

HOUSE BILL NO. HB0026

Post-conviction relief.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; allowing a petition  
 2 for exoneration for persons convicted of a felony based  
 3 upon newly discovered evidence of factual innocence;  
 4 specifying requirements, procedures and conditions;  
 5 providing for appointment of counsel as specified; amending  
 6 post-conviction relief statutes; and providing for an  
 7 effective date.

8

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

10

11 **Section 1.** W.S. 7-12-401 through 7-12-407 are created  
 12 to read:

13

14

ARTICLE 4

15

POST-CONVICTION DETERMINATION OF FACTUAL INNOCENCE

16

1           **7-12-401. Short title.**

2

3 This act shall be known and may be cited as the  
4 "Post-Conviction Determination of Factual Innocence Act."

5

6           **7-12-402. Definitions.**

7

8           (a) As used in this act:

9

10                   (i) "Bona fide issue of factual innocence" means  
11 that the newly discovered evidence presented by the  
12 petitioner, if credible, would clearly establish the  
13 petitioner's factual innocence;

14

15                   (ii) "Factual innocence" or "factually innocent"  
16 means a person:

17

18                           (A) Did not engage in the conduct for which  
19 he was convicted;

20

21                           (B) Did not engage in conduct constituting  
22 a lesser included or inchoate offense of the crime for  
23 which he was convicted; and

1

2 (C) Did not commit any other crime arising  
3 out of or reasonably connected to the facts supporting the  
4 indictment or information upon which he was convicted.

5

6 (iii) "Forensic science" is the application of  
7 scientific or technical practices to the recognition,  
8 collection, analysis and interpretation of evidence for  
9 criminal and civil law or regulatory issues;

10

11 (iv) "Newly discovered evidence" means evidence  
12 that was not available to the petitioner at trial or during  
13 the resolution by the trial court of any motion to withdraw  
14 a guilty plea or motion for new trial and which is relevant  
15 to the determination of the issue of factual innocence,  
16 including:

17

18 (A) Evidence that was discovered prior to  
19 or in the course of any appeal or post-conviction  
20 proceedings that served in whole or in part as the basis to  
21 vacate or reverse the petitioner's conviction;

22

1                   (B) Evidence that supports the claims  
2 within a petition for post-conviction relief under W.S.  
3 7-14-101 through 7-14-108 that is pending at the time of  
4 the court's determination of factual innocence under this  
5 act; or

6  
7                   (C) Relevant forensic scientific evidence  
8 that was not available at the time of trial or during the  
9 resolution by the trial court of any motion to withdraw a  
10 guilty plea or motion for new trial, or that undermines  
11 forensic evidence presented at trial. Forensic scientific  
12 evidence is to be considered as "undermined" if new  
13 research or information exists that repudiates:

14  
15                   (I) The foundational validity of the  
16 challenged evidence or testimony. "Foundational validity"  
17 means the reliability of the method to be repeatable,  
18 reproducible and accurate in a scientific setting; or

19  
20                   (II) The applied validity of the  
21 method or technique. "Applied validity" means the  
22 reliability of the method or technique in practice.

23

1           (v) "This act" means W.S. 7-12-401 through  
2 7-12-407.

3

4           **7-12-403. Petition for exoneration based on factual**  
5 **innocence; conduct of proceedings.**

6

7           (a) A person who has been convicted of a felony  
8 offense may petition the district court in the county in  
9 which the person was convicted for a hearing to establish  
10 that the person is factually innocent of the crime or  
11 crimes of which the person was convicted.

12

13           (b) The petition shall contain an assertion of  
14 factual innocence under oath by the petitioner and shall  
15 aver, with supporting affidavits or other credible  
16 documents, that:

17

18           (i) Newly discovered evidence exists that, if  
19 credible, establishes a bona fide issue of factual  
20 innocence;

21

1           (ii) The specific evidence identified by the  
2 petitioner establishes innocence and is material to the  
3 case and the determination of factual innocence;

4

5           (iii) The material evidence identified by the  
6 petitioner is not merely cumulative of evidence that was  
7 known, is not reliant solely upon recantation of testimony  
8 by a witness against the petitioner and is not merely  
9 impeachment evidence;

10

11           (iv) When viewed with all other evidence in the  
12 case, whether admitted during trial or not, the newly  
13 discovered evidence demonstrates that the petitioner is  
14 factually innocent; and

15

16           (v) Newly discovered evidence claimed in the  
17 petition is distinguishable from any claims made in prior  
18 petitions.

19

20           (c) The court shall review the petition in accordance  
21 with the procedures in W.S. 7-12-404, and make a finding  
22 whether the petition has satisfied the requirements of  
23 subsection (b) of this section. If the court finds the

1 petition does not meet all the requirements of subsection  
2 (b) of this section, it shall dismiss the petition without  
3 prejudice and send notice of the dismissal to the  
4 petitioner, the district attorney, and the attorney  
5 general.

6

7 (d) The petition shall also contain an averment that:

8

9 (i) Neither the petitioner nor the petitioner's  
10 counsel knew of the evidence at the time of trial or  
11 sentencing or in time to include the evidence in any  
12 previously filed post-trial motion or post-conviction  
13 petition, and the evidence could not have been discovered  
14 by the petitioner or the petitioner's counsel through the  
15 exercise of reasonable diligence; or

16

17 (ii) A court has found ineffective assistance of  
18 counsel for failing to exercise reasonable diligence in  
19 uncovering the evidence.

20

21 (e) Upon entry of a finding that the petition is  
22 sufficient under subsection (b) of this section, the court  
23 shall then review the petition to determine if subsection

1 (d) of this section has been satisfied. If the court finds  
2 that the requirements of subsection (d) of this section  
3 have not been satisfied, it may dismiss the petition  
4 without prejudice and give notice to the petitioner, the  
5 district attorney and the attorney general of the  
6 dismissal, or the court may waive the requirements of  
7 subsection (d) if the court finds the petition should  
8 proceed to hearing and that there is other evidence that  
9 could have been discovered through the exercise of  
10 reasonable diligence by the petitioner or the petitioner's  
11 counsel at trial, and the other evidence:

12

13 (i) Was not discovered by the petitioner or the  
14 petitioner's counsel;

15

16 (ii) Is material upon the issue of factual  
17 innocence; and

18

19 (iii) Has never been presented to a court.

20

21 (f) A person who has already obtained post-conviction  
22 relief that vacated or reversed the person's conviction or  
23 sentence may also file a petition under this act in the



1 same manner and form as described above, if no retrial or  
2 appeal regarding this offense is pending.

3

4 (g) If some or all of the newly discovered evidence  
5 alleged in a petition filed under this act is biological  
6 evidence subject to DNA testing, the petitioner shall seek  
7 DNA testing pursuant to W.S. 7-19-401 through 7-19-406.  
8 Separate petitions may be filed simultaneously in the same  
9 court.

10

11 (h) Except as provided in this act, and unless  
12 otherwise inconsistent with the provisions of this act, the  
13 petition and all subsequent proceedings shall be governed  
14 by the Wyoming Rules of Civil Procedure and the Wyoming  
15 Rules of Evidence and shall include the underlying criminal  
16 case number.

17

18 (j) Once a petition is filed under this section,  
19 attorneys for the state, law enforcement officers and crime  
20 laboratory personnel shall preserve the evidence that is  
21 the subject of the petition and shall preserve information  
22 to determine the sufficiency of the chain of custody of the  
23 evidence.

1

2           **7-12-404. Service of process; response by state;**  
3 **review by the court.**

4

5           (a) A person filing a petition under this act shall  
6 serve notice and a copy of the petition upon the office of  
7 the district attorney where the conviction was obtained and  
8 upon the Wyoming attorney general.

9

10           (b) The assigned district judge shall conduct an  
11 initial review of the petition. If it is apparent to the  
12 court that the petitioner is merely relitigating facts,  
13 issues or evidence presented in previous proceedings or  
14 presenting issues that appear frivolous or speculative on  
15 their face, the court shall dismiss the petition, state the  
16 basis for the dismissal and serve notice of dismissal upon  
17 the petitioner, the district attorney and the attorney  
18 general. If, upon completion of the initial review, the  
19 court does not dismiss the petition, it shall order the  
20 district attorney to file a response to the petition.

21

22           (c) The district attorney shall, within one hundred  
23 twenty (120) days after receipt of the court's order

1 requiring a response, or within any additional period of  
2 time the court allows, answer or otherwise respond to the  
3 petition and serve the same upon the petitioner and the  
4 attorney general.

5  
6 (d) After the time for response by the district  
7 attorney has passed, the court shall order a hearing if it  
8 finds the petition meets the requirements of W.S. 7-12-403  
9 and finds there is a bona fide and compelling issue of  
10 factual innocence regarding the charges of which the  
11 petitioner was convicted. No bona fide and compelling issue  
12 of factual innocence exists if the petitioner is merely  
13 relitigating facts, issues or evidence presented in a  
14 previous proceeding or if the petitioner is unable to  
15 identify with sufficient specificity the nature and  
16 reliability of the newly discovered evidence that  
17 establishes the petitioner's factual innocence.

18  
19 (e) Within thirty (30) days after the date the  
20 district attorney responds to the petition, the petitioner  
21 may reply. Within thirty (30) days after the time for  
22 petitioner to reply has passed, the court shall consider  
23 the petition and any response and enter an order either

1 denying the petition or granting a hearing on the petition.  
2 The court may not grant a hearing during the period in  
3 which criminal proceedings in the matter are pending before  
4 any trial or appellate court, unless stipulated to by the  
5 parties.

6  
7 (f) If the court grants a hearing, both the hearing  
8 and the final order following the hearing shall occur and  
9 be entered within one hundred fifty (150) days after the  
10 last day for the petitioner to reply to the district  
11 attorney's response to the petition, unless for good cause  
12 the court determines additional time is required.

13  
14 (g) If the court sets a hearing on the petition and  
15 evidence is in the custody of the state or its agents, upon  
16 request of the petitioner, the court shall order the state  
17 to preserve all material and relevant evidence in the  
18 state's possession or control during the pendency of the  
19 proceeding.

20  
21 (h) Upon motion, the court may order forensic testing  
22 of any available evidence.

23

1           (j) If the court orders forensic testing under  
2 subsection (h) of this section, the testing shall be  
3 performed by the Wyoming state crime laboratory unless the  
4 movant establishes that the state crime laboratory has a  
5 conflict of interest or does not have the capability to  
6 perform the necessary testing.

7

8           (k) If the court orders that forensic testing under  
9 subsection (h) of this section shall be conducted by a  
10 laboratory other than the Wyoming state crime laboratory,  
11 the court shall require that the testing be performed by a  
12 laboratory that is accredited by the American society of  
13 crime laboratory directors accreditation board, ANSI-ASQ  
14 national accreditation board or a successor accrediting  
15 body.

16

17           (m) The movant shall bear the cost of forensic  
18 testing ordered under subsection (h) of this section unless  
19 the court determines the movant is needy and the forensic  
20 testing supports the movant's petition for exoneration, in  
21 which case the court shall order the state to bear the cost  
22 of the forensic testing.

23

1           (n) If the parties stipulate the evidence establishes  
2 the petitioner is factually innocent, the court may find  
3 the petitioner is factually innocent without holding a  
4 hearing. If the state will not stipulate the evidence  
5 establishes the petitioner is factually innocent, no  
6 determination of factual innocence may be made by the court  
7 without first holding a hearing.

8

9           (o) Upon stipulation of the parties or the state's  
10 motion for dismissal of the original charges against the  
11 petitioner, the court shall vacate the petitioner's  
12 conviction, issue an order of factual innocence and  
13 exoneration and order expungement of the records of the  
14 original conviction.

15

16           (p) If, after a hearing, the court determines that  
17 the petitioner has proven his factual innocence by clear  
18 and convincing evidence, the court shall issue an order of  
19 factual innocence and exoneration and shall order  
20 expungement of the records of the original conviction.

21

22           **7-12-405. Appointment of counsel.**

23

1 The court may appoint counsel for a petitioner upon a  
2 determination that the petition is not subject to summary  
3 dismissal and the petitioner is needy. Counsel shall be  
4 appointed as provided in W.S. 7-6-104(c)(vii).

5

6 **7-12-406. Victim notification.**

7

8 Following any petition filed under W.S. 7-12-403, the  
9 district attorney shall make reasonable efforts to provide  
10 notice to the victim that the petition has been filed, the  
11 time and place for any hearing that may be held as a result  
12 of the petition and the disposition of the petition. For  
13 purposes of this section, "victim" means as defined in W.S.  
14 1-40-202(a)(ii).

15

16 **7-12-407. Appeal.**

17

18 An order granting or denying a petition under this act is  
19 appealable by either party.

20

21 **Section 2.** W.S. 7-6-104(c)(vii), 7-14-101(b),  
22 7-14-103(b) and 7-14-105(a) are amended to read:

23

1           **7-6-104. Representation of needy persons.**

2

3           (c) A needy person who is entitled to be represented  
4 by an attorney under subsection (a) of this section is  
5 entitled:

6

7           (vii) To be represented by the public defender  
8 in a motion brought in accordance with the provisions of  
9 the Post-Conviction DNA Testing Act or in accordance with  
10 W.S. 7-12-405.

11

12           **7-14-101. Definition of "this act"; commencement and**  
13 **conduct of proceedings.**

14

15           (b) Any person serving a felony sentence in a state  
16 penal institution who asserts that in the proceedings which  
17 resulted in his conviction or sentence there was a  
18 substantial denial of his rights under the constitution of  
19 the United States or of the state of Wyoming, or both, may  
20 institute proceedings under this act. The proceeding shall  
21 be commenced by filing with the clerk of the court where  
22 the conviction occurred a petition verified by affidavit. A  
23 copy of the petition shall be served by the inmate on the



1 Wyoming attorney general by ~~certified or registered~~ mail or  
2 by some other method reasonably calculated to assure prompt  
3 and verifiable service. The clerk shall docket the petition  
4 upon receipt and bring it promptly to the attention of the  
5 court.

6

7 **7-14-103. Claims barred; applicability of act.**

8

9 (b) Notwithstanding paragraph (a)(i) of this section,  
10 a court may hear a petition ~~if~~ based on any of the  
11 following:

12

13 (i) The petitioner sets forth facts supported by  
14 affidavits or other credible evidence which was not known  
15 or reasonably available to him at the time of a direct  
16 appeal; ~~or~~

17

18 (ii) The court ~~makes a finding~~ finds from a  
19 review of the trial and appellate records that the  
20 ~~petitioner was denied~~ petitioner's appellate counsel  
21 provided constitutionally ~~effective~~ ineffective assistance  
22 ~~of counsel~~ by failing to assert a claim that was likely to  
23 result in a reversal of the petitioner's conviction or

1 sentence on his direct appeal. This finding may be reviewed  
2 by the supreme court together with any further action of  
3 the district court taken on the petition; ~~or~~ or  
4

5 (iii) The petitioner was represented by the same  
6 attorney in the trial and appellate courts.  
7

8 **7-14-105. Answer by state; withdrawal of petition;**  
9 **amendments and further pleadings.**  
10

11 (a) Within ~~thirty (30)~~ forty-five (45) days after  
12 ~~filing~~ being ordered to respond to the petition by the  
13 court, or within any further time as the court may fix, the  
14 attorney general on behalf of the state shall answer or  
15 move to dismiss the petition. No other or further pleadings  
16 shall be filed except as the court may order on its own  
17 motion or on that of either party.  
18

1           **Section 3.** This act is effective immediately upon  
2 completion of all acts necessary for a bill to become law  
3 as provided in Article 4, Section 8 of the Wyoming  
4 Constitution.

5

6

(END)