

ORIGINAL HOUSE
BILL NO. HB0026

ENROLLED ACT NO. 44, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2018 BUDGET SESSION

AN ACT relating to criminal procedure; allowing a petition for exoneration for persons convicted of a felony based upon newly discovered evidence of factual innocence; specifying requirements, procedures and conditions; providing for appointment of counsel as specified; amending post-conviction relief statutes; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 7-12-401 through 7-12-407 are created to read:

ARTICLE 4
POST-CONVICTION DETERMINATION OF FACTUAL INNOCENCE

7-12-401. Short title.

This act shall be known and may be cited as the "Post-Conviction Determination of Factual Innocence Act."

7-12-402. Definitions.

(a) As used in this act:

(i) "Bona fide issue of factual innocence" means that the newly discovered evidence presented by the petitioner, if credible, would clearly establish the petitioner's factual innocence;

(ii) "Factual innocence" or "factually innocent" means a person:

(A) Did not engage in the conduct for which he was convicted;

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(B) Did not engage in conduct constituting a lesser included or inchoate offense of the crime for which he was convicted; and

(C) Did not commit any other crime arising out of or reasonably connected to the facts supporting the indictment or information upon which he was convicted.

(iii) "Forensic science" is the application of scientific or technical practices to the recognition, collection, analysis and interpretation of evidence for criminal and civil law or regulatory issues;

(iv) "Newly discovered evidence" means evidence that was not available to the petitioner at trial or during the resolution by the trial court of any motion to withdraw a guilty plea or motion for new trial and which is relevant to the determination of the issue of factual innocence, including:

(A) Evidence that was discovered prior to or in the course of any appeal or post-conviction proceedings that served in whole or in part as the basis to vacate or reverse the petitioner's conviction;

(B) Evidence that supports the claims within a petition for post-conviction relief under W.S. 7-14-101 through 7-14-108 that is pending at the time of the court's determination of factual innocence under this act; or

(C) Relevant forensic scientific evidence that was not available at the time of trial or during the resolution by the trial court of any motion to withdraw a

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guilty plea or motion for new trial, or that undermines forensic evidence presented at trial. Forensic scientific evidence is to be considered as "undermined" if new research or information exists that repudiates:

(I) The foundational validity of the challenged evidence or testimony. "Foundational validity" means the reliability of the method to be repeatable, reproducible and accurate in a scientific setting; or

(II) The applied validity of the method or technique. "Applied validity" means the reliability of the method or technique in practice.

(v) "This act" means W.S. 7-12-401 through 7-12-407.

7-12-403. Petition for exoneration based on factual innocence; conduct of proceedings.

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

(b) The petition shall contain an assertion of factual innocence under oath by the petitioner and shall aver, with supporting affidavits or other credible documents, that:

(i) Newly discovered evidence exists that, if credible, establishes a bona fide issue of factual innocence;

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(ii) The specific evidence identified by the petitioner establishes innocence and is material to the case and the determination of factual innocence;

(iii) The material evidence identified by the petitioner is not merely cumulative of evidence that was known, is not reliant solely upon recantation of testimony by a witness against the petitioner and is not merely impeachment evidence;

(iv) When viewed with all other evidence in the case, whether admitted during trial or not, the newly discovered evidence demonstrates that the petitioner is factually innocent; and

(v) Newly discovered evidence claimed in the petition is distinguishable from any claims made in prior petitions.

(c) The court shall review the petition in accordance with the procedures in W.S. 7-12-404, and make a finding whether the petition has satisfied the requirements of subsection (b) of this section. If the court finds the petition does not meet all the requirements of subsection (b) of this section, it shall dismiss the petition without prejudice and send notice of the dismissal to the petitioner, the district attorney, and the attorney general.

(d) The petition shall also contain an averment that:

(i) Neither the petitioner nor the petitioner's counsel knew of the evidence at the time of trial or sentencing or in time to include the evidence in any previously filed post-trial motion or post-conviction

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petition, and the evidence could not have been discovered by the petitioner or the petitioner's counsel through the exercise of reasonable diligence; or

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

(e) Upon entry of a finding that the petition is sufficient under subsection (b) of this section, the court shall then review the petition to determine if subsection (d) of this section has been satisfied. If the court finds that the requirements of subsection (d) of this section have not been satisfied, it may dismiss the petition without prejudice and give notice to the petitioner, the district attorney and the attorney general of the dismissal, or the court may waive the requirements of subsection (d) if the court finds the petition should proceed to hearing and that there is other evidence that could have been discovered through the exercise of reasonable diligence by the petitioner or the petitioner's counsel at trial, and the other evidence:

(i) Was not discovered by the petitioner or the petitioner's counsel;

(ii) Is material upon the issue of factual innocence; and

(iii) Has never been presented to a court.

(f) A person who has already obtained post-conviction relief that vacated or reversed the person's conviction or sentence may also file a petition under this act in the

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same manner and form as described above, if no retrial or appeal regarding this offense is pending.

(g) If some or all of the newly discovered evidence alleged in a petition filed under this act is biological evidence subject to DNA testing, the petitioner shall seek DNA testing pursuant to W.S. 7-19-401 through 7-19-406. Separate petitions may be filed simultaneously in the same court.

(h) Except as provided in this act, and unless otherwise inconsistent with the provisions of this act, the petition and all subsequent proceedings shall be governed by the Wyoming Rules of Civil Procedure and the Wyoming Rules of Evidence and shall include the underlying criminal case number.

(j) Once a petition is filed under this section, attorneys for the state, law enforcement officers and crime laboratory personnel shall preserve the evidence that is the subject of the petition and shall preserve information to determine the sufficiency of the chain of custody of the evidence.

7-12-404. Service of process; response by state; review by the court.

(a) A person filing a petition under this act shall serve notice and a copy of the petition upon the office of the district attorney where the conviction was obtained and upon the Wyoming attorney general.

(b) The assigned district judge shall conduct an initial review of the petition. If it is apparent to the court that the petitioner is merely relitigating facts,

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issues or evidence presented in previous proceedings or presenting issues that appear frivolous or speculative on their face, the court shall dismiss the petition, state the basis for the dismissal and serve notice of dismissal upon the petitioner, the district attorney and the attorney general. If, upon completion of the initial review, the court does not dismiss the petition, it shall order the district attorney to file a response to the petition.

(c) The district attorney shall, within one hundred twenty (120) days after receipt of the court's order requiring a response, or within any additional period of time the court allows, answer or otherwise respond to the petition and serve the same upon the petitioner and the attorney general.

(d) After the time for response by the district attorney has passed, the court shall order a hearing if it finds the petition meets the requirements of W.S. 7-12-403 and finds there is a bona fide and compelling issue of factual innocence regarding the charges of which the petitioner was convicted. No bona fide and compelling issue of factual innocence exists if the petitioner is merely relitigating facts, issues or evidence presented in a previous proceeding or if the petitioner is unable to identify with sufficient specificity the nature and reliability of the newly discovered evidence that establishes the petitioner's factual innocence.

(e) Within thirty (30) days after the date the district attorney responds to the petition, the petitioner may reply. Within thirty (30) days after the time for petitioner to reply has passed, the court shall consider the petition and any response and enter an order either denying the petition or granting a hearing on the petition.

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The court may not grant a hearing during the period in which criminal proceedings in the matter are pending before any trial or appellate court, unless stipulated to by the parties.

(f) If the court grants a hearing, both the hearing and the final order following the hearing shall occur and be entered within one hundred fifty (150) days after the last day for the petitioner to reply to the district attorney's response to the petition, unless for good cause the court determines additional time is required.

(g) If the court sets a hearing on the petition and evidence is in the custody of the state or its agents, upon request of the petitioner, the court shall order the state to preserve all material and relevant evidence in the state's possession or control during the pendency of the proceeding.

(h) Upon motion, the court may order forensic testing of any available evidence.

(j) If the court orders forensic testing under subsection (h) of this section, the testing shall be performed by the Wyoming state crime laboratory unless the movant establishes that the state crime laboratory has a conflict of interest or does not have the capability to perform the necessary testing.

(k) If the court orders that forensic testing under subsection (h) of this section shall be conducted by a laboratory other than the Wyoming state crime laboratory, the court shall require that the testing be performed by a laboratory that is accredited by the American society of crime laboratory directors accreditation board, ANSI-ASQ

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national accreditation board or a successor accrediting body.

(m) The movant shall bear the cost of forensic testing ordered under subsection (h) of this section unless the court determines the movant is needy and the forensic testing supports the movant's petition for exoneration, in which case the court shall order the state to bear the cost of the forensic testing.

(n) If the parties stipulate the evidence establishes the petitioner is factually innocent, the court may find the petitioner is factually innocent without holding a hearing. If the state will not stipulate the evidence establishes the petitioner is factually innocent, no determination of factual innocence may be made by the court without first holding a hearing.

(o) Upon stipulation of the parties or the state's motion for dismissal of the original charges against the petitioner, the court shall vacate the petitioner's conviction, issue an order of factual innocence and exoneration and order expungement of the records of the original conviction.

(p) If, after a hearing, the court determines that the petitioner has proven his factual innocence by clear and convincing evidence, the court shall issue an order of factual innocence and exoneration and shall order expungement of the records of the original conviction.

7-12-405. Appointment of counsel.

The court may appoint counsel for a petitioner upon a determination that the petition is not subject to summary

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dismissal and the petitioner is needy. Counsel shall be appointed as provided in W.S. 7-6-104(c)(vii).

7-12-406. Victim notification.

Following any petition filed under W.S. 7-12-403, the district attorney shall make reasonable efforts to provide notice to the victim that the petition has been filed, the time and place for any hearing that may be held as a result of the petition and the disposition of the petition. For purposes of this section, "victim" means as defined in W.S. 1-40-202(a)(ii).

7-12-407. Appeal.

An order granting or denying a petition under this act is appealable by either party.

Section 2. W.S. 7-6-104(c)(vii), 7-14-101(b), 7-14-103(b) and 7-14-105(a) are amended to read:

7-6-104. Representation of needy persons.

(c) A needy person who is entitled to be represented by an attorney under subsection (a) of this section is entitled:

(vii) To be represented by the public defender in a motion brought in accordance with the provisions of the Post-Conviction DNA Testing Act or in accordance with W.S. 7-12-405.

7-14-101. Definition of "this act"; commencement and conduct of proceedings.

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(b) Any person serving a felony sentence in a state penal institution who asserts that in the proceedings which resulted in his conviction or sentence there was a substantial denial of his rights under the constitution of the United States or of the state of Wyoming, or both, may institute proceedings under this act. The proceeding shall be commenced by filing with the clerk of the court where the conviction occurred a petition verified by affidavit. A copy of the petition shall be served by the inmate on the Wyoming attorney general by ~~certified or registered mail~~ or by some other method reasonably calculated to assure prompt and verifiable service. The clerk shall docket the petition upon receipt and bring it promptly to the attention of the court.

7-14-103. Claims barred; applicability of act.

(b) Notwithstanding paragraph (a)(i) of this section, a court may hear a petition ~~if~~ based on any of the following:

(i) The petitioner sets forth facts supported by affidavits or other credible evidence which was not known or reasonably available to him at the time of a direct appeal; ~~or~~

(ii) The court ~~makes a finding~~ finds from a review of the trial and appellate records that the ~~petitioner was denied~~ petitioner's appellate counsel provided constitutionally ~~effective~~ ineffective assistance ~~of counsel by failing to assert a claim that was likely to result in a reversal of the petitioner's conviction or sentence~~ on his direct appeal. This finding may be reviewed by the supreme court together with any further action of the district court taken on the petition; ~~or~~ or

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(iii) The petitioner was represented by the same attorney in the trial and appellate courts.

7-14-105. Answer by state; withdrawal of petition; amendments and further pleadings.

(a) Within ~~thirty (30)~~ forty-five (45) days after filing being ordered to respond to the petition by the court, or within any further time as the court may fix, the attorney general on behalf of the state shall answer or move to dismiss the petition. No other or further pleadings shall be filed except as the court may order on its own motion or on that of either party.

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Section 3. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided in Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk