

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1381

By: Wilkerson of the Senate

and

Askins and Toure of the
House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; creating the DNA Forensic Testing Act; providing short title; creating the DNA Forensic Testing Program; stating purposes; mandating standard of evidence; providing procedures; placing certain decisions within discretion of Oklahoma Indigent Defense System; providing for employment of personnel; providing for priority of claims; authorizing the Oklahoma Indigent Defense System to investigate cases and arrange for forensic testing; providing that persons who are not incarcerated do not have to provide samples; authorizing certain persons to request services; providing for codification; providing an effective date; and declaring an emergency.

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 1371 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Sections 1 through 3 of this act shall be known and may be cited as the "DNA Forensic Testing Act".

B. There is hereby created the Oklahoma Indigent Defense System DNA Forensic Testing Program to continue until July 1, 2005.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1371.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. A DNA Forensic Testing Program shall be created within the Oklahoma Indigent Defense System to investigate, screen, and present to the appropriate prosecutorial agency claims that scientific

evidence will demonstrate indigent persons convicted of, and presently incarcerated on, any felony offense upon which the testing is sought are factually innocent. Factual innocence requires the defendant to establish by clear and convincing evidence that no reasonable jury would have found the defendant guilty beyond a reasonable doubt in light of the new evidence. The System's services shall be available only upon the submission of an affidavit of indigency to the System signed by an incarcerated person convicted of a felony and upon a preliminary determination by the System that the claim has a reasonable basis in fact.

Determinations of indigency shall be made at the sole discretion of the System based on rules for determining indigency promulgated by the Court of Criminal Appeals pursuant to the Indigent Defense Act. Determinations of reasonableness and acceptance of cases for which DNA testing will be performed shall be within the sole discretion of the System and shall not be subject to judicial review.

B. The System shall employ such attorneys, investigators, and other employees as may be necessary to process and present claims of factual innocence to the appropriate prosecuting agency in an efficient manner.

C. The System shall give priority to claims based on certain factors, including but not limited to:

1. The opportunity for conclusive or near conclusive proof that the person is factually innocent by reason of scientific evidence; and

2. A lengthy sentence of imprisonment or a death sentence.

D. The System is authorized to investigate cases and arrange for the forensic testing of evidence to determine whether evidence of factual innocence exists. Samples must be of sufficient quantity to allow testing by both the prosecution and the defense. Neither the prosecution nor defense shall consume the entire sample in testing in the absence of a court order allowing the sample to be

entirely consumed in testing. The System shall request the Oklahoma State Bureau of Investigation or the city in which the offense upon which the testing is sought was committed to perform the testing. The Bureau or the city may decline for any reason at their discretion in writing within thirty (30) days of receipt of the request. In those cases where the Bureau or city declines or fails to respond within thirty (30) days, or cannot perform the testing within a reasonable time, the System may request the professional services of experts under contract with the System as necessary for testing and presentation of such claims to the appropriate prosecuting agency.

E. Nothing in the DNA Forensic Testing Act shall require any person other than an incarcerate to provide a sample from their body for purposes of testing.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1371.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

An indigent person convicted of, and presently incarcerated on, any felony offense upon which the testing is sought, who alleges a claim of entitlement to forensic testing for purposes of demonstrating factual innocence may request the services of the Oklahoma Indigent Defense System DNA Forensic Testing Program pursuant to the DNA Forensic Testing Act.

SECTION 4. This act shall become effective July 1, 2000.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.