duplication in numbering, reads as follows:

7 A. The results of the analysis shall be simultaneously
8 disclosed to the moving party, the prosecuting attorney and the
9 court.

10 B. The court shall, at the request of a party or on its own
11 initiative, order production of the underlying laboratory data,
12 documents and notes.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1093a of Title 22, unless there
15 is created a duplication in numbering, reads as follows:

16 If the analysis is inconclusive, the court may order any
17 additional analysis requested if the court concludes that the
18 requirements of subsection B of Section 7 of this act are met.

19 SECTION 14. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1094a of Title 22, unless there
21 is created a duplication in numbering, reads as follows:

22 A. If a motion is filed under Section 3 of this act, the
23 prosecuting attorney shall notify the victim of the crime in the
24 underlying case.

1 B. The prosecuting attorney shall notify the victim if the
2 court allows a motion for forensic or scientific analysis and, if
3 the victim is notified of the allowance of the motion, shall
4 promptly notify the victim of the result of the analysis.

5 SECTION 15. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1095a of Title 22, unless there
7 is created a duplication in numbering, reads as follows:

8 The right to file a motion under this act shall not be waived.
9 This prohibition of any waiver includes, but is not limited to, any
10 stated or unstated waiver that is or is alleged to be part of any
11 agreement or understanding related to any plea of guilty or of nolo
12 contendere or to any sentencing or appellate proceeding or to any
13 correctional placement or conditions.

14 SECTION 16. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1096a of Title 22, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Any governmental entity that is in possession of evidence or
18 biological material that is collected for its potential evidentiary
19 value during the investigation of a crime, the prosecution of which
20 results in a conviction, shall retain such evidence or biological
21 material for the period of time that a person remains in the custody
22 of this state or under parole or probation supervision in connection
23 with such crime, without regard to whether the evidence or
24 biological material was introduced at trial. Each governmental

1 entity shall retain all such evidence or biological material in a
2 manner that is reasonably designed to preserve the evidence and
3 biological material and to prevent its destruction or deterioration.
4 The evidence or biological material need not be preserved if it is
5 to be returned to a third party or if it is of such a size, bulk or
6 physical character as to render retention impracticable.

7 B. The director of the Oklahoma State Bureau of Investigation
8 shall promulgate regulations governing the retention and
9 preservation of evidence or biological material by any governmental
10 entity. The regulations shall include standards for maintaining the
11 integrity of the materials over time, the designation of officials
12 at each governmental entity with custodial responsibility and
13 requirements for contemporaneously recorded documentation of
14 individuals having and obtaining custody of any evidence or
15 biological material.

16 SECTION 17. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1097a of Title 22, unless there
18 is created a duplication in numbering, reads as follows:

19 A. Governmental officials and employees acting in good faith
20 shall not be liable in a civil or criminal proceeding for any act
21 under this act.

22 B. If a governmental entity responsible for the preservation of
23 evidence or biological material engages in willful or wanton
24 misconduct or gross negligence, which results in the deterioration

1 or destruction of evidence or biological material so that a
2 laboratory is unable to perform adequate or proper analysis, such
3 entity shall be subject to proceedings for contempt.

4 C. Nothing in this act shall create any cause of action for
5 damages against this state or any of its subdivisions or officers,
6 employees, agents or subdivisions, except as provided in this
7 section.

8 SECTION 18. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1098a of Title 22, unless there
10 is created a duplication in numbering, reads as follows:

11 An order allowing or denying a motion for forensic or scientific
12 analysis filed under this act shall be a final and appealable order.
13 If the moving party appeals an order denying a motion for forensic
14 or scientific analysis, the moving party shall file a notice of
15 appeal with the court within thirty (30) days after the entry of the
16 judgment.

17 SECTION 19. This act shall become effective November 1, 2018.

18
19 56-2-2071 TEK 1/18/2018 11:16:47 AM

20
21
22
23
24