

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)