

1 **SENATE FLOOR VERSION**

2 April 3, 2013

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 HOUSE BILL NO. 1068

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

6 and

7 Halligan, Ivester and Sykes  
8 of the Senate

9  
10 [ criminal procedure - creating the Postconviction  
11 DNA Act - providing eligibility requirements for  
12 postconviction DNA testing - codification - effective  
13 date ]

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

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

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

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

23 As used in the Postconviction DNA Act:  
24

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

11        2. "DNA" means deoxyribonucleic acid;

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

19        4. "Guardian of a convicted person" means a person who is the  
20 legal guardian of the convicted person, whether the legal  
21 relationship exists because of the age of the convicted person or  
22 because of the physical or mental incompetency of the convicted  
23 person.

24

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

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

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

14       2. Persons convicted on a plea of not guilty, guilty or nolo  
15 contendere;

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

19       4. Persons who have discharged the sentence for which the  
20 person was convicted.

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

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

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

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

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

15        E. A guardian of a convicted person may submit motions for the  
16 convicted person under the provisions of this act and shall be  
17 entitled to counsel as otherwise provided to a convicted person  
18 pursuant to this act.

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

22        The sentencing court, in its discretion, may refer pro se  
23 requests for DNA testing to qualified parties willing to accept the  
24 referrals for further review without appointing the parties as

1 counsel for the convicted person at that time. Such qualified  
2 parties may include, but shall not be limited to, indigent defense  
3 organizations or clinical legal education programs.

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

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

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

14 2. The request for DNA testing is made to demonstrate the  
15 innocence of the convicted person and is not made to unreasonably  
16 delay the execution of the sentence or the administration of  
17 justice;

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

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

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

11        B. If at the close of the hearing the court orders DNA forensic  
12 testing to be conducted, the court by written order shall require  
13 the attorney representing the state to effect the transfer of the  
14 item or items of evidence to be tested along with any documents,  
15 logs or reports relating to the items of evidence collected in  
16 connection with the criminal case to the designated laboratory or  
17 laboratories within thirty (30) days of the order. In addition, the  
18 court shall require the attorney representing the state to assist  
19 the petitioner in locating any evidence the state contends was lost,  
20 destroyed or in the possession of any other governmental entity,  
21 public or private hospital, laboratory or other facility.

22        C. If the attorney representing the state or the petitioner  
23 previously conducted any DNA analysis or other biological-evidence  
24 testing without the knowledge of the other party, such testing shall

1 be revealed in the motion requesting forensic DNA testing or  
2 response.

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

16 E. The results of any postconviction DNA testing conducted  
17 under the provisions of this act, including any laboratory reports  
18 prepared in connection with the testing, the underlying data or  
19 other laboratory documents, shall be disclosed to the petitioner,  
20 the attorney for the state and the court.

21 F. If an accredited laboratory other than the OSBI or one under  
22 contract with the OSBI performs the DNA testing, the court shall  
23 impose reasonable conditions on the testing of the evidence to  
24 protect the interests of the parties in the integrity of the

1 evidence and testing process and to preserve the evidence to the  
2 greatest extent possible.

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

6 A. If the results of the forensic DNA testing conducted under  
7 the provisions of this act are favorable to the petitioner, the  
8 court shall schedule a hearing to determine the appropriate relief  
9 to be granted. Based on the results of the testing and any other  
10 evidence presented at the hearing, the court shall thereafter enter  
11 any order that serves the interests of justice including, but not  
12 limited to, any of the following:

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

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

18 3. An order granting the petitioner a new commitment hearing or  
19 dispositional hearing;

20 4. An order discharging the petitioner from custody;

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

23 6. An order granting the petitioner additional discovery on  
24 matters related to the DNA test results on the conviction or



1 sentence under scrutiny including, but not limited to, documents  
2 pertaining to the original criminal investigation or the identities  
3 of other suspects; or

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

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

10 1. Dismiss the motion; and

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

13 a. requires the DNA test results be provided to the  
14 Pardon and Parole Board or Department of Corrections,  
15 or

16 b. requests the DNA profile of the petitioner be added to  
17 the convicted offender index database of the OSBI  
18 Combined DNA Index System (CODIS) Database as provided  
19 by law.

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

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

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS  
17 April 3, 2013 - DO PASS AS AMENDED  
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