



# *State of Tennessee*

## **PUBLIC CHAPTER NO. 355**

### **SENATE BILL NO. 448**

**By Bell, Akbari, Powers, Stevens**

Substituted for: House Bill No. 1086

By Curcio, Hardaway, Freeman, Smith, Terry

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 30, relative to evidence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 30, Part 1, is amended by adding the following language as an appropriately designated section:

Whenever a law enforcement agency discovers new evidence deemed potentially exculpatory by the chief law enforcement officer of the agency, the agency shall report the evidence to the district attorney currently serving in the jurisdiction in which the case was prosecuted, the trial court in which the conviction was obtained, the individual convicted in the case in which the evidence was secured, and that individual's attorney, if such individual is represented by counsel, within thirty (30) days of the discovery of the evidence.

SECTION 2. Tennessee Code Annotated, Title 40, Chapter 30, is amended by adding the following language as a new part:

#### **40-30-401. Short title.**

This part is known and may be cited as the "Post-Conviction Fingerprint Analysis Act of 2021."

#### **40-30-402. Part definitions.**

As used in this part, unless the context otherwise requires, "fingerprint analysis" means the processes through which fingerprints are analyzed and compared for identification purposes, including, but not limited to, latent print comparisons and searches in fingerprint databases.

#### **40-30-403. Petition requesting analysis.**

(a) Notwithstanding part 1 of this chapter, or any other law governing post-conviction relief to the contrary, any appropriate party may, at any time, file a petition requesting the performance of fingerprint analysis of any evidence that is in the possession or control of the prosecution, law enforcement, laboratory, or court, and that is related to the investigation or prosecution that resulted in a judgment of conviction and that may contain fingerprint evidence.

(b) As used in this section, "any appropriate party" means:

- (1) A court on its own motion;
- (2) A district attorney general; or
- (3) A person convicted of and sentenced for the commission or attempted commission of:
  - (A) First degree murder;

(B) A Class A felony;

(C) A Class B felony;

(D) Any lesser included offense of an offense in subdivisions (b)(3)(A)-(C); or

(E) Any other offense, at the direction of the court.

**40-30-404. Court order if probable that exculpatory results would not have resulted in prosecution or conviction.**

After notice to the prosecution and an opportunity to respond, the court shall order fingerprint analysis if the court finds that:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through fingerprint analysis;

(2) The evidence is still in existence and in such a condition that fingerprint analysis may be conducted;

(3) The evidence was never previously subjected to fingerprint analysis, was not subjected to the analysis that is being requested which could resolve an issue not resolved by previous analysis, or was previously subjected to analysis and the person making the motion under this part requests analysis that uses a new method or technology that is substantially more probative than the prior analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

**40-30-405. Court order if probable that results would have resulted in a more favorable verdict or sentence.**

After notice to the prosecution and an opportunity to respond, the court may order fingerprint analysis if the court finds that:

(1) A reasonable probability exists that analysis of the evidence will produce fingerprint results that would have rendered the petitioner's verdict or sentence more favorable if the results had been available at the proceeding leading to the judgment of conviction;

(2) The evidence is still in existence and in such a condition that fingerprint analysis may be conducted;

(3) The evidence was not previously subjected to fingerprint analysis, was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous analysis, or was previously subjected to analysis and the person making the motion under this part requests analysis that uses a new method or technology that is substantially more probative than the prior analysis; and

(4) The application for analysis is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.

**40-30-406. Payment for analysis.**

If an order is issued pursuant to § 40-30-404, then the court shall order the analysis and payment pursuant to § 40-30-413, if necessary. If an order is issued pursuant to § 40-30-405, the court may require the petitioner to pay for the analysis, unless the petitioner is determined indigent by the court.

**40-30-407. Appointment of counsel for indigents.**

The court may, at any time during proceedings instituted under this part, appoint counsel for an indigent petitioner.

**40-30-408. Court order for production of laboratory reports, underlying data, and notes.**

If evidence has previously been subjected to fingerprint analysis by either the prosecution or defense, the court may order the prosecution or defense to provide all parties and the court with access to the laboratory reports prepared in connection with the fingerprint analysis, as well as the underlying data and laboratory notes. If any fingerprint or other evidence analysis was previously conducted by either the prosecution or defense without knowledge of the other party, the analysis shall be revealed in the motion for analysis or response, if any. If the court orders fingerprint analysis in connection with a proceeding brought under this part, the court shall order the production of any laboratory reports prepared in connection with the fingerprint analysis and may, in the court's discretion, order production of the underlying data and laboratory notes.

**40-30-409. Preservation of evidence during pendency of proceeding — Sanctions.**

When the petition is not summarily dismissed, the court shall order that all evidence in the possession of the prosecution, law enforcement, laboratory, or the court that could be subjected to fingerprint analysis must be preserved during the pendency of the proceeding. The intentional destruction of evidence after such an order may result in appropriate sanctions, including criminal contempt for a knowing violation of the court's order.

**40-30-410. Laboratory selection.**

If the court orders analysis, the court must select the laboratory used by the original investigating agency if the laboratory is capable of performing the required analysis. If the laboratory used by the original investigating agency is not capable of performing the required analysis, the court shall select a laboratory that the court deems appropriate.

**40-30-411. Orders in discretion of court.**

The court may, in its discretion, make such other orders as may be appropriate.

**40-30-412. Analysis results — Dismissal of petition — Order for hearing.**

If the results of the post-conviction fingerprint analysis are not favorable to the petitioner, the court shall dismiss the petition, and make further orders as may be appropriate. If the results of the post-conviction fingerprint analysis are favorable, the court shall order a hearing, notwithstanding any law or rule of court that would bar the hearing as untimely, and thereafter make orders as are required or permitted by the Rules of Criminal Procedure or part 1 of this chapter.

**40-30-413. Payment for analysis.**

If an order is issued requiring fingerprint analysis be paid on behalf of a petitioner pursuant to this part, then the payment shall be made from funding provided for indigent defendants' counsel as set forth within the annual appropriations act. The payment shall be made only after receipt by the administrative director of the courts of a certified copy of the order and only upon receipt of a bill from the laboratory that conducted the analysis. The bill shall set forth the name of the petitioner, the date the analysis was performed, the amount of the bill, and the name and address of the laboratory to which payment is to be made.

SECTION 3. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 4. This act takes effect July 1, 2021, the public welfare requiring it.

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PASSED: April 28, 2021

  
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RANDY McNALLY  
SPEAKER OF THE SENATE

  
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CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 11<sup>th</sup> day of May 2021

  
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BILL LEE, GOVERNOR