

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0438.01 Michael Dohr x4347

HOUSE BILL 23-1034

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

Gonzales,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO EXPAND POSTCONVICTION DNA TESTING.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Under current law, an incarcerated person can motion the court for postconviction DNA testing to prove the person's actual innocence if DNA testing was not available at the time of the person's prosecution. The bill changes who can apply for postconviction DNA testing to include a person convicted of or adjudicated not guilty by reason of insanity for a felony offense in Colorado, including a person currently incarcerated; a person on parole or probation for a felony offense; a person subject to sex offender registration; or a person who has

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

completed the sentence imposed for the felony offense.

The bill allows an eligible person to apply for postconviction DNA testing:

- To show a reasonable probability that the person would not have been convicted; or
- If evidence was previously available and tested and the evidence now can be subjected to additional DNA testing that provides a reasonable likelihood of more probative results.

The bill permits the court to order postconviction DNA testing if there is a reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through DNA testing at the time of the original prosecution.

The bill allows a court to consider a subsequent petition with new or different grounds for relief if the court finds just cause or the interests of justice so requires.

If the results of DNA testing are favorable to the petitioner, the court shall schedule a hearing to determine appropriate relief to be granted including, but not limited to, an order setting aside or vacating the petitioner's conviction.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-1-411, **add** (3.3)
3 and (3.5); and **repeal** (1) as follows:

4 **18-1-411. Postconviction testing of DNA - definitions.** As used
5 in this section and in sections 18-1-412 to 18-1-416, unless the context
6 otherwise requires:

7 (1) ~~"Actual innocence" means clear and convincing evidence such~~
8 ~~that no reasonable juror would have convicted the defendant.~~

9 (3.3) "ELIGIBLE PERSON" MEANS A PERSON CONVICTED OF A
10 FELONY OFFENSE IN COLORADO OR ADJUDICATED NOT GUILTY BY REASON
11 OF INSANITY FOR A FELONY OFFENSE IN COLORADO PURSUANT TO SECTION
12 16-8-105.5, INCLUDING A PERSON CURRENTLY INCARCERATED; A PERSON
13 ON PAROLE OR PROBATION FOR A FELONY OFFENSE; A PERSON SUBJECT TO

1 SEX OFFENDER REGISTRATION PURSUANT TO SECTION 16-22-103; OR A
2 PERSON WHO HAS COMPLETED THE SENTENCE IMPOSED FOR THE FELONY
3 OFFENSE;

4 (3.5) "FAVORABLE RESULT" MEANS A RESULT THAT INDICATES A
5 REASONABLE PROBABILITY THAT THE PETITIONER WOULD NOT HAVE BEEN
6 CONVICTED.

7 SECTION 2. In Colorado Revised Statutes, 18-1-412, **amend** (1),
8 (3), and (9) as follows:

9 18-1-412. Procedure for application for DNA testing -
10 **appointment of counsel.** (1) An ~~incarcerated~~ ELIGIBLE person may apply
11 AT ANY TIME to the district court in the district where the conviction was
12 secured for DNA testing concerning the conviction and sentence. ~~the~~
13 ~~person is currently serving.~~

14 (3) If the motion, files, and record of the case show to the
15 satisfaction of the court that the petitioner is not entitled to relief based on
16 the criteria specified in section 18-1-413, the court shall deny the motion
17 without a hearing and without appointment of counsel. ~~The court may~~
18 ~~deny a second or subsequent motion requesting relief pursuant to this~~
19 ~~section.~~

20 (9) Upon motion of the defendant or ~~his or her~~ THE DEFENDANT'S
21 counsel, the court shall order a database search by a law enforcement
22 agency IN BOTH NATIONAL AND LOCAL DATABASES if the court determines
23 that a reasonable probability exists that the database search will produce
24 exculpatory or mitigating evidence relevant to a claim of wrongful
25 conviction or sentencing. DNA profiles must meet current national DNA
26 database index system eligibility standards and conform to current federal
27 bureau of investigation quality assurance standards in order to be eligible

1 for search against the state index system.

2 **SECTION 3.** In Colorado Revised Statutes, 18-1-413, **amend** (1)
3 introductory portion, (1)(a), (1)(b), and (1)(c); and **add** (2) as follows:

4 **18-1-413. Content of application for DNA testing.** (1) ~~A court~~
5 ~~shall not order DNA testing unless the petitioner demonstrates by a~~
6 ~~preponderance of the evidence that~~ THE COURT SHALL ORDER DNA
7 TESTING IF:

8 (a) ~~Favorable results of the DNA testing will demonstrate the~~
9 ~~petitioner's actual innocence~~ IT FINDS A REASONABLE PROBABILITY THAT
10 THE PETITIONER WOULD NOT HAVE BEEN CONVICTED IF FAVORABLE
11 RESULTS HAD BEEN OBTAINED THROUGH DNA TESTING AT THE TIME OF
12 THE ORIGINAL PROSECUTION;

13 (b) IT FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT a law
14 enforcement agency collected biological evidence pertaining to the
15 offense; ~~and retains actual or constructive possession of the evidence that~~
16 ~~allows for reliable DNA testing;~~

17 (c) (I) ~~Conclusive~~ IT FINDS BY A PREPONDERANCE OF THE
18 EVIDENCE THAT DNA results were not available prior to the
19 ~~conviction and~~ OR, IF PREVIOUSLY AVAILABLE AND TESTED, THE EVIDENCE
20 CAN BE SUBJECTED TO MORE ADVANCED, SCIENTIFICALLY RELIABLE DNA
21 TESTING THAT PROVIDES A REASONABLE LIKELIHOOD OF MORE PROBATIVE
22 RESULTS; OR

23 (II) The petitioner did not secure THE REQUESTED DNA testing
24 prior to ~~his or her~~ THE PETITIONER'S conviction because DNA testing was
25 not reasonably available or for reasons that constitute justifiable excuse,
26 ineffective assistance of counsel, or excusable neglect; and

27 (2) A PETITIONER MAY FILE A SUBSEQUENT PETITION WITH

1 NEW GROUNDS FOR RELIEF NOT RAISED IN THE PRIOR PETITION IF THE
2 PETITIONER EXERCISED DUE DILIGENCE TO RAISE ALL VIABLE CLAIMS AT
3 THE TIME OF THE INITIAL PETITION OR IF THE PETITIONER WAS NOT
4 GRANTED A HEARING ON THE INITIAL PETITION AND THE SUBSEQUENT
5 PETITION RAISES VIABLE GROUNDS FOR RELIEF. IF THE COURT DETERMINES
6 THESE CRITERIA ARE SATISFIED, THE COURT MAY CONSIDER THE
7 SUBSEQUENT PETITION IF THE PETITIONER ESTABLISHES GOOD CAUSE WHY
8 A SUCCESSIVE PETITION SHOULD BE CONSIDERED OR THE COURT FINDS
9 THAT THE INTERESTS OF JUSTICE SO REQUIRE. IF THE COURT CONSIDERS
10 THE SUBSEQUENT PETITION, THE COURT SHALL DETERMINE WHETHER TO
11 GRANT THE PETITION PURSUANT TO SUBSECTION (1) OF THIS SECTION.

12 **SECTION 4.** In Colorado Revised Statutes, 18-1-414, **add**
13 (2)(d) as follows:

14 **18-1-414. Preservation of evidence.** (2) (d) WHEN A MOTION
15 FOR POSTCONVICTION DNA TESTING IS GRANTED, THE PRIMARY
16 INVESTIGATIVE AGENCY THAT HANDLED THE CASE SHALL PREPARE AN
17 INVENTORY OF THE EVIDENCE RELATED TO THE CASE AND ISSUE A COPY OF
18 THE INVENTORY TO THE PETITIONER AND THE COURT.

19
20 **SECTION 5.** In Colorado Revised Statutes, **amend** 18-1-415 as
21 follows:

22 **18-1-415. Testing - payment.** ~~All testing shall be performed at a~~
23 ~~law enforcement facility, and the petitioner shall pay for the testing.~~ IF
24 THE COURT ORDERS DNA TESTING, THE TESTING MUST BE CONDUCTED BY
25 THE COLORADO BUREAU OF INVESTIGATION; EXCEPT THAT THE COURT,
26 UPON REQUEST OF THE PETITIONER AND AFTER THE PETITIONER
27 ESTABLISHING GOOD CAUSE, MAY ORDER TESTING BY ANOTHER TESTING

1 LABORATORY OR AGENCY THAT CONFORMS TO THE CURRENT VERSION OF
2 ISO/IEC 17025 REQUIREMENTS, THE APPROPRIATION QUALITY ASSURANCE
3 STANDARDS REQUIRED BY THE FEDERAL BUREAU OF INVESTIGATION, AND
4 FORENSIC-SPECIFIC REQUIREMENTS AND IS ACCREDITED BY AN
5 ORGANIZATION THAT IS SIGNATORY TO THE INTERNATIONAL LABORATORY
6 ACCREDITATION COOPERATION MUTUAL RECOGNITION ARRANGEMENTS
7 FOR TESTING LABORATORIES. THE PETITIONER SHALL PAY FOR THE
8 TESTING. THE PARTIES SHALL CONSULT AND NEGOTIATE ON AN
9 AGREEMENT ON TESTING METHODS AND TECHNIQUES. IF THE PARTIES
10 CANNOT AGREE, THE COURT SHALL DESIGNATE THE TESTING METHODS
11 AND TECHNIQUES, CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES.
12 IN CONSIDERING THE TOTALITY OF THE CIRCUMSTANCES, THE COURT
13 SHALL CONSIDER WHETHER THE TESTING WOULD BE CONSUMPTIVE IN
14 NATURE, WHETHER THE TESTING WOULD ALLOW FOR THE BEST POSSIBLE
15 COLLECTION OF EVIDENCE, AND WHETHER THE TESTING WOULD ALLOW
16 FOR THE MOST PROBATIVE RESULTS TO BE OBTAINED. If the petitioner is
17 indigent and represented by either the public defender or alternate defense
18 counsel, and with the approval of the public defender or the alternate
19 defense counsel, the costs of the testing shall be paid from ~~their~~ THE
20 PUBLIC DEFENDER'S BUDGET OR THE ALTERNATE DEFENSE COUNSEL'S
21 budget.

22 **SECTION 6.** In Colorado Revised Statutes, 18-1-416, **amend** (1);
23 and **add** (1.5) and (3) as follows:

24 **18-1-416. Results of the DNA test.** (1) Notwithstanding any law
25 or rule of procedure that bars a motion for postconviction review as
26 untimely OR SUCCESSIVE, a petitioner may use the results of a DNA test
27 ordered pursuant to section 18-1-413 as the grounds for filing a motion

1 for postconviction review ~~under~~ PURSUANT TO section 18-1-410 and the
2 Colorado rules of criminal procedure.

3 (1.5) IF FORENSIC DNA TESTING ORDERED PROVIDES A FAVORABLE
4 RESULT TO THE PETITIONER, THE COURT SHALL SCHEDULE A HEARING
5 WITHIN THIRTY DAYS AFTER THE RESULT TO DETERMINE THE APPROPRIATE
6 RELIEF TO BE GRANTED. BASED ON THE RESULTS OF THE TESTING AND ANY
7 EVIDENCE OR OTHER INFORMATION PRESENTED AT THE HEARING, THE
8 COURT SHALL ENTER AN ORDER WITHIN THIRTY DAYS AFTER THE HEARING
9 THAT SERVES THE INTERESTS OF JUSTICE, INCLUDING, BUT NOT LIMITED TO,
10 AN ORDER SETTING ASIDE OR VACATING THE PETITIONER'S JUDGMENT OF
11 CONVICTION.

12 (3) THE COURT SHALL ENSURE COMPLIANCE WITH THE
13 NOTIFICATION PROCEDURES AND RIGHTS AFFORDED TO VICTIMS PROVIDED
14 FOR IN SECTIONS 24-4.1-301 TO 24-4.1-305.

15 **SECTION 7.** In Colorado Revised Statutes, 24-4.1-302, **amend**
16 **(2)(u); and add (2)(u.5) as follows:**

17 **24-4.1-302. Definitions.** As used in this part 3, and for no other
18 purpose, including the expansion of the rights of any defendant:

19 (2) "Critical stages" means the following stages of the criminal
20 justice process:

21 (u) The decision, whether by court order, stipulation of the parties,
22 or otherwise, to conduct postconviction DNA testing ~~to establish the~~
23 ~~actual innocence of the person convicted of a crime against the victim~~
24 pursuant to section 18-1-413, the results of any such postconviction DNA
25 testing, and court proceedings initiated based on the result of the
26 postconviction DNA testing. An inmate's written or oral request for such
27 testing is not a "critical stage".

1 (u.5) A HEARING HELD PURSUANT TO SECTION 18-1-416 (1.5);
2 SECTION 8. In Colorado Revised Statutes, 24-4.1-303, amend
3 (11)(b) as follows:

4 24-4.1-303. Procedures for ensuring rights of victims of
5 crimes. (11) The district attorney shall inform a victim of the following:
6 (b) Any of the critical stages specified in section 24-4.1-302 (2)(a)
7 to (2)(j), and (2)(l), AND (2)(u.5) of a criminal proceeding relating to a
8 person accused of a crime against the victim; except that the district
9 attorney shall not be obligated to inform the victim of any appellate
10 review undertaken by the attorney general's office;

11 SECTION 9. Effective date - applicability. This act takes effect
12 on October 1, 2023, and applies to petitions filed on or after said date.

13 SECTION 10. Safety clause. The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.