

HOUSE BILL NO. HB0144

New trial based on actual innocence.

Sponsored by: Representative(s) Pelkey, Baker, Blake, Gierau and Pownall and Senator(s) Case

A BILL

for

1 AN ACT relating to criminal procedure; allowing a motion
2 for a new trial for persons convicted of a felony based
3 upon newly discovered evidence of actual innocence;
4 specifying requirements, procedures and conditions; and
5 providing for an effective date.

6

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

8

9 **Section 1.** W.S. 7-12-401 through 7-12-408 are created
10 to read:

11

ARTICLE 4

12

NEW TRIAL BASED ON ACTUAL INNOCENCE

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14

15 **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
5 engage in any of the following:

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7 (A) Conduct for which the movant was
8 convicted;

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10 (B) Conduct in connection with the offense
11 for which the movant was convicted that would constitute a
12 lesser included offense or another felony;

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14 (C) Conduct that would constitute aiding
15 and abetting, attempt or conspiracy to commit the offense
16 for which the movant was originally convicted or any lesser
17 included offense thereof.

18

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

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22 (iii) "False evidence" means evidence that is
23 material or probative on the issue of guilt or punishment

1 that was introduced against a movant to prove the offense
2 for which the movant was originally convicted that has been
3 repudiated by the expert who originally provided the
4 opinion or that has been undermined by later scientific
5 research or technological advances;

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7 (iv) "This act" means W.S. 7-12-401 through
8 7-12-408.

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10 **7-12-402. Motion for new trial based on actual**
11 **innocence; conduct of proceedings.**

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13 (a) Notwithstanding any law or rule of procedure that
14 bars a motion for a new trial as untimely, a person who has
15 been convicted of a felony offense may file a motion in the
16 district court in which the person was convicted for a new
17 trial based on newly discovered evidence that the person is
18 actually innocent of the crime or crimes for which the
19 person was convicted.

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21 (b) The motion shall:

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1 (i) Identify with specificity newly discovered
2 material evidence or false evidence, which if proven would
3 establish by a reasonable probability that the movant is
4 actually innocent;

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6 (ii) Be supported by affidavit based on personal
7 knowledge of the affiant or similar credible evidence
8 showing that the movant is actually innocent; and

9

10 (iii) Be supported by evidence other than
11 impeachment evidence.

12

13 (c) The motion shall state:

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15 (i) That neither the movant nor his counsel knew
16 of the evidence at the time of trial or sentencing and the
17 evidence could not have been discovered by the movant or
18 his counsel through the exercise of due diligence; or

19

20 (ii) A court has found ineffective assistance of
21 counsel for failing to exercise due diligence to discover
22 the evidence by entry of a final order that is not subject
23 to appeal.

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2 (d) Unless otherwise inconsistent with the provisions
3 of this act, proceedings under this act shall be conducted
4 pursuant to the Wyoming Rules of Evidence.

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6 **7-12-403. Service of process; response by state.**

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

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12 (b) The district attorney shall respond to the motion
13 within one hundred twenty (120) days after receipt of the
14 motion, or within any extension of time the court allows
15 for good cause shown.

16

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.

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. The court, however, may waive the requirements
4 of W.S. 7-12-402(c) if the court finds a reasonable
5 probability that actual innocence exists.

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7 (c) If the requirements of W.S. 7-12-402(b) have been
8 met and the requirements of W.S. 7-12-402(c) have been met
9 or waived, the court shall set a hearing on the motion for
10 a new trial. The motion for a new trial shall be considered
11 and determined and a dispositive order entered within
12 thirty (30) days after the date the district attorney
13 responds to the motion. The court may extend the thirty
14 (30) days for entering a dispositive order provided that
15 the time for entering a dispositive order shall not extend
16 one hundred fifty (150) days after the date the district
17 attorney responds to the motion.

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19 (d) If the court sets a hearing on the motion for a
20 new trial and evidence is in the custody of the state or
21 its agents, upon request of the movant, the court shall
22 order the state to preserve all material and relevant

1 evidence in the state's possession or control during the
2 pendency of the proceeding.

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4 (e) Upon the stipulation of the parties or the
5 state's motion for dismissal of the original charges
6 against the movant, the court shall vacate the movant's
7 conviction, issue an order of actual innocence and
8 exoneration and order expungement of the records of the
9 original conviction.

10

11 (f) In the event a retrial is conducted and the
12 movant is acquitted at the retrial, the court shall issue
13 an order of actual innocence and exoneration and order
14 expungement of the records of the original conviction.

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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 colorable, nonfrivolous, showing of actual innocence and
21 the movant is needy. Counsel shall be appointed as
22 provided in W.S. 7-6-104(c)(vii).

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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 make reasonable efforts to provide
5 notice to the victim that the motion has been filed, the
6 time and place for any hearing that may be held as a result
7 of the motion and the disposition of the motion. For
8 purposes of this section, "victim" means as defined in W.S.
9 1-40-202(a)(ii).

10

11 **7-12-407. Rights not subject to waiver; refiling of**
12 **uncharged offenses.**

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

18

19 (b) If a movant is granted a new trial under this act
20 any offense that was dismissed or not charged may be
21 refiled by the state, except no charges shall be filed in
22 violation of the terms of a plea agreement.

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1 **7-12-408. Appeal.**

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3 An order granting or denying a motion for a new trial under
4 this act is appealable.

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6 **Section 2.** W.S. 7-6-104(c)(vii) is amended to read:

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8 **7-6-104. Representation of needy persons.**

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10 (c) A needy person who is entitled to be represented
11 by an attorney under subsection (a) of this section is
12 entitled:

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

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19 **Section 3.** This act is effective July 1, 2017.

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(END)