

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 2250 of the Regular Session

As Engrossed: H3/30/05 H4/5/05

A Bill

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

HOUSE BILL 2857

4
5 By: Representative Verkamp
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8 **For An Act To Be Entitled**

9 AN ACT CONCERNING THE STATUTE OF LIMITATION FOR
10 PROSECUTIONS BASED ON DEOXYRIBONUCLEIC ACID AND
11 OTHER SCIENTIFIC EVIDENCE, POST-CONVICTION
12 APPEALS BASED ON DEOXYRIBONUCLEIC ACID AND OTHER
13 SCIENTIFIC EVIDENCE, TESTING AND POST-TESTING
14 PROCEDURES FOR DEOXYRIBONUCLEIC ACID EVIDENCE,
15 TIME LIMITATIONS AND REPORTING PROCEDURES
16 RELATING TO THE TESTING OF DEOXYRIBONUCLEIC ACID
17 EVIDENCE; AND FOR OTHER PURPOSES.
18

19 **Subtitle**

20 AN ACT CONCERNING THE STATUTE OF
21 LIMITATION FOR PROSECUTIONS BASED ON
22 DEOXYRIBONUCLEIC ACID EVIDENCE AND POST-
23 CONVICTION APPEALS BASED ON
24 DEOXYRIBONUCLEIC ACID AND OTHER
25 SCIENTIFIC EVIDENCE.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 *SECTION 1. Arkansas Code § 5-1-109, pertaining to statutes of*
31 *limitations for criminal offenses, is amended to add an additional subsection*
32 *to read as follows:*

33 *(j) In a case in which deoxyribonucleic acid testing implicates a*
34 *person previously identified through a search of the State DNA Data Base or*
35 *National DNA Index System, no statute of limitation that would otherwise*



1 preclude prosecution of the offense shall preclude the prosecution until a
2 period of time following the implication of the person by deoxyribonucleic
3 acid testing has elapsed that is equal to the otherwise applicable limitation
4 period.

5
6 SECTION 2. Arkansas Code § 16-112-201 is amended to read as follows:

7 16-112-201. ~~Appeals~~ Writ of Habeas Corpus - New scientific evidence.

8 (a) Except when direct appeal is available, a person convicted of a
9 crime may commence a proceeding to secure relief by filing a petition in the
10 court in which the conviction was entered to vacate and set aside the
11 judgment and to discharge the petitioner or to resentence the petitioner or
12 grant a new trial or correct the sentence or make other disposition as may be
13 appropriate, if the person claims under penalty of perjury that:

14 (1) Scientific evidence not available at trial establishes the
15 petitioner's actual innocence; or

16 (2) The scientific predicate for the claim could not have been
17 previously discovered through the exercise of due diligence and the facts
18 underlying the claim, if proven and viewed in light of the evidence as a
19 whole, would be sufficient to establish by clear and convincing evidence that
20 no reasonable fact-finder would find the petitioner guilty of the underlying
21 offense.

22 (b) Nothing contained in this subchapter shall prevent the Arkansas
23 Supreme Court or the Arkansas Court of Appeals, upon application by a party,
24 from granting a stay of an appeal to allow an application to the trial court
25 for an evidentiary hearing under this subchapter.

26
27 SECTION 3. Arkansas Code § 16-112-202 is amended to read as follows:

28 16-112-202. Form of motion.

29 ~~(a)(1)~~ Except when direct appeal is available, a person convicted of a
30 crime may make a motion for the performance of fingerprinting, forensic
31 deoxyribonucleic acid testing, or other tests which may become available
32 through advances in technology to demonstrate the person's actual innocence
33 if:

34 ~~(A) The testing is to be performed on evidence secured in~~
35 ~~relation to the trial which resulted in the conviction; and~~

36 ~~(B) The evidence was not subject to the testing because~~

~~1 either the technology for the testing was not available at the time of the
2 trial or the testing was not available as evidence at the time of the trial.~~

~~3 (2) The motion shall be filed before the court in which the
4 conviction was entered.~~

~~5 (3) Reasonable notice of the motion shall be served on the
6 prosecuting attorney who represented the state at trial.~~

~~7 (b) A person who makes a motion for the performance of fingerprinting,
8 forensic deoxyribonucleic acid testing, or other tests which may become
9 available through advances in technology to demonstrate the person's actual
10 innocence must present a prima facie case that:~~

~~11 (1) Identity was an issue in the trial; and~~

~~12 (2) The evidence to be tested has been subject to a chain of
13 custody sufficient to establish that it has not been substituted, tampered
14 with, replaced, or altered in any material aspect.~~

~~15 (c)(1) The court shall order that the testing be performed if:~~

~~16 (A) A prima facie case has been established under
17 subsection (b) of this section;~~

~~18 (B) The testing has the scientific potential to produce
19 new noncumulative evidence materially relevant to the defendant's assertion
20 of actual innocence; and~~

~~21 (C) The testing requested employs a scientific method
22 generally accepted within the relevant scientific community.~~

~~23 (2) The court shall impose reasonable conditions on the testing
24 designed to protect the state's interests in the integrity of the evidence
25 and the testing process.~~

~~26 (1) The specific evidence to be tested was secured as a result
27 of the conviction of an offense being challenged under § 16-112-201;~~

~~28 (2) The specific evidence to be tested was not previously
29 subjected to testing and the person making the motion under this section did
30 not:~~

~~31 (A) Knowingly and voluntarily waive the right to request
32 testing of the evidence in a court proceeding commenced on or after the
33 effective date of this subdivision (2)(A); or~~

~~34 (B) Knowingly fail to request testing of the evidence in a
35 prior motion for post-conviction testing;~~

~~36 (3) The specific evidence was previously subjected to testing~~

1 and the person making a motion under this section is requesting testing using
2 a new method or technology that is substantially more probative than the
3 prior testing;

4 (4) The specific evidence to be tested is in the possession of
5 the state and has been subject to a chain of custody and retained under
6 conditions sufficient to ensure that the evidence has not been substituted,
7 contaminated, tampered with, replaced, or altered in any respect material to
8 the proposed testing;

9 (5) The proposed testing is reasonable in scope, utilizes
10 scientifically sound methods, and is consistent with accepted forensic
11 practices;

12 (6) The person making a motion under this section identifies a
13 theory of defense that:

14 (A) Is not inconsistent with an affirmative defense
15 presented at the trial of the offense being challenged under § 16-112-201;
16 and

17 (B) Would establish the actual innocence of the person in
18 relation to the offense being challenged under § 16-112-201;

19 (7) The identity of the perpetrator was at issue during the
20 investigation or prosecution of the offense being challenged under § 16-112-
21 201;

22 (8) The proposed testing of the specific evidence may produce
23 new material evidence that would:

24 (A) Support the theory of defense described in subdivision
25 (6) of this section; and

26 (B) Raise a reasonable probability that the person making
27 a motion under this section did not commit the offense;

28 (9) The person making a motion under this section certifies that
29 he or she will provide a deoxyribonucleic acid, fingerprint, or other sample
30 for comparison; and

31 (10) The motion is made in a timely fashion subject to the
32 following conditions:

33 (A) There shall be a rebuttal presumption of timeliness if
34 the motion is made within thirty-six (36) months of the date of conviction.
35 The presumption may be rebutted upon a showing:

36 (i) That the motion for a test under this section is

1 based solely upon information used in a previously denied motion; or
2 (ii) Of clear and convincing evidence that the
3 motion filed under this section was filed solely to cause delay or
4 harassment; and

5 (B) There shall be a rebuttable presumption against
6 timeliness for any motion not made within thirty-six (36) months of the date
7 of conviction. The presumption may be rebutted upon a showing:

8 (i) That the person making a motion under this
9 section was or is incompetent and the incompetence substantially contributed
10 to the delay in the motion for a test;

11 (ii) That the evidence to be tested is newly
12 discovered evidence;

13 (iii) That the motion is not based solely upon the
14 person's own assertion of innocence and a denial of the motion would result
15 in a manifest injustice;

16 (iv) That a new method of technology that is
17 substantially more probative than prior testing is available; or

18 (v) Of good cause.

19
20 SECTION 4. Arkansas Code Title 16, Chapter 112, Subchapter 2 is
21 amended to add an additional section to read as follows:

22 16-112-208. Testing procedures.

23 (a)(1) A court that orders any deoxyribonucleic acid testing under
24 this subchapter shall direct the testing to be carried out by the State Crime
25 Laboratory.

26 (2)(A) However, the court may order deoxyribonucleic acid
27 testing by another qualified laboratory if the court makes all necessary
28 orders to ensure the integrity of the specific evidence and the reliability
29 of the testing process and test results.

30 (B) As used in this section, "qualified laboratory" means
31 a laboratory that is accredited by the American Society of Crime Laboratory
32 Directors or certified through the National Forensic Science Technology
33 Center.

34 (3) The court may order the person who requested any
35 deoxyribonucleic acid testing under this subchapter to pay for the cost of
36 the testing if the court determines that the person has the ability to pay

1 for the testing.

2 (b) If the deoxyribonucleic acid test results obtained under this
3 subchapter are inconclusive, the court may order additional testing or deny
4 further relief to the person who requested the testing.

5 (c)(1) If deoxyribonucleic acid test results obtained under this
6 subchapter establish that the person who requested the testing was the source
7 of the deoxyribonucleic acid evidence, the court shall deny any relief to the
8 person.

9 (2) On motion of the state, the court shall determine if the
10 person's assertion of actual innocence was false. If the court finds that
11 the person's assertion of actual innocence was false, the court may:

12 (A) Hold the person in contempt;

13 (B) Assess against the person the cost of any
14 deoxyribonucleic acid testing carried out under this subchapter;

15 (C) Forward the finding to the Board of Corrections for
16 consideration in the awarding of meritorious good time to the person; or

17 (D) Forward the finding to the Parole Board for
18 consideration in the granting of parole to the person.

19 (d) In any prosecution of a person for perjury or other conduct
20 resulting from a proceeding under this subchapter, upon conviction or a plea
21 of guilty or nolo contendere the court shall sentence the person to a term of
22 imprisonment that shall run consecutively to any other term of imprisonment
23 the person is serving.

24 (e)(1) If deoxyribonucleic acid test results obtained under this
25 subchapter exclude a person as the source of the deoxyribonucleic acid
26 evidence, the person may file a motion for a new trial or resentencing.

27 (2) The court shall establish a reasonable schedule for the
28 person to file a motion under subdivision (e)(1) of this section and for the
29 state to respond to the motion.

30 (3) The court may grant the motion of the person for a new trial
31 or resentencing if the deoxyribonucleic acid test results, when considered
32 with all other evidence in the case regardless of whether the evidence was
33 introduced at trial, establish by compelling evidence that a new trial would
34 result in an acquittal.

35 (f) In a case in which a person is sentenced to death, any
36 deoxyribonucleic acid testing ordered under this subchapter shall be

1 completed:

2 (1) No later than sixty (60) days after the date on which the
3 state responds to the motion described in §§ 16-112-202 and 16-112-203; or

4 (2) No later than one hundred twenty (120) days after the date
5 on which the deoxyribonucleic acid testing was ordered under any post-
6 conviction testing procedures under this subchapter.

7 (g)(1) The results of any deoxyribonucleic acid testing ordered under
8 this subchapter shall be simultaneously disclosed to the court, the person
9 that requested the testing, and the State of Arkansas.

10 (2)(A) The state shall submit any test results relating to a
11 person's deoxyribonucleic acid to the National DNA Index System.

12 (B) If the deoxyribonucleic acid test results obtained
13 under this subchapter are inconclusive or show that the person tested was the
14 source of the deoxyribonucleic acid evidence, the deoxyribonucleic acid
15 sample of the person tested may be retained in the National DNA Index System
16 and State DNA Data Base.

17 (C) If the deoxyribonucleic acid test results obtained
18 under this subchapter exclude the person tested as the source of the
19 deoxyribonucleic acid evidence but a comparison of the deoxyribonucleic acid
20 sample of the person tested results in a match between the person's sample
21 and another offense, the State Crime Laboratory shall notify the appropriate
22 agency and preserve the deoxyribonucleic acid sample of the person tested.

23 (D) The State Crime Laboratory shall destroy the
24 deoxyribonucleic acid sample of the person tested and ensure that the
25 information is not retained in the National DNA Index System or State DNA
26 Data Base if:

27 (i) The deoxyribonucleic acid test results obtained
28 under this subchapter exclude the person tested as the source of the
29 deoxyribonucleic acid evidence;

30 (ii) A comparison of the deoxyribonucleic acid
31 sample through a search of the State DNA Data Base or National DNA Index
32 System does not match the person's sample and another offense; and

33 (iii) There is no other legal authority to retain
34 the sample of the person tested in the National DNA Index System or State DNA
35 Data Base.

36 /s/ Verkamp

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APPROVED: 4/13/2005