



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR S.B. 1469

forensic evidence testing; postconviction relief

Purpose

Prescribes post-conviction relief (PCR) procedures for ordering forensic testing associated with specified types of evidence.

Background

Under Arizona's Rules of Criminal Procedure, a defendant has the right to file a PCR petition asking for relief from the conviction or sentence on various, but specific, grounds. The specific grounds for seeking relief include: 1) claims that the conviction or sentence violated state or federal constitutional rights; 2) the trial court lacked proper jurisdiction; 3) the sentence was excessive and illegal; 4) newly-discovered material facts exist; or 5) a significant change in the law has occurred which should be applied retroactively ([A.R.S. § 13-4231](#)).

The defendant is entitled to a PCR evidentiary hearing to determine issues of material fact, with the right to be present and to subpoena witnesses. If facilities are available, the court may, in its discretion, order the hearing to be held at the place of confinement, giving at least 15 days' notice to the officer in charge of the confinement facility. A verbatim record of the hearing must be made. The rules of evidence applicable in criminal proceedings apply, except that the defendant may be called to testify at the hearing. The defendant has the burden of proving the allegations of fact by a preponderance of the evidence. If a constitutional defect is proven, the state has the burden of proving that the defect was harmless beyond a reasonable doubt.

The court must rule within 10 days after the hearing ends. If the court finds in favor of the defendant, it must enter an appropriate order with respect to the conviction, sentence or detention, any further proceedings, including a new trial and conditions of release, and other matters that may be necessary and proper. The court must make specific findings of fact and state expressly its conclusions of law relating to each issue presented ([A.R.S. § 13-4238](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Allows a person who was convicted of, and sentenced for, a felony offense, at any time to request that any evidence that is in the possession or control of the court or the state and that is related to the investigation or prosecution that resulted in the judgment of conviction either be:
 - a) forensically tested using a technique that was not widely accepted in the scientific community at the time of sentencing and that has become available through advances in technology; or

- b) uploaded to searchable local, state or national databases that are subject to the standards imposed by the agency that is responsible for managing the database.
2. Requires the court, after notice to the prosecutor and an opportunity to respond, to order the new forensic testing if the court finds that:
 - a) a reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through the new forensic testing;
 - b) the evidence is still in existence and is in a condition that allows the new forensic testing to be continued;
 - c) the evidence was not previously subjected to the new forensic testing or was not subjected to the analysis or comparison that is now requested; and
 - d) the new forensic testing may resolve an issue that was not previously resolved by any other testing.
3. Requires the court to order the method and responsibility for payment, if necessary, if the court orders testing.
4. Allows the court to appoint counsel for an indigent petitioner at any time during any proceedings related to the evidentiary testing.
5. Allows the court to make any order it deems appropriate, including designating:
 - a) the procedures to ensure a proper chain of custody and integrity of the evidence;
 - b) the preservation of some of the sample for replicating the testing; and
 - c) the elimination of samples from third parties.
6. Requires, if the new forensic testing must be performed in a laboratory (lab), that the new forensic testing be performed by the Department of Public Safety (DPS) crime lab unless the original investigating agency has a lab that is capable of performing the new forensic testing or the parties mutually agree on another internationally accredited lab.
7. Specifies that the new procedures do not require the state or a law enforcement agency to retain evidence beyond any time period that is established by law.
8. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Makes procedural changes related to the forensic testing.
2. Specifies that the DPS crime lab will perform the new forensic testing unless the original investigatory agency has a capable lab, or the parties mutually agree on another certified lab.
3. Specifies that the new procedures do not require the state or a law enforcement agency to retain evidence beyond any time period that is established by law.

Amendments Adopted by the House of Representatives

1. Specifies that if forensic testing is performed at a non-DPS lab, it is performed at an internationally accredited lab rather than a lab that is certified by the American Society of Crime Lab Directors.

2. Clarifies that a person may request evidence to either be forensically tested or uploaded to a searchable database, rather than both forensically tested and uploaded to a database.

Senate Action

JUD 2/11/21 DPA 8-0-0
3rd Read 2/22/21 30-0-0

House Action

CJR 3/10/21 DPA 7-0-0-2
3rd Read 3/18/21 60-0-0

Prepared by Senate Research

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