

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1068

By: Denney, Pittman,
Wesselhoft, Shelton and
McDaniel (Jeannie) of the
House

and

Halligan of the Senate

COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; creating the
Postconviction DNA Act; providing short title;
defining terms; providing eligibility requirements
for postconviction DNA testing; providing procedures
for filing motion for postconviction DNA testing;
stating findings necessary for DNA testing; providing
time limitation for transferring items of evidence;
requiring disclosure of previous DNA test analyses;
declaring which entities may conduct DNA testing;
authorizing court to enter DNA testing results order;
making motion for postconviction DNA testing optional
under certain circumstances; allowing for appeals;
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 1373 of Title 22, unless there
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Postconviction
2 DNA Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1373.1 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 As used in the Postconviction DNA Act:

7 1. "Biological material" means the contents of a sexual assault
8 evidence collection kit as well as any item that contains or
9 includes blood, semen, hair, saliva, skin tissue, fingernail
10 scrapings or parings, bone, bodily fluids or other identifiable
11 biological material that was collected as part of the criminal
12 investigation or may reasonably be used to incriminate or exculpate
13 any person for an offense and that may be suitable for forensic DNA
14 testing. This definition applies whether the material was
15 catalogued separately including, but not limited to, on a swab, a
16 slide or on any other evidence;

17 2. "DNA" means deoxyribonucleic acid;

18 3. "Document" or "documents" means any tangible thing upon
19 which any expression, communication or representation has been
20 recorded by any means and includes any writing, electronic writing,
21 recording, drawing, map, graph or chart, photograph and other data
22 compilation in the actual or constructive possession, custody, care
23 or control of the government which pertains directly or indirectly
24 to any matter relevant to the issues in a criminal case; and

1 4. "Guardian of a convicted person" means a person who is the
2 legal guardian of the convicted person, whether the legal
3 relationship exists because of the age of the convicted person or
4 because of the physical or mental incompetency of the convicted
5 person.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1373.2 of Title 22, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Notwithstanding any other provision of law concerning
10 postconviction relief, a person convicted of a violent felony crime
11 or who has received a sentence of twenty-five (25) years or more and
12 who asserts that he or she did not commit such crime may file a
13 motion in the sentencing court requesting forensic DNA testing of
14 any biological material secured in the investigation or prosecution
15 attendant to the challenged conviction. Persons eligible for
16 testing shall include any and all of the following:

17 1. Persons currently incarcerated, civilly committed, on parole
18 or probation or subject to sex offender registration;

19 2. Persons convicted on a plea of not guilty, guilty or nolo
20 contendere;

21 3. Persons deemed to have provided a confession or admission
22 related to the crime, either before or after conviction of the
23 crime; and
24

1 4. Persons who have discharged the sentence for which the
2 person was convicted.

3 B. A convicted person may request forensic DNA testing of any
4 biological material secured in the investigation or prosecution
5 attendant to the conviction that:

6 1. Was not previously subjected to DNA testing; or

7 2. Although previously subjected to DNA testing, can be
8 subjected to testing with newer testing techniques that provide a
9 reasonable likelihood of results that are more accurate and
10 probative than the results of the previous DNA test.

11 C. The motion requesting forensic DNA testing shall be
12 accompanied by an affidavit sworn to by the convicted person
13 containing statements of fact in support of the motion.

14 D. Upon receipt of the motion requesting forensic DNA testing,
15 the sentencing court shall provide a copy of the motion to the
16 attorney representing the state and require the attorney for the
17 state to file a response within sixty (60) days of receipt of
18 service or longer, upon good cause shown. The response shall
19 include an inventory of all the evidence related to the case,
20 including the custodian of such evidence.

21 E. A guardian of a convicted person may submit motions for the
22 convicted person under the provisions of this act and shall be
23 entitled to counsel as otherwise provided to a convicted person
24 pursuant to this act.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1373.3 of Title 22, unless there
3 is created a duplication in numbering, reads as follows:

4 The sentencing court, in its discretion, may refer pro se
5 requests for DNA testing to qualified parties willing to accept the
6 referrals for further review without appointing the parties as
7 counsel for the convicted person at that time. Such qualified
8 parties may include, but shall not be limited to, indigent defense
9 organizations or clinical legal education programs.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1373.4 of Title 22, unless there
12 is created a duplication in numbering, reads as follows:

13 A. After the motion requesting forensic DNA testing and
14 subsequent response have been filed, the sentencing court shall hold
15 a hearing to determine whether DNA forensic testing will be ordered.
16 A court shall order DNA testing only if the court finds:

17 1. A reasonable probability that the petitioner would not have
18 been convicted if favorable results had been obtained through DNA
19 testing at the time of the original prosecution;

20 2. The request for DNA testing is made to demonstrate the
21 innocence of the convicted person and is not made to unreasonably
22 delay the execution of the sentence or the administration of
23 justice;

1 3. One or more of the items of evidence the convicted person
2 seeks to have tested still exists;

3 4. The evidence to be tested was secured in relation to the
4 challenged conviction and either was not previously subject to DNA
5 testing or, if previously tested for DNA, the evidence can be
6 subjected to additional DNA testing that will provide a reasonable
7 likelihood of more probative results; and

8 5. The chain of custody of the evidence to be tested is
9 sufficient to establish that the evidence has not been substituted,
10 tampered with, replaced or altered in any material respect or, if
11 the chain of custody does not establish the integrity of the
12 evidence, the testing itself has the potential to establish the
13 integrity of the evidence. For purposes of this act, evidence that
14 has been in the custody of law enforcement, other government
15 officials or a public or private hospital shall be presumed to
16 satisfy the chain-of-custody requirement of this subsection absent
17 specific evidence of material tampering, replacement or alteration.

18 B. If at the close of the hearing the court orders DNA forensic
19 testing to be conducted, the court by written order shall require
20 the attorney representing the state to effect the transfer of the
21 item or items of evidence to be tested along with any documents,
22 logs or reports relating to the items of evidence collected in
23 connection with the criminal case to the designated laboratory or
24 laboratories within thirty (30) days of the order. In addition, the

1 court shall require the attorney representing the state to assist
2 the petitioner in locating any evidence the state contends was lost,
3 destroyed or in the possession of any other governmental entity,
4 public or private hospital, laboratory or other facility.

5 C. If the attorney representing the state or the petitioner
6 previously conducted any DNA analysis or other biological-evidence
7 testing without the knowledge of the other party, such testing shall
8 be revealed in the motion requesting forensic DNA testing or
9 response.

10 D. The court may order DNA testing to be performed by the
11 Oklahoma State Bureau of Investigation (OSBI), an accredited
12 laboratory operating under contract with the OSBI or another
13 accredited laboratory, as defined in Section 150.37 of Title 74 of
14 the Oklahoma Statutes. If the OSBI or an accredited laboratory
15 under contract with the OSBI conducts the testing, the state shall
16 bear the costs of the testing. If another laboratory conducts the
17 testing because neither the OSBI nor an accredited laboratory under
18 contract with the OSBI has the ability or the resources to conduct
19 the type of DNA testing to be performed, or if an accredited
20 laboratory that is neither the OSBI nor under contract with the OSBI
21 is chosen for some other reason, then the court shall require the
22 petitioner to pay for the testing.

23 E. The results of any postconviction DNA testing conducted
24 under the provisions of this act, including any laboratory reports

1 prepared in connection with the testing, the underlying data or
2 other laboratory documents, shall be disclosed to the petitioner,
3 the attorney for the state and the court.

4 F. If an accredited laboratory other than the OSBI or one under
5 contract with the OSBI performs the DNA testing, the court shall
6 impose reasonable conditions on the testing of the evidence to
7 protect the interests of the parties in the integrity of the
8 evidence and testing process and to preserve the evidence to the
9 greatest extent possible.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1373.5 of Title 22, unless there
12 is created a duplication in numbering, reads as follows:

13 A. If the results of the forensic DNA testing conducted under
14 the provisions of this act are favorable to the petitioner, the
15 court shall schedule a hearing to determine the appropriate relief
16 to be granted. Based on the results of the testing and any other
17 evidence presented at the hearing, the court shall thereafter enter
18 any order that serves the interests of justice including, but not
19 limited to, any of the following:

20 1. An order setting aside or vacating the judgment of
21 conviction, judgment of not guilty by reason of mental disease or
22 defect or adjudication of delinquency;

23 2. An order granting the petitioner a new trial or fact-finding
24 hearing;

1 3. An order granting the petitioner a new commitment hearing or
2 dispositional hearing;

3 4. An order discharging the petitioner from custody;

4 5. An order specifying the disposition of any evidence that
5 remains after the completion of the testing;

6 6. An order granting the petitioner additional discovery on
7 matters related to the DNA test results on the conviction or
8 sentence under scrutiny including, but not limited to, documents
9 pertaining to the original criminal investigation or the identities
10 of other suspects; or

11 7. An order directing the state to place any unidentified DNA
12 profile or profiles obtained from postconviction DNA testing into
13 Oklahoma or federal databases as allowed within applicable state and
14 federal laws.

15 B. If the results of the tests are not favorable to the
16 petitioner, the court shall:

17 1. Dismiss the motion; and

18 2. Make such further orders as the court deems appropriate,
19 including an order that:

20 a. requires the DNA test results be provided to the
21 Pardon and Parole Board or Department of Corrections,
22 or

23 b. requests the DNA profile of the petitioner be added to
24 the convicted offender index database of the OSBI

1 Combined DNA Index System (CODIS) Database as provided
2 by law.

3 SECTION 7. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1373.6 of Title 22, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The filing of a motion for postconviction DNA testing shall
7 not be required if both the state and the convicted person consent
8 and agree to conduct postconviction DNA testing.

9 B. Notwithstanding any other provision of law governing
10 postconviction relief, if DNA test results obtained under testing
11 conducted upon consent of the parties are favorable to the convicted
12 person, the convicted person may file and the court shall adjudicate
13 an order pursuant to Section 6 of this act for postconviction relief
14 based on the DNA test results.

15 SECTION 8. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1373.7 of Title 22, unless there
17 is created a duplication in numbering, reads as follows:

18 An appeal under the provisions of the Postconviction DNA Act may
19 be taken in the same manner as any other appeal.

20 SECTION 9. This act shall become effective November 1, 2013.
21

22 54-1-1661 CD 3/25/2013 2:40:24 PM
23
24