

SENATE FILE NO. SF0028

Post-conviction actual innocence.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; allowing a motion  
 2 for new trial for persons convicted of a felony upon a  
 3 showing of actual innocence based on non-DNA evidence;  
 4 specifying requirements and conditions; providing for  
 5 compensation; specifying retention of governmental  
 6 immunity; conforming provisions; and providing for an  
 7 effective date.

8

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

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11 **Section 1.** W.S. 7-12-401 through 7-12-410 are created  
 12 to read:

13

14

ARTICLE 4

15

NEW TRIAL BASED ON ACTUAL INNOCENCE

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17 **7-12-401. Definitions.**

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2 (a) As used in this act:

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4 (i) "Actually innocent" means a movant did not:

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6 (A) Engage in the conduct for which the  
7 movant was convicted;

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9 (B) Engage in conduct in connection with  
10 the offense for which the movant was convicted which would  
11 constitute a lesser included offense or another felony  
12 arising out of the same conduct; or

13

14 (C) Engage in any conduct which would  
15 constitute aiding and abetting, attempt or conspiracy to  
16 commit the offense of conviction or any lesser included  
17 offense thereof.

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19 (ii) "Movant" means the person filing a motion  
20 under W.S. 7-12-402;

21

22 (iii) "This act" means W.S. 7-12-401 through  
23 7-12-410.

24

1           **7-12-402. Motion for new trial based on actual**  
2 **innocence.**

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4           (a) Notwithstanding any law or rule of procedure that  
5 bars a motion for a new trial as untimely, a person who has  
6 been convicted of a felony offense may file a motion in the  
7 district court in which the person was convicted for a new  
8 trial based on newly discovered evidence that the person is  
9 actually innocent of the crime or crimes of which the  
10 person was convicted.

11

12           (b) The motion shall:

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14           (i) Identify with specificity newly discovered  
15 material evidence, other than DNA evidence, which if proven  
16 would establish by clear and convincing evidence the movant  
17 is actually innocent;

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19           (ii) Be supported by affidavit based on personal  
20 knowledge of the affiant or similar credible evidence  
21 showing that the movant is actually innocent;

22

1           (iii) Show there is an absence of available  
2 state corrective process to establish the movant is  
3 actually innocent; and

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5           (iv) Be supported by evidence other than  
6 recantations of testimony or statements or impeachment  
7 evidence.

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9           (c) The motion shall state:

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11           (i) Whether the movant has previously moved for  
12 a new trial under this act for the conviction from which  
13 the movant seeks relief; and

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15           (ii) That neither the movant nor his counsel  
16 knew of the evidence at the time of trial or sentencing and  
17 the evidence could not have been discovered by the movant  
18 or his counsel through the exercise of due diligence within  
19 two (2) years of the final judgment; or

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21           (iii) That a court has found ineffective  
22 assistance of counsel for failing to exercise due diligence  
23 to discover the evidence by entry of a final order that is  
24 not subject to appeal.

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2           **7-12-403. Service of process; response by state.**

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4           (a) Notice of the motion filed under W.S. 7-12-402  
5 shall be served upon the district attorney in the county in  
6 which the conviction occurred.

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8           (b) The district attorney shall respond to the motion  
9 within one hundred twenty (120) days after receipt of the  
10 motion.

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12           **7-12-404. Review by the court; hearing on motion;  
13 preservation of evidence.**

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15           (a) If the court finds that the requirements of W.S.  
16 7-12-402(b) have not been satisfied, it shall dismiss the  
17 motion.

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19           (b) If the court finds that the requirements of W.S.  
20 7-12-402(c) have not been satisfied, the court may dismiss  
21 the motion. The court, however, may waive the requirements  
22 of W.S. 7-12-402(c) if the court finds clear and convincing  
23 evidence of actual innocence exists.

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1           (c) If the requirements of W.S. 7-12-402(b) have been  
2 met and the requirements of W.S. 7-12-402(c) have been met  
3 or waived, the court shall set a hearing on the motion for  
4 a new trial.

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6           (d) If the court sets a hearing on the motion for a  
7 new trial and evidence is in the custody of the state or  
8 its agents, upon request of the movant, the court shall  
9 order the state to preserve all material and relevant  
10 evidence in the state's possession or control during the  
11 pendency of the proceeding.

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13           (e) Upon the stipulation of the parties or a motion  
14 for dismissal of the original charges against the movant by  
15 the state in lieu of a retrial, the court shall:

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17           (i) Vacate the movant's conviction consistent  
18 with the evidence demonstrating the movant's actual  
19 innocence;

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21           (ii) Issue an order of actual innocence and  
22 exoneration; and

23

24           (iii) Issue an order of expungement.

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2 (f) In the event a retrial is conducted and the  
3 movant is acquitted at the retrial, the court shall:

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5 (i) Issue an order of actual innocence and  
6 exoneration; and

7

8 (ii) Issue an order of expungement.

9

10 **7-12-405. Appointment of counsel.**

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12 The court may appoint counsel for a movant upon a  
13 determination that the motion for a new trial presents a  
14 nonfrivolous prima facie showing of actual innocence and  
15 the petitioner is needy. Counsel shall be appointed as  
16 provided in W.S. 7-6-104(c)(vii).

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18 **7-12-406. Victim notification.**

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20 Following any motion filed under this act, the district  
21 attorney shall provide notice to the victim that the motion  
22 has been filed, the time and place for any hearing that may  
23 be held as a result of the motion, and the disposition of

1 the motion. For purposes of this section, "victim" means  
2 as defined in W.S. 1-40-202(a)(ii).

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4 **7-12-407. Rights not waived; refiling of uncharged**  
5 **offenses.**

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7 (a) Notwithstanding any other provision of law, the  
8 right to file a motion under W.S. 7-12-402 shall not be  
9 waived as part of an agreement resulting in a plea of  
10 guilty or nolo contendere or in any other manner.

11

12 (b) If a movant is granted a new trial under this  
13 act, any offense that was dismissed or not charged pursuant  
14 to a plea agreement that resulted in the original  
15 conviction may be refiled by the state.

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17 **7-12-408. Appeal.**

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19 An order granting or denying a motion for a new trial under  
20 this act is not appealable.

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22 **7-12-409. Subsequent motions.**

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1 The court shall not be required to entertain a second or  
2 subsequent motion under this act.

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4 **7-12-410. Compensation.**

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6 If the court enters an order of actual innocence and  
7 exoneration pursuant to W.S. 7-12-404, the movant shall be  
8 eligible for compensation subject to the appropriation of  
9 funds by the legislature. The compensation shall be  
10 awarded in the same amount and subject to the same terms,  
11 conditions and requirements as awarded under W.S.  
12 7-12-316(b) through (n) for persons exonerated based on DNA  
13 testing.

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15 **Section. 2.** W.S. 1-39-104(a), 1-39-120 by creating a  
16 new subsection (b) and 7-6-104(c)(vii) are amended to read:

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18 **1-39-104. Granting immunity from tort liability;**  
19 **liability on contracts; exceptions.**

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21 (a) A governmental entity and its public employees  
22 while acting within the scope of duties are granted  
23 immunity from liability for any tort except as provided by  
24 W.S. 1-39-105 through 1-39-112 and limited by W.S.

1 1-39-121. Any immunity in actions based on a contract  
2 entered into by a governmental entity is waived except to  
3 the extent provided by the contract if the contract was  
4 within the powers granted to the entity and was properly  
5 executed and except as provided in W.S. 1-39-120(b) and  
6 1-39-121. The claims procedures of W.S. 1-39-113 apply to  
7 contractual claims against governmental entities.

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9 **1-39-120. Exclusions from waiver of immunity.**

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11 (b) Notwithstanding the waiver of immunity for tort  
12 liability provided by W.S. 1-39-105 through 1-39-112 or the  
13 waiver of immunity in actions based on contract provided by  
14 W.S. 1-39-104, a governmental entity and its public  
15 employees while acting within the scope of duties are  
16 immune from a civil action in tort, contract or otherwise  
17 alleging, in whole or in part, improper denial of  
18 compensation provided for in W.S. 7-12-410.

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20 **7-6-104. Representation of needy persons.**

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

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(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.

**Section. 3.** This act is effective July 1, 2014.

(END)