



HANDOUT 2

www.alec.org

AN ACT REGARDING POST-CONVICTION RELIEF ON THE GROUNDS OF CHANGES IN FORENSIC SCIENTIFIC EVIDENCE

Policy Status

Type: **Model Policy** Status: **Final** Date Introduced: **December 1, 2016**

Date Finalized: **January 12, 2017**

Issues

- Criminal Justice Reform

Task Forces

- Criminal Justice Reform

Tags

- Criminal Justice
- Criminal Justice Reform
- SNPS 2016

Summary

This Act would create a clear mechanism for potentially innocent people, who would otherwise be barred or face extreme delays under existing post-conviction relief or newly discovered evidence laws, to get back into court to prove their innocence based on non-DNA evidence. In some instances, the revelation of the wrongful conviction might also lead to the detection of the actual perpetrator of the crime. A mechanism for newly discovered evidence of changed science is an opportunity to correct the harm imposed on the wrongfully convicted and the public, thereby maintaining integrity and public trust in the criminal justice system.

AN ACT REGARDING POST-CONVICTION RELIEF ON THE GROUNDS OF CHANGES IN FORENSIC SCIENTIFIC EVIDENCE

SECTION 1. DEFINITIONS.

1. “Forensic science” is the application of scientific or technical practices to the recognition, collection, analysis, and interpretation of evidence for criminal and civil law or regulatory issues.
2. “Forensic scientific evidence” shall include scientific or technical knowledge; a testifying forensic analyst’s or expert’s scientific or technical knowledge or opinion; reports and/or testimony offered by experts or forensic analysts; scientific standards; or a scientific method or technique upon which the relevant forensic scientific evidence is based.
3. “Scientific knowledge” shall include the knowledge of the general scientific community and all fields of scientific knowledge on which those fields or disciplines rely.

SECTION 2. APPLICABILITY AND BASIS FOR RELIEF.

1. This article applies to relevant forensic scientific evidence that:

- was not available to be offered by a convicted person at the convicted person's

trial; or

- undermines forensic scientific evidence presented at trial.

1. A court may grant a convicted person relief if:

(1) the convicted person files an application asserting that relevant forensic scientific evidence is currently available and was not ascertainable through the exercise of reasonable diligence by the convicted person before or during trial; and

(2) the court makes the findings described by Subdivision (1) of this Section and finds that, had the evidence been presented at trial, there is a reasonable likelihood there would have been a different outcome at the trial.

1. In determining whether relevant forensic scientific evidence was not ascertainable through the exercise of reasonable diligence on or before a specific date, the court shall consider whether the relevant scientific evidence has changed since:

(1) the applicable trial date or dates, or date of entry of guilty or nolo plea, for a determination made with respect to an original application; or

(2) the date on which the original application or a previously considered application, as applicable, was filed, for a determination made with respect to a subsequent application.

1. This section does not create additional liabilities for an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

SECTION 3. SERVICE OF PROCESS; RESPONSE BY STATE.

Notwithstanding any other provision of law, a person convicted of a crime and who asserts he did not commit that crime may file a petition relating to forensic scientific evidence that was not available at trial; or that contradicts forensic scientific evidence presented at trial. Eligible applicants shall include any and all of the following:

1. Persons currently incarcerated; civilly committed; on parole or probation; or subject to sex offender registration;

2. Persons convicted on a plea of not guilty, guilty or *nolo contendere*;
3. Persons deemed to have provided a confession or admission related to the crime, either before or after conviction; and
4. Persons who have completed their sentences.

SECTION 4. PROCEEDINGS.

Upon the filing of a motion under this Act, the petitioner shall serve a copy of such motion upon the attorney for the state. The state shall respond within 30 days of the receipt of service. The court shall hear the motion no sooner than 30 and no later than 90 days after its filing.

SECTION 5. REVIEW BY THE COURT.

1. If the court determines that the new forensic scientific evidence offered by the petitioner is not favorable to the petitioner, the court shall dismiss the petition.
2. If the new evidence is favorable to the petitioner, the court shall hold a hearing to determine the appropriate relief to be granted and enter any order that serves the interest of justice, including :

(1) An order setting aside or vacating the petitioner's judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication of delinquency;

(2) An order granting the petitioner a new trial or fact-finding hearing;

(3) An order granting the petitioner a new sentencing hearing, commitment hearing or dispositional hearing;

(4) An order discharging the petitioner from custody; or

(5) An order granting the petitioner additional discovery on matters related to forensic evidence used to obtain the conviction or sentence under attack, including, but not limited to, documents pertaining to the original criminal investigation or the identities of other suspects.

SECTION 6. EFFECTIVE DATE.

This Act shall take effect on [date].