

State of South Dakota

EIGHTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2009

808Q0592

HOUSE BILL NO. 1166

Introduced by: Representatives Deadrick, Cutler, Gosch, and Lust and Senators Heidepriem, Abdallah, and Vehle

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Any person who has been convicted of a felony may make a motion to the court
5 for an order to require that DNA analysis be performed on evidence collected in the case for
6 which the person was convicted, provided the following conditions are met:

7 (1) The petitioner's conviction is final under chapter 23A-32;

8 (2) The petitioner does not have a petition for relief pending under chapter 21-27 or 28
9 U.S.C. § 2254;

10 (3) Identity was a significant issue in the case in which the petitioner was convicted;

11 (4) The petitioner raises a claim of actual innocence of the offense; and

12 (5) The evidence to be tested exists and is material to the issue of the petitioner's identity
13 as the perpetrator of, or accomplice to, the crime which resulted in the conviction.

14 Section 2. Upon good cause shown, the petitioner shall be granted full, fair, and prompt
15 proceedings upon the filing of a motion under this Act. The petitioner shall serve a copy of the



1 motion upon the state's attorney whose office prosecuted the case resulting in the person's
2 conviction.

3 Section 3. The circuit court may, in its discretion, refer *pro se* requests for DNA testing to
4 qualified parties for further review, without appointing those parties as counsel. Such qualified
5 parties may include a recognized Innocence Project or such volunteer attorney as the State Bar
6 of South Dakota may designate. If the petitioner prevails and the DNA testing establishes the
7 petitioner's actual innocence of the crime, the court may, in its discretion, award reasonable
8 attorney fees and costs at the conclusion of the litigation.

9 Section 4. Nothing in this Act precludes a petitioner from proceeding with privately retained
10 counsel.

11 Section 5. Upon receiving a copy of a motion made under this Act or notice from a court that
12 a motion has been made, whichever occurs first, the state's attorney shall take all actions
13 necessary to ensure that all evidence which was collected in connection with the investigation
14 or prosecution of the case, and which remains in the actual or constructive custody of a
15 government agency, is preserved pending completion of the proceedings under this Act.

16 Section 6. If the prerequisites established in section 1 of this Act are met, the court shall hold
17 a hearing on the motion for post-conviction DNA testing and shall order such testing if the court
18 finds:

- 19 (1) A reasonable probability that the petitioner would not have been convicted or would
20 have received a lesser sentence if favorable results had been obtained through DNA
21 testing at the time of the original prosecution;
- 22 (2) One or more items of evidence which the petitioner seeks to have tested still exists;
- 23 (3) The evidence to be tested was related to the offense underlying the challenged
24 conviction and:

- 1 (a) Was not previously subjected to DNA testing; or
- 2 (b) Although previously subjected to DNA testing, additional DNA testing would
- 3 provide a reasonable probability or more probative results;
- 4 (4) The chain of custody of the evidence to be tested establishes that the evidence has not
- 5 been tampered with, replaced, or altered in any material respect or, if the chain of
- 6 custody does not establish the integrity of the evidence, the testing itself has the
- 7 potential to establish the integrity of the evidence. For purposes of this Act, evidence
- 8 which has remained in the custody of law enforcement, other government officials,
- 9 or a public or private hospital shall be presumed to satisfy the chain of custody
- 10 requirement of this subdivision, absent specific evidence of material tampering,
- 11 replacement, or alteration; and
- 12 (5) The application for testing is made to demonstrate innocence or the appropriateness
- 13 of a lesser sentence and not solely to delay the execution of sentence or the
- 14 administration of justice.

15 Section 7. The results of any DNA testing ordered under this Act shall be fully disclosed to

16 the petitioner, the Board of Pardons and Paroles, the state's attorney, the attorney general, and

17 the court. If requested by any party, the court shall order production of the underlying laboratory

18 data, notes, and chain of custody documents.

19 Section 8. The cost of the DNA testing provided for in section 6 of this Act shall be borne

20 by the state or the applicant, as the court may order in the interests of justice.

21 Section 9. Nothing in this Act prohibits a convicted person and the state from consenting

22 to and conducting post-conviction DNA testing by agreement of the parties, without filing a

23 motion for post-conviction DNA testing under this Act. If DNA test results are obtained

24 pursuant to testing conducted upon consent of the parties which are favorable to the petitioner,

1 the petitioner may file and the court shall adjudicate a motion for post-conviction relief based
2 on the DNA test results.

3 Section 10. Upon receipt of the test results, any party may request a hearing before the court
4 if the results exonerate or exculpate the person. Following the hearing, the court shall, on its
5 own motion or upon the motion of any party, vacate and set aside the judgment.