

HOUSE BILL NO. HB0211

Post-conviction actual innocence.

Sponsored by: Representative(s) Pelkey and Lindholm and
Senator(s) Rothfuss

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; specifying
5 retention of governmental immunity; conforming related
6 provisions; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 7-12-401 through 7-12-409 are created
11 to read:

12

13

ARTICLE 4

14

NEW TRIAL BASED ON ACTUAL INNOCENCE

15

1 **7-12-401. Definitions.**

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3 (a) As used in this act:

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

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

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

14

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

19

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

22

1 (iii) "This act" means W.S. 7-12-401 through
2 7-12-409.

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4 **7-12-402. Motion for new trial based on actual**
5 **innocence.**

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

14

15 (b) The motion shall:

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

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22 (ii) Be supported by one (1) or more affidavits
23 based on the personal knowledge of the affiant or similar

1 credible evidence showing that the movant is actually
2 innocent;

3

4 (iii) Show there is an absence of any available
5 process to establish under state law that the movant is
6 actually innocent; and

7

8 (iv) Be supported by evidence other than
9 recantations of testimony or statements or impeachment
10 evidence.

11

12 (c) The motion shall state:

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14 (i) Whether the movant has previously moved for
15 a new trial under this act for the conviction from which
16 the movant seeks relief; and

17

18 (ii) That neither the movant nor his counsel
19 knew of the newly discovered material evidence at the time
20 of trial or sentencing and the evidence could not have been
21 discovered by the movant or his counsel through the
22 exercise of due diligence within two (2) years of the final
23 judgment; or

1

2 (iii) That a court has found ineffective
3 assistance of counsel for failing to exercise due diligence
4 to discover the evidence by entry of a final order that is
5 not subject to appeal.

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

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

12

13 (b) The district attorney shall respond to the motion
14 within one hundred twenty (120) days after receipt of the
15 motion.

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17 **7-12-404. Review by the court; hearing on motion;**
18 **preservation of evidence.**

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20 (a) If the court finds that the requirements of W.S.
21 7-12-402(b) have not been satisfied, it shall dismiss the
22 motion filed under W.S. 7-12-402.

23

1 (b) If the court finds that the requirements of W.S.
2 7-12-402(c) have not been satisfied, the court may dismiss
3 the motion filed under W.S. 7-12-402. The court, however,
4 may waive the requirements of W.S. 7-12-402(c) if the court
5 finds clear and convincing evidence that actual innocence
6 exists.

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

12

13 (d) If the court sets a hearing on the motion for a
14 new trial and evidence is in the custody or control of the
15 state or its agents, upon request of the movant, the court
16 shall order the state to preserve all evidence in the
17 state's possession or control during the pendency of the
18 proceeding.

19

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

23

1 (i) Vacate the movant's conviction;

2

3 (ii) Issue an order of actual innocence and
4 exoneration; and

5

6 (iii) Issue an order of expungement.

7

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

10

11 (i) Issue an order of actual innocence and
12 exoneration; and

13

14 (ii) Issue an order of expungement.

15

16 **7-12-405. Appointment of counsel.**

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18 The court may appoint counsel for a movant upon a
19 determination that the motion for a new trial presents a
20 nonfrivolous prima facie showing of actual innocence and
21 the petitioner is needy. Counsel shall be appointed as
22 provided in W.S. 7-6-104(c)(vii).

23

1 **7-12-406. Victim notification.**

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3 Following any motion filed under W.S. 7-12-402, the
4 district attorney shall provide notice to the victim that
5 the motion has been filed, the time and place for any
6 hearing that may be held as a result of the motion, and the
7 disposition of the motion. For purposes of this section,
8 "victim" means as defined in W.S. 1-40-202(a)(ii).

9

10 **7-12-407. Rights not waived; refiling of uncharged**
11 **offenses.**

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13 (a) Notwithstanding any other provision of law, the
14 right to file a motion under W.S. 7-12-402 shall not be
15 waived as part of an agreement resulting in a plea of
16 guilty or nolo contendere or in any other manner.

17

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

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23 **7-12-408. Appeal.**

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

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5 **7-12-409. Subsequent motions.**

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7 The court shall not be required to entertain a second or
8 subsequent motion under W.S. 7-12-402.

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

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13 **1-39-104. Granting immunity from tort liability;**
14 **liability on contracts; exceptions.**

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16 (a) A governmental entity and its public employees
17 while acting within the scope of duties are granted
18 immunity from liability for any tort except as provided by
19 W.S. 1-39-105 through 1-39-112 and limited by W.S.
20 1-39-121. Any immunity in actions based on a contract
21 entered into by a governmental entity is waived except to
22 the extent provided by the contract if the contract was
23 within the powers granted to the entity and was properly

1 executed and except as provided in W.S. 1-39-120(b) and
2 1-39-121. The claims procedures of W.S. 1-39-113 apply to
3 contractual claims against governmental entities.

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5 **1-39-120. Exclusions from waiver of immunity.**

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

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16 **7-6-104. Representation of needy persons.**

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18 (c) A needy person who is entitled to be represented
19 by an attorney under subsection (a) of this section is
20 entitled:

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22 (vii) To be represented by the public defender
23 in a motion brought in accordance with the provisions of

1 the Post-Conviction DNA Testing Act or in accordance with
2 W.S. 7-12-405.

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4 **Section 3.** This act is effective July 1, 2015.

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(END)