



ROCKY MOUNTAIN
INNOCENCE CENTER

Legislation for Post-Conviction Relief Based on Non-DNA Evidence

Fact Sheet

- In Wyoming it is extremely difficult for an individual to obtain post-conviction relief based on newly discovered non-DNA evidence. There are currently two avenues for an individual to obtain post-conviction relief in Wyoming. First, Wyoming’s Rule 33 of Criminal Procedure requires a movant to make a motion for a new trial based on newly discovered evidence before or within two years after final judgment.¹ The defendant must show: (1) the evidence was discovered after trial; (2) the failure to learn of the evidence was not caused by lack of diligence; (3) the new evidence is not merely impeaching or cumulative; (4) the new evidence is material to the principal issues involved; and (5) the new evidence would probably produce an acquittal if a new trial were granted. Second, W.S. §§ 7-14-101 to -108 allows a petition for relief based on violation of a constitutional right, which must be filed within five years after entry of the judgment of conviction. However, relief cannot be granted under this statute if there is new evidence proving innocence, but no constitutional violation.
- The strict time limit for introducing newly discovered non-DNA evidence is a major barrier to overturning wrongful convictions. First, DNA evidence is only probative in 5-10 percent of criminal cases. The National Registry of Exonerations reports 1,770 wrongful convictions overturned in the United States since 1989 and only 19 percent of these exonerations were based on DNA evidence.² Second, the time frame is arbitrary and narrow—if a person is wrongfully convicted of murder and videotape showing someone else committing the crime is found two years and one day after the final judgment, the innocent person could not obtain post-conviction relief.

¹ W.R.Cr.P. 33(c)

² National Registry of Exonerations

- The two-year time restriction is particularly challenging if a defendant seeks to overturn a conviction based on forensic evidence that has been undermined by advancements in scientific knowledge or techniques, which is treated as “newly discovered evidence.” In 2009 the National Academy of Sciences published a report, which concluded that many claims that forensic analysts had been making in court for decades lacked scientific foundation in disciplines including bite mark comparisons, arson and hair comparison. Last year the FBI acknowledged that its hair microscopy examiners gave flawed testimony in almost all trials in which they offered evidence against criminal defendants over more than a two-decade period before 2000.
- Because new science often takes decades to emerge, the current two-year time limit would bar individuals whose convictions were based on discredited or changing science from obtaining a new trial. For example, in David Lee Gavitt was convicted of starting a fire that killed his wife and two children in Michigan in 1986. His conviction was based on fire investigators’ testimony that arson indicators were found at the crime scene. However, all of the evidence that was used to conclude that the fire was intentionally set was later found to be scientifically invalid and he was exonerated in 2012. Had this conviction taken place in Wyoming, the current law would not have permitted Mr. Gavitt to return to court to refute the scientifically invalid evidence that had been used to convict him.
- This legislation would allow a person to file a motion for a new trial based on newly discovered non-DNA evidence of actual innocence without a time limit. In addition, it makes clear that newly discovered evidence shall include opinions of experts that have later been repudiated by scientific research or technological advancements, which is similar to “changing science” laws recently enacted in Texas and California.