

SENATE FILE NO. SF0028

Post-conviction actual innocence.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; allowing a motion
2 for new trial for persons convicted of a felony upon a
3 showing of actual innocence based on non-DNA evidence;
4 specifying requirements and conditions; providing for
5 compensation; specifying retention of governmental
6 immunity; conforming provisions; 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 7-12-410 are created
12 to read:

13

14

ARTICLE 4

15

NEW TRIAL BASED ON ACTUAL INNOCENCE

16

17 **7-12-401. Definitions.**

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2 (a) As used in this act:

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4 (i) "Actually innocent" means a movant did not:

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6 (A) Engage in the conduct for which the
7 movant was convicted;

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9 (B) Engage in conduct in connection with
10 the offense for which the movant was convicted which would
11 constitute a lesser included offense or another felony
12 arising out of the same conduct; or

13

14 (C) Engage in any conduct which would
15 constitute aiding and abetting, attempt or conspiracy to
16 commit the offense of conviction or any lesser included
17 offense thereof.

18

19 (ii) "Movant" means the person filing a motion
20 under W.S. 7-12-402;

21

22 (iii) "This act" means W.S. 7-12-401 through
23 7-12-410.

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1 7-12-402. Motion for new trial based on actual
2 innocence.

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4 (a) Notwithstanding any law or rule of procedure that
5 bars a motion for a new trial as untimely, a person who has
6 been convicted of a felony offense may file a motion in the
7 district court in which the person was convicted for a new
8 trial based on newly discovered evidence that the person is
9 actually innocent of the crime or crimes of which the
10 person was convicted.

11

12 (b) The motion shall:

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14 (i) Identify with specificity newly discovered
15 material evidence, other than DNA evidence, which if proven
16 would establish by clear and convincing evidence the movant
17 is actually innocent;

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19 (ii) Be supported by affidavit based on personal
20 knowledge of the affiant or similar credible evidence
21 showing that the movant is actually innocent;

22

1 (iii) Show there is an absence of available
2 state corrective process to establish the movant is
3 actually innocent; and
4

5 (iv) Be supported by evidence other than
6 recantations of testimony or statements or impeachment
7 evidence.
8

9 (c) The motion shall state that:
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11 (i) Neither the movant nor his counsel knew of
12 the evidence at the time of trial or sentencing and the
13 evidence could not have been discovered by the movant or
14 his counsel through the exercise of due diligence; or
15

16 (ii) A court has found ineffective assistance of
17 counsel for failing to exercise due diligence to discover
18 the evidence.
19

20 **7-12-403. Service of process; response by state.**
21

22 (a) Notice of the motion filed under W.S. 7-12-402
23 shall be served upon the district attorney in the county in
24 which the conviction occurred.

1

2 (b) The district attorney shall respond to the motion
3 within sixty (60) days after receipt of the motion.

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5 7-12-404. Review by the court; hearing on motion;
6 **preservation of evidence.**

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8 (a) If the court finds that the requirements of W.S.
9 7-12-402(b) have not been satisfied, it shall dismiss the
10 motion.

11

12 (b) If the court finds that the requirements of W.S.
13 7-12-402(c) have not been satisfied, the court may dismiss
14 the motion. The court, however, may waive the requirements
15 of W.S. 7-12-402(c) if the court finds clear and convincing
16 evidence of actual innocence exists.

17

18 (c) If the requirements of W.S. 7-12-402(b) have been
19 met and the requirements of W.S. 7-12-402(c) have been met
20 or waived, the court shall set a hearing on the motion for
21 a new trial.

22

23 (d) If the court sets a hearing on the motion for a
24 new trial and evidence is in the custody of the state or

1 its agents, upon request of the movant, the court shall
2 order the state to preserve all material and relevant
3 evidence in the state's possession or control during the
4 pendency of the proceeding.

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6 (e) Upon the stipulation of the parties or a motion
7 for dismissal of the original charges against the movant by
8 the state in lieu of a retrial, the court shall:

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10 (i) Vacate the movant's conviction consistent
11 with the evidence demonstrating the movant's actual
12 innocence;

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14 (ii) Issue an order of actual innocence and
15 exoneration; and

16

17 (iii) Issue an order of expungement.

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19 (f) In the event a retrial is conducted and the
20 movant is acquitted at the retrial, the court shall:

21

22 (i) Issue an order of actual innocence and
23 exoneration; and

24

1 (ii) Issue an order of expungement.

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3 **7-12-405. Appointment of counsel.**

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5 The court may appoint counsel for a movant upon a
6 determination that the motion for a new trial presents a
7 colorable showing of actual innocence and the petitioner is
8 needy. Counsel shall be appointed as provided in W.S.
9 7-6-104(c)(vii).

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11 **7-12-406. Victim notification.**

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13 Following any motion filed under this act, the district
14 attorney shall provide notice to the victim that the motion
15 has been filed, the time and place for any hearing that may
16 be held as a result of the motion, and the disposition of
17 the motion. For purposes of this section, "victim" means
18 as defined in W.S. 1-40-202(a)(ii).

19

20 **7-12-407. Rights not waived; refiling of uncharged**
21 **offenses.**

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23 (a) Notwithstanding any other provision of law, the
24 right to file a motion under W.S. 7-12-402 shall not be

1 waived as part of an agreement resulting in a plea of
2 guilty or nolo contendere or in any other manner.

3

4 (b) If a movant is granted a new trial under this
5 act, any offense that was dismissed or not charged pursuant
6 to a plea agreement that resulted in the original
7 conviction may be refiled by the state.

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9 **7-12-408. Appeal.**

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11 An order granting or denying a motion for a new trial under
12 this act is not appealable.

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14 **7-12-409. Subsequent motions.**

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16 The court shall not be required to entertain a second or
17 subsequent motion under this act.

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19 **7-12-410. Compensation.**

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21 If the court enters an order of actual innocence and
22 exoneration pursuant to W.S. 7-12-404, the movant shall be
23 eligible for compensation subject to the appropriation of
24 funds by the legislature. The compensation shall be

1 awarded in the same amount and subject to the same terms,
2 conditions and requirements as awarded under W.S.
3 7-12-316(b) through (n) for persons exonerated based on DNA
4 testing.

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6 **Section. 2.** W.S. 1-39-104(a), 1-39-120 by creating a
7 new subsection (b) and 7-6-104(c)(vii) are amended to read:

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9 **1-39-104. Granting immunity from tort liability;**
10 **liability on contracts; exceptions.**

11
12 (a) A governmental entity and its public employees
13 while acting within the scope of duties are granted
14 immunity from liability for any tort except as provided by
15 W.S. 1-39-105 through 1-39-112 and limited by W.S.
16 1-39-121. Any immunity in actions based on a contract
17 entered into by a governmental entity is waived except to
18 the extent provided by the contract if the contract was
19 within the powers granted to the entity and was properly
20 executed and except as provided in W.S. 1-39-120(b) and
21 1-39-121. The claims procedures of W.S. 1-39-113 apply to
22 contractual claims against governmental entities.

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24 **1-39-120. Exclusions from waiver of immunity.**

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2 (b) Notwithstanding the waiver of immunity for tort
3 liability provided by W.S. 1-39-105 through 1-39-112 or the
4 waiver of immunity in actions based on contract provided by
5 W.S. 1-39-104, a governmental entity and its public
6 employees while acting within the scope of duties are
7 immune from a civil action in tort, contract or otherwise
8 alleging, in whole or in part, improper denial of
9 compensation provided for in W.S. 7-12-410.

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11 **7-6-104. Representation of needy persons.**

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13 (c) A needy person who is entitled to be represented
14 by an attorney under subsection (a) of this section is
15 entitled:

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17 (vii) To be represented by the public defender
18 in a motion brought in accordance with the provisions of
19 the Post-Conviction DNA Testing Act or in accordance with
20 W.S. 7-12-405.

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22 **Section. 3.** This act is effective July 1, 2014.

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24

(END)