

HOUSE BILL 1034

By Watson

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8; Title 16; Title 29; Title 38; Title 40 and Title
41, relative to criminal proceedings.

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

SECTION 1. Tennessee Code Annotated, Section 4-29-234(a), is amended by deleting subdivision (33) in its entirety.

SECTION 2. Tennessee Code Annotated, Section 8-8-201(b)(1), is amended by deleting the language "40-30-110,".

SECTION 3. Tennessee Code Annotated, Section 8-14-209, is amended by deleting the language "or petition for post-conviction relief".

SECTION 4. Tennessee Code Annotated, Section 8-36-807(b), is amended by deleting the language "and such cases as may arise under any Post Conviction Procedure Act, compiled in title 40, chapter 30, part 2".

SECTION 5. Tennessee Code Annotated, Section 16-5-108(a)(2), is amended by deleting the language "and Post-Conviction Procedure Act".

SECTION 6. Tennessee Code Annotated, Section 40-26-105, is amended by adding the following new subsection (e) thereto:

(e)

(1) A writ of error coram nobis may lie for any action brought under the former Post-Conviction DNA Analysis Act of 2001 pursuant to the procedures set out in this subsection (e).

(2) As used in this subsection (e), unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in

a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(3)

(A) A person convicted of an offense may at any time, file a petition requesting the forensic DNA 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 the judgment of conviction and that may contain biological evidence.

(B) After notice to the prosecution and an opportunity to respond, the court shall order DNA analysis if it finds that:

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

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

(3) The evidence was never previously subjected to DNA analysis or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous 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.

(C) After notice to the prosecution and an opportunity to respond, the court may order DNA analysis if it finds that:

(1) A reasonable probability exists that analysis of the evidence will produce DNA 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 DNA analysis may be conducted;

(3) The evidence was never previously subjected to DNA analysis, or was not subjected to the analysis that is now requested which could resolve an issue not resolved by previous 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.

(D) If evidence has previously been subjected to DNA 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 DNA analysis, as well as the underlying data and laboratory notes. If any DNA or other biological 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 DNA analysis in connection with a proceeding brought under this subsection (e), the court shall order the production of any laboratory

reports prepared in connection with the DNA analysis and may, in its discretion, order production of the underlying data and laboratory notes.

(E)

(1) The court may, at any time during proceedings instituted under this subsection (e), appoint counsel for an indigent petitioner.

(2) The court may require the petitioner to pay for the analysis conducted under this subsection (e).

(3) If an order is issued requiring a DNA analysis be paid on behalf of a petitioner pursuant to this subsection (e), 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.

(F) 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 DNA analysis 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.

(G) If the court orders analysis, it shall select a laboratory that meets the standards adopted pursuant to the DNA Identification Act of 1994, compiled in 42 U.S.C. § 14131 et seq.

(H) If the results of the DNA analysis conducted pursuant to this subsection (e) 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 analysis conducted pursuant to this subsection (e) are favorable, the court shall order a hearing, notwithstanding any provisions of 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.

SECTION 7. Tennessee Code Annotated, Title 40, Chapter 26, Part 1, is amended by adding the following new sections thereto:

40-26-106.

When affirming a conviction and sentence of death on direct appeal, the Tennessee supreme court shall contemporaneously set a date for an execution. The date shall be no less than four (4) months from the date of the judgment of the Tennessee supreme court.

40-26-107.

(a) In criminal actions, an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Tennessee supreme court or Tennessee court of criminal appeals on a plea of:

(1) Not guilty; and

(2) Guilty or nolo contendere, if:

(A) The defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law

dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A)(i) or (iv) of the Tennessee Rules of Criminal Procedure;

(B) The defendant seeks review of the sentence pursuant to § 40-35-401, and there was no plea agreement concerning the sentence; or

(C) The issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had.

(b) The defendant may also appeal as of right from an order denying or revoking probation, and from a final judgment in a criminal contempt, habeas corpus or extradition proceeding.

SECTION 8. Tennessee Code Annotated, Title 40, is amended by deleting the Chapter 30 in its entirety.

SECTION 9. Tennessee Code Annotated, Section 41-21-801(1), is amended by deleting the language “except a petition for post-conviction relief”.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, then all provisions and applications of this act are declared to be invalid and void.

SECTION 11. This act shall not be construed as altering or amending a person’s right to petition for habeas corpus or a person’s right to a direct appeal in any criminal proceeding.

SECTION 12. This act shall take effect July 1, 2011, the public welfare requiring it, and shall apply to any petition for post-conviction relief filed on or after the effective date of this act.