

1 ENGROSSED HOUSE
2 BILL NO. 1068

By: Denney, Pittman and
Wesselhoft of the House

3 and

4 Halligan of the Senate
5
6

7 An Act relating to criminal procedure; providing
8 short title; creating the Postconviction DNA Act;
9 defining terms; providing eligibility requirements
10 for postconviction DNA testing; providing procedures
11 for filing motion for postconviction DNA testing;
12 providing for the appointment of counsel; stating
13 findings necessary for DNA testing; providing time
14 limitation for transferring items of evidence;
15 requiring disclosure of previous DNA test analyses;
16 declaring which entities may conduct DNA testing;
17 authorizing court to enter DNA testing results order;
18 making motion for postconviction DNA testing optional
19 under certain circumstances; allowing for appeals;
20 providing for codification; providing for
21 noncodification; and providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 1373 of Title 22, unless there
is created a duplication in numbering, reads as follows:

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

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

4 As used in this act:

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

15 2. "DNA" means deoxyribonucleic acid;

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

23 4. "Guardian of a convicted person" means a person who is the
24 legal guardian of the convicted person, whether the legal

1 relationship exists because of the age of the convicted person or
2 because of the physical or mental incompetency of the convicted
3 person.

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

7 A. Notwithstanding any other provision of law concerning
8 postconviction relief, a person convicted of a crime who asserts
9 that he or she did not commit said crime may at any time file a
10 motion in the sentencing court requesting forensic DNA testing of
11 any biological material secured in the investigation or prosecution
12 attendant to the challenged conviction. Persons eligible for
13 testing shall include any and all of the following:

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

16 2. Persons convicted on a plea of not guilty, guilty or nolo
17 contendere;

18 3. Persons deemed to have provided a confession or admission
19 related to the crime, either before or after conviction of the
20 crime; and

21 4. Persons who have discharged the sentence for which the
22 person was convicted.

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

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

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

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

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

19 E. A guardian of a convicted person may submit motions for the
20 convicted person under the provisions of this act and shall be
21 entitled to counsel as otherwise provided to a convicted person
22 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 A. The sentencing court may appoint counsel for an indigent
5 convicted person at any time during proceedings under this act.

6 B. The sentencing court, in its discretion, may refer pro se
7 requests for DNA testing to qualified parties willing to accept the
8 referrals for further review without appointing the parties as
9 counsel for the convicted person at that time. Such qualified
10 parties may include, but shall not be limited to, indigent defense
11 organizations or clinical legal education programs. If the results
12 of the DNA testing are favorable to the convicted person, the court
13 shall then appoint counsel.

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

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

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

1 2. The request for DNA testing is made to demonstrate the
2 innocence of the convicted person and is not made to unreasonably
3 delay the execution of the sentence or the administration of
4 justice;

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

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

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

22 B. If at the close of the hearing the court orders DNA forensic
23 testing to be conducted, the court by written order shall require
24 the attorney representing the state to effect the transfer of the

1 item or items of evidence to be tested along with any documents,
2 logs or reports relating to the items of evidence collected in
3 connection with the criminal case to the designated laboratory or
4 laboratories within thirty (30) days of the order. In addition, the
5 court shall require the attorney representing the state to assist
6 the petitioner in locating any evidence the state contends was lost,
7 destroyed or in the possession of any other governmental entity,
8 public or private hospital, laboratory or other facility.

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

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

1 is chosen for some other reason, then the court may require either
2 the petitioner or the state to pay for the testing as the interests
3 of justice require.

4 E. The results of any postconviction DNA testing conducted
5 under the provisions of this act, including any laboratory reports
6 prepared in connection with the testing, the underlying data or
7 other laboratory documents, shall be disclosed to the petitioner,
8 the attorney for the state and the court.

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

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

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

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

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

6 3. An order granting the petitioner a new commitment hearing or
7 dispositional hearing;

8 4. An order discharging the petitioner from custody;

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

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

16 7. An order directing the state to place any unidentified DNA
17 profile or profiles obtained from postconviction DNA testing into
18 Oklahoma or federal databases as allowed within applicable state and
19 federal laws.

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

22 1. Dismiss the motion; and

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

- 1 a. requires the DNA test results be provided to the
2 Pardon and Parole Board or Department of Corrections,
3 or
4 b. requests the DNA profile of the petitioner be added to
5 the convicted offender index database of the OSBI
6 Combined DNA Index System (CODIS) Database as provided
7 by law.

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

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

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

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

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

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

Passed the House of Representatives the 18th day of February, 2013.

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2013.

Presiding Officer of the Senate