An Act

ENROLLED HOUSE
BILL NO. 1068

By: Denney, Pittman, Wesselhoft, Shelton, McDaniel (Jeanie) and Sherrer of the House

and

Halligan, Ivester, Sykes, Johnson (Constance) and Sharp of the Senate

An Act relating to criminal procedure; providing short title; creating the Postconviction DNA Act; defining terms; providing eligibility requirements for postconviction DNA testing; providing procedures for filing motion for postconviction DNA testing; authorizing courts to refer DNA testing requests to qualified parties; stating findings necessary for DNA testing; providing time limitation for transferring items of evidence; requiring disclosure of previous DNA test analyses; declaring which entities may conduct DNA testing; authorizing court to enter DNA testing results order; making motion for postconviction DNA testing optional under certain circumstances; allowing for appeals; providing for codification; and providing an effective date.

SUBJECT: Postconviction DNA Act

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373 of Title 22, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Postconviction DNA Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.1 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in the Postconviction DNA Act:

1. "Biological material" means the contents of a sexual assault evidence collection kit as well as any item that contains or includes blood, semen, hair, saliva, skin tissue, fingernail scrapings or parings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for an offense and that may be suitable for forensic DNA testing. This definition applies whether the material was catalogued separately including, but not limited to, on a swab, a slide or on any other evidence;

2. "DNA" means deoxyribonucleic acid;

3. "Document" or "documents" means any tangible thing upon which any expression, communication or representation has been recorded by any means and includes any writing, electronic writing, recording, drawing, map, graph or chart, photograph and other data compilation in the actual or constructive possession, custody, care or control of the government which pertains directly or indirectly to any matter relevant to the issues in a criminal case; and

4. "Guardian of a convicted person" means a person who is the legal guardian of the convicted person, whether the legal relationship exists because of the age of the convicted person or because of the physical or mental incompetency of the convicted person.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.2 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any other provision of law concerning postconviction relief, a person convicted of a violent felony crime or who has received a sentence of twenty-five (25) years or more and who asserts that he or she did not commit such crime may file a motion in the sentencing court requesting forensic DNA testing of any biological material secured in the investigation or prosecution attendant to the challenged conviction. Persons eligible for testing shall include any and all of the following:

1. Persons currently incarcerated, civilly committed, on parole or probation or subject to sex offender registration;

2. Persons convicted on a plea of not guilty, guilty or nolo contendere;

3. Persons deemed to have provided a confession or admission related to the crime, either before or after conviction of the crime; and

4. Persons who have discharged the sentence for which the person was convicted.

B. A convicted person may request forensic DNA testing of any biological material secured in the investigation or prosecution attendant to the conviction that:

1. Was not previously subjected to DNA testing; or

2. Although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous DNA test.

C. The motion requesting forensic DNA testing shall be accompanied by an affidavit sworn to by the convicted person containing statements of fact in support of the motion.

D. Upon receipt of the motion requesting forensic DNA testing, the sentencing court shall provide a copy of the motion to the attorney representing the state and require the attorney for the state to file a response within sixty (60) days of receipt of service or longer, upon good cause shown. The response shall include an inventory of all the evidence related to the case, including the custodian of such evidence.

E. A guardian of a convicted person may submit motions for the convicted person under the provisions of this act and shall be entitled to counsel as otherwise provided to a convicted person pursuant to this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.3 of Title 22, unless there is created a duplication in numbering, reads as follows:

The sentencing court, in its discretion, may refer pro se requests for DNA testing to qualified parties willing to accept the referrals for further review without appointing the parties as counsel for the convicted person at that time. Such qualified parties may include, but shall not be limited to, indigent defense organizations or clinical legal education programs.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.4 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. After the motion requesting forensic DNA testing and subsequent response have been filed, the sentencing court shall hold a hearing to determine whether DNA forensic testing will be ordered. A court shall order DNA testing only if the court finds:

1. A reasonable probability that the petitioner would not have been convicted if favorable results had been obtained through DNA testing at the time of the original prosecution;

2. The request for DNA testing is made to demonstrate the innocence of the convicted person and is not made to unreasonably delay the execution of the sentence or the administration of justice;

3. One or more of the items of evidence the convicted person seeks to have tested still exists;

4. The evidence to be tested was secured in relation to the challenged conviction and either was not previously subject to DNA testing or, if previously tested for DNA, the evidence can be subjected to additional DNA testing that will provide a reasonable likelihood of more probative results; and

5. The chain of custody of the evidence to be tested is sufficient to establish that the evidence has not been substituted, tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence. For purposes of this act, evidence that has been in the custody of law enforcement, other government officials or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subsection absent specific evidence of material tampering, replacement or alteration.

B. If at the close of the hearing the court orders DNA forensic testing to be conducted, the court by written order shall require the attorney representing the state to effect the transfer of the item or items of evidence to be tested along with any documents, logs or reports relating to the items of evidence collected in connection with the criminal case to the designated laboratory or laboratories within thirty (30) days of the order. In addition, the court shall require the attorney representing the state to assist the petitioner in locating any evidence the state contends was lost, destroyed or in the possession of any other governmental entity, public or private hospital, laboratory or other facility.

C. If the attorney representing the state or the petitioner previously conducted any DNA analysis or other biological-evidence testing without the knowledge of the other party, such testing shall be revealed in the motion requesting forensic DNA testing or response.

D. The court may order DNA testing to be performed by the Oklahoma State Bureau of Investigation (OSBI), an accredited laboratory operating under contract with the OSBI or another accredited laboratory, as defined in Section 150.37 of Title 74 of the Oklahoma Statutes. If the OSBI or an accredited laboratory under contract with the OSBI conducts the testing, the state shall bear the costs of the testing. If another laboratory conducts the testing because neither the OSBI nor an accredited laboratory under contract with the OSBI has the ability or the resources to conduct the type of DNA testing to be performed, or if an accredited laboratory that is neither the OSBI nor under contract with the OSBI is chosen for some other reason, then the court shall require the petitioner to pay for the testing.

E. The results of any postconviction DNA testing conducted under the provisions of this act, including any laboratory reports prepared in connection with the testing, the underlying data or other laboratory documents, shall be disclosed to the petitioner, the attorney for the state and the court.

F. If an accredited laboratory other than the OSBI or one under contract with the OSBI performs the DNA testing, the court shall impose reasonable conditions on the testing of the evidence to protect the interests of the parties in the integrity of the evidence and testing process and to preserve the evidence to the greatest extent possible.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.5 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. If the results of the forensic DNA testing conducted under the provisions of this act are favorable to the petitioner, the court shall schedule a hearing to determine the appropriate relief to be granted. Based on the results of the testing and any other evidence presented at the hearing, the court shall thereafter enter any order that serves the interests of justice including, but not limited to, any of the following:

1. An order setting aside or vacating the judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication of delinquency;

2. An order granting the petitioner a new trial or fact-finding hearing;

3. An order granting the petitioner a new commitment hearing or dispositional hearing;

4. An order discharging the petitioner from custody;

5. An order specifying the disposition of any evidence that remains after the completion of the testing;

6. An order granting the petitioner additional discovery on matters related to the DNA test results on the conviction or sentence under scrutiny including, but not limited to, documents pertaining to the original criminal investigation or the identities of other suspects; or

7. An order directing the state to place any unidentified DNA profile or profiles obtained from postconviction DNA testing into Oklahoma or federal databases as allowed within applicable state and federal laws.

B. If the results of the tests are not favorable to the petitioner, the court shall:

1. Dismiss the motion; and

2. Make such further orders as the court deems appropriate, including an order that:

a. requires the DNA test results be provided to the Pardon and Parole Board or Department of Corrections, or

b. requests the DNA profile of the petitioner be added to the convicted offender index database of the OSBI Combined DNA Index System (CODIS) Database as provided by law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.6 of Title 22, unless there is created a duplication in numbering, reads as follows:

A. The filing of a motion for postconviction DNA testing shall not be required if both the state and the convicted person consent and agree to conduct postconviction DNA testing.

B. Notwithstanding any other provision of law governing postconviction relief, if DNA test results obtained under testing conducted upon consent of the parties are favorable to the convicted person, the convicted person may file and the court shall adjudicate an order pursuant to Section 6 of this act for postconviction relief based on the DNA test results.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1373.7 of Title 22, unless there is created a duplication in numbering, reads as follows:

An appeal under the provisions of the Postconviction DNA Act may be taken in the same manner as any other appeal.

SECTION 9. This act shall become effective November 1, 2013.

Passed the House of Representatives the 16th day of May, 2013.

Presiding Officer of the House
of Representatives

Passed the Senate the 22nd day of May, 2013.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 22nd

day of May, 20 13, at 5:32 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 24th

day of May, 20 13, at 1:15 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 24th

day of May, 20 13, at 1:55 o'clock P. M.

By: Chris Morris