

SENATE FILE NO. SF0051

Post-conviction actual innocence.

Sponsored by: Senator(s) Esquibel, F. and Landen and Representative(s) Byrd and Lockhart

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, procedures and conditions;
5 providing for compensation; specifying retention of
6 governmental immunity; conforming provisions; and providing
7 for an 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

1

2 **7-12-401. Definitions.**

3

4 (a) As used in this act:

5

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

7

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

10

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

15

16 (C) Engage in any conduct which would
17 constitute aiding and abetting, attempt or conspiracy to
18 commit the offense for which the movant was convicted or
19 any lesser included offense thereof.

20

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

23

1 (iii) "This act" means W.S. 7-12-401 through
2 7-12-410.

3

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

6

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 for which the
13 person was convicted.

14

15 (b) The motion shall:

16

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 the movant
20 is actually innocent;

21

22 (ii) Be supported by one (1) or more affidavits
23 based on 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 available
5 state corrective process to establish 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:

13

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

17

18 (ii) That neither the movant nor his counsel
19 knew of the evidence at the time of trial, sentencing or
20 appeal and the evidence could not have been discovered by
21 the movant or his counsel through the exercise of
22 reasonable diligence; or

23

1 (iii) That a court has found ineffective
2 assistance of counsel for failing to exercise due diligence
3 to discover the evidence.

4
5 **7-12-403. Service of process; response by state.**

6
7 (a) Notice of the motion filed under W.S. 7-12-402
8 shall be served upon the district attorney in the county in
9 which the conviction occurred.

10
11 (b) The district attorney shall respond to the motion
12 within sixty (60) days after receipt of the motion.

13
14 **7-12-404. Review by the court; hearing on motion;**
15 **preservation of evidence.**

16
17 (a) If the court finds that the requirements of W.S.
18 7-12-402(b) have not been satisfied, it shall dismiss the
19 motion.

20
21 (b) If the court finds that the requirements of W.S.
22 7-12-402(c) have not been satisfied, the court may dismiss
23 the motion. The court, however, may waive the requirements

1 of W.S. 7-12-402(c) if the court finds that the motion for
2 a new trial presents a colorable showing of actual
3 innocence.

4

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

9

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

16

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

20

21 (i) Vacate the movant's conviction consistent
22 with the evidence demonstrating the movant's actual
23 innocence;

1

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

4

5 (iii) Issue an order of expungement.

6

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

9

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

12

13 (ii) Issue an order of expungement.

14

15 **7-12-405. Appointment of counsel.**

16

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

22

23 **7-12-406. Victim notification.**

1

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

8

9 **7-12-407. Rights not waived; refiling of uncharged**
10 **offenses.**

11

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

16

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

21

22 **7-12-408. Appeal.**

23

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

3

4 **7-12-409. Subsequent motions.**

5

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

8

9 **7-12-410. Compensation.**

10

11 (a) If the court enters an order of actual innocence
12 and exoneration pursuant to W.S. 7-12-404, the movant shall
13 be eligible for compensation subject to the appropriation
14 of funds by the legislature and other limitations of this
15 section.

16

17 (b) A movant who meets the eligibility criteria in
18 subsection (a) of this section shall be provided
19 compensation in the amount of one hundred dollars (\$100.00)
20 per day while actually incarcerated not to exceed a total
21 of five hundred thousand dollars (\$500,000.00).

22

1 (c) The office of attorney general shall administer
2 the provision of compensation provided for in this section
3 and may promulgate rules as it deems necessary to implement
4 this section.

5
6 (d) A movant who meets the eligibility criteria
7 established in subsection (a) of this section may present
8 an application not more than two (2) years from entry of
9 the order of actual innocence and exoneration, regardless
10 of whether the order of actual innocence and exoneration
11 was entered before or after July 1, 2016, to the office of
12 the attorney general. If the attorney general determines
13 the movant is eligible for compensation under this section
14 and the amount of the compensation under subsection (b) of
15 this section is equal to or less than fifty thousand
16 dollars (\$50,000.00), payment to the movant shall be made
17 in a lump sum. If the movant is determined eligible for
18 compensation under subsection (b) of this section in excess
19 of fifty thousand dollars (\$50,000.00), the movant shall
20 receive an initial payment of fifty thousand dollars
21 (\$50,000.00) and the remaining amount shall be provided by
22 distributing funds appropriated for purposes of this
23 section to the state treasurer to annuitize the remaining

1 balance. The annuity shall provide equal payments to the
2 movant of fifty thousand dollars (\$50,000.00) annually
3 until the balance has been paid. The annuity shall provide
4 that it shall not be sold, discounted or used as
5 securitization for loans or mortgages. The annuity may
6 include a beneficiary designated by the movant. In the
7 event the movant dies before the expiration of the two (2)
8 year period for presenting an application, the movant's
9 estate or person claiming to be the distributee of the
10 movant's property as established by affidavit pursuant to
11 W.S. 2-1-201 or district court decree pursuant to W.S.
12 2-1-205 may present an application for the compensation
13 which is authorized to be provided under subsection (b) of
14 this section provided the application is presented within
15 the time specified in this subsection. The estate or
16 distributee shall not be eligible for compensation unless
17 the estate or distributee complies with all provisions and
18 requirements of this section which would have applied to
19 the movant.

20

21 (e) A movant shall not receive compensation under
22 this section if he has any action pending, has obtained a
23 judgment or has settled an action or claim against a

1 governmental entity or an employee of any governmental
2 entity involving the conviction for which the order of
3 actual innocence and exoneration was entered.

4

5 (f) Compensation to a movant under this section may
6 not be offset by any expenses incurred by a governmental
7 entity, including expenses to secure custody of the movant
8 and expenses to feed, clothe, house and provide medical
9 care for the movant.

10

11 (g) A movant who receives compensation under this
12 section may not bring any action against any governmental
13 entity or an employee of any governmental entity involving
14 the conviction for which the order of actual innocence and
15 exoneration was entered.

16

17 (h) A movant shall not receive compensation under
18 this section unless the movant signs a release and waiver
19 on behalf of himself and his heirs, successors and assigns,
20 forever releasing all governmental entities and their
21 employees in the employees' official and individual
22 capacities from all present and future claims involving the
23 conviction for which the order of actual innocence and

1 exoneration was entered. The release shall provide that
2 any payment to the movant does not constitute a waiver of
3 sovereign immunity.

4

5 (j) The provisions of the Wyoming Administrative
6 Procedure Act are not applicable to the grant or denial of
7 compensation under this section.

8

9 (k) The payment of compensation under this section
10 does not constitute a waiver of sovereign immunity.

11

12 (m) A movant is not entitled to compensation unless
13 sufficient funds have been appropriated to the office of
14 the attorney general to provide compensation authorized
15 under this section.

16

17 (n) Any interest in payment of compensation under
18 this section is not subject to execution or attachment by
19 trustee process or otherwise, in law or equity, or under
20 any other process whatsoever.

21

22 **Section 2.** W.S. 1-39-104(a), 1-39-120 by creating a
23 new subsection (b), 1-40-203(b)(xvii), (xviii) and by

1 creating a new paragraph (xix) and 7-6-104(c)(vii) are
2 amended to read:

3

4 **1-39-104. Granting immunity from tort liability;**
5 **liability on contracts; exceptions.**

6

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

18

19 **1-39-120. Exclusions from waiver of immunity.**

20

21 (b) Notwithstanding the waiver of immunity for tort
22 liability provided by W.S. 1-39-105 through 1-39-112 or the
23 waiver of immunity in actions based on contract provided by

1 W.S. 1-39-104, a governmental entity and its public
2 employees while acting within the scope of duties are
3 immune from a civil action in tort, contract or otherwise
4 alleging, in whole or in part, an improper denial of
5 compensation pursuant to W.S. 7-12-410.

6
7 **1-40-203. Victim and witness bill of rights.**

8
9 (b) Crime victims, key witnesses and, upon request,
10 other witnesses shall have the following rights:

11
12 (xvii) To be notified about the opportunity to
13 make an impact statement at sentencing as provided in W.S.
14 7-21-102(a); ~~and~~

15
16 (xviii) To be notified of the time and place of
17 the sentencing proceeding and any changes thereof as
18 provided in W.S. 7-21-102(a)(vii); ~~and~~ and

19
20 (xix) To be notified of a motion for a new trial
21 as provided in W.S. 7-12-406.

22
23 **7-6-104. Representation of needy persons.**

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2 (c) A needy person who is entitled to be represented
3 by an attorney under subsection (a) of this section is
4 entitled:

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

10

11 **Section 3.** This act is effective July 1, 2016.

12

13 (END)