

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.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

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

A Bill

HOUSE BILL 2857

5 By: Representative Verkamp
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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

Subtitle

19 AN ACT CONCERNING THE STATUTE OF
20 LIMITATION FOR PROSECUTIONS BASED ON
21 DEOXYRIBONUCLEIC ACID EVIDENCE AND POST-
22 CONVICTION APPEALS BASED ON
23 DEOXYRIBONUCLEIC ACID AND OTHER
24 SCIENTIFIC EVIDENCE.
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28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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*
36 *preclude prosecution of the offense shall preclude the prosecution until a*



1 period of time following the implication of the person by deoxyribonucleic
2 acid testing has elapsed that is equal to the otherwise applicable limitation
3 period.

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5 SECTION 2. Arkansas Code § 16-112-201 is amended to read as follows:
6 16-112-201. ~~Appeals~~ Writ of Habeas Corpus - New scientific evidence.

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

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

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

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

25
26 SECTION 3. Arkansas Code § 16-112-202 is amended to read as follows:
27 16-112-202. Form of motion.

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

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

35 ~~(B) The evidence was not subject to the testing because~~
36 ~~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 conviction of an offense being challenged 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 on or after the effective date of this subdivision (2)(A); 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

1 a new method or technology that is substantially more probative than the
2 prior testing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (v) Of good cause.

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

21 16-112-208. Testing procedures.

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

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

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

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

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

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

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

11 (A) Hold the person in contempt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 /s/ Verkamp
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