

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 36

By: Brooks

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5
6 AS INTRODUCED

7 An Act relating to DNA testing; amending Section 5,
8 Chapter 317, O.S.L. 2013 (22 O.S. Supp. 2020, Section
9 1373.4), which relates to hearing; defining term;
10 updating statutory references; and providing an
11 effective date.

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

13 SECTION 1. AMENDATORY Section 5, Chapter 317, O.S.L.
14 2013 (22 O.S. Supp. 2020, Section 1373.4), is amended to read as
15 follows:

16 Section 1373.4. A. After the motion requesting forensic DNA
17 testing and subsequent response have been filed, the sentencing
18 court shall hold a hearing to determine whether DNA forensic testing
19 will be ordered. A court shall order DNA testing only if the court
20 finds:

21 1. A reasonable probability that the petitioner would not have
22 been convicted if favorable results had been obtained through DNA
23 testing at the time of the original prosecution. For the purposes
24 of this paragraph, "reasonable probability" means that a petitioner

1 must show by a preponderance of the evidence that he or she would
2 not have been prosecuted or convicted if exculpatory results had
3 been obtained through DNA testing. Exculpatory results include, but
4 are not limited to, evidence that would impeach a witness;

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

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

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

16 5. The chain of custody of the evidence to be tested is
17 sufficient to establish that the evidence has not been substituted,
18 tampered with, replaced or altered in any material respect or, if
19 the chain of custody does not establish the integrity of the
20 evidence, the testing itself has the potential to establish the
21 integrity of the evidence. For purposes of ~~this act~~ the
22 Postconviction DNA Act, evidence that has been in the custody of law
23 enforcement, other government officials or a public or private
24 hospital shall be presumed to satisfy the chain-of-custody

1 requirement of this subsection absent specific evidence of material
2 tampering, replacement or alteration.

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

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

19 D. The court may order DNA testing to be performed by the
20 Oklahoma State Bureau of Investigation (OSBI), an accredited
21 laboratory operating under contract with the OSBI or another
22 accredited laboratory, as defined in Section 150.37 of Title 74 of
23 the Oklahoma Statutes. If the OSBI or an accredited laboratory
24 under contract with the OSBI conducts the testing, the state shall

1 bear the costs of the testing. If another laboratory conducts the
2 testing because neither the OSBI nor an accredited laboratory under
3 contract with the OSBI has the ability or the resources to conduct
4 the type of DNA testing to be performed, or if an accredited
5 laboratory that is neither the OSBI nor under contract with the OSBI
6 is chosen for some other reason, then the court shall require the
7 petitioner to pay for the testing.

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

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

20 SECTION 2. This act shall become effective November 1, 2021.

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