

Hall of the House of Representatives
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of House Bill No. 2857

"AN ACT CONCERNING THE STATUTE OF LIMITATION FOR PROSECUTIONS BASED
ON DEOXYRIBONUCLEIC ACID EVIDENCE AND POST-CONVICTION APPEALS
BASED ON DEOXYRIBONUCLEIC ACID AND OTHER SCIENTIFIC EVIDENCE."

Amendment No. 1 to House Bill No. 2857.

Amend House Bill No. 2857 as originally introduced:

Delete everything following the enacting clause and substitute the following:

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

(j) If the prosecution of a felony offense is not barred by a statute of limitation prior to the effective date of this subsection (j) and deoxyribonucleic acid testing implicates in the commission of the felony a person previously identified through a search of the State DNA Data Base or National DNA Index System, then the prosecution of the person previously identified shall not be precluded by any statute of limitation that would otherwise preclude the prosecution.

SECTION 2. Arkansas Code § 16-112-201 is amended to read as follows:
16-112-201. Appeals - New scientific evidence.

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

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

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

(b) Nothing contained in this subchapter shall prevent the Arkansas Supreme Court or the Arkansas Court of Appeals, upon application by a party,



from granting a stay of an appeal to allow an application to the trial court for an evidentiary hearing under this subchapter.

SECTION 3. Arkansas Code § 16-112-202 is amended to read as follows:
16-112-202. Form of motion.

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

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

~~(B) The evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.~~

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

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

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

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

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

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

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

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

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

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

~~(1) The specific evidence to be tested was secured as a result of the investigation or prosecution of an offense being appealed under § 16-112-201;~~

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

~~(A) Knowingly and voluntarily waive the right to request testing of the evidence in a court proceeding commenced after January 1, 2004; or~~

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

~~(3) The specific evidence was previously subjected to testing and the person making a motion under this section is requesting testing using a new method or technology that is substantially more probative than the~~

prior testing;

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

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

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

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

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

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

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

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

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

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

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

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

(i) That the motion for a test under this section is based solely upon information used in a previously denied motion; or

(ii) Of clear and convincing evidence that the motion filed under this section was filed solely to cause delay or harassment; and

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

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

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

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

(iv) Of good cause.

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

16-112-208. Testing procedures.

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

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

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

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

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

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

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

(A) Hold the person in contempt;

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

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

(D) Forward the finding to the Post Prison Transfer Board for consideration in the granting of parole to the person.

(d) In any prosecution of a person for false assertions in a proceeding under this subchapter upon conviction or a plea of guilty or nolo contendere, the person shall be subject to a term of imprisonment of not less than three (3) years that shall run consecutively with any other term of imprisonment the person is serving.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Amendment was read _____
By: Representative Verkamp
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GRH372

Chief Clerk