

Amendment No. 1 to HB0873

Curcio  
Signature of Sponsor

**AMEND Senate Bill No. 405\***

**House Bill No. 873**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-30-103, is amended by deleting the section and substituting instead the following:

Relief under this part shall be granted when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States or because of newly discovered evidence of actual innocence as described in § 40-30-102(b)(2).

SECTION 2. Tennessee Code Annotated, Section 40-30-102(b), is amended by deleting subdivision (b)(2) and substituting instead the following:

(2)

(A) The claim in the petition is based upon new scientific evidence or new non-scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted;

(B) The new evidence must:

(i) Be currently available and must not have been available to the petitioner through the exercise of due diligence at the time of conviction;  
and

(ii) Be such that had such new evidence been available, there is a reasonable probability that the petitioner would not have been convicted;  
and

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(C) "New scientific evidence" as applied in this section means scientific evidence that:

(i) Was not available to be offered by the petitioner at the time of the conviction or that undermines forensic scientific evidence used to convict the petitioner; and

(ii) Includes:

(a) Scientific or technical knowledge;

(b) A testifying forensic analyst's or expert's scientific or technical knowledge or opinion;

(c) Reports or testimony offered by experts or scientific analysts; or

(d) Scientific standards, methods, or techniques upon which the relevant scientific evidence is based; or

SECTION 3. Tennessee Code Annotated, Section 40-30-102(c), is amended by deleting the subsection and substituting instead the following:

(c) This part contemplates the filing of only one (1) petition for post-conviction relief. In no event may more than one (1) petition for post-conviction relief be filed attacking a single judgment, unless a subsequent petition is filed based on new evidence of actual innocence as described in subdivision (b)(2) and such evidence was not ascertainable by the petitioner through the exercise of due diligence at the time a previous petition was filed under this section. If a prior petition has been filed that was

resolved on the merits by a court of competent jurisdiction, any second or subsequent petition must be summarily dismissed. A petitioner may move to reopen a post-conviction proceeding that has been concluded, under the limited circumstances set out in § 40-30-117.

(d)

(1)

(A) A petitioner may not seek relief under title 27, chapter 7 or title 29, chapter 21 that is based on new evidence of actual innocence that has previously been the basis for a petition filed pursuant to this part.

(B) A petitioner may not seek relief under this part that is based on new evidence of actual innocence that has previously been the basis for a petition filed pursuant to title 27, chapter 7 or title 29, chapter 21.

(2) Subdivision (d)(1) shall not be retroactively applied to preclude a petitioner from seeking relief under this part on the grounds that the petitioner, prior to July 1, 2019, had filed a petition pursuant to title 27, chapter 7 or title 29, chapter 21.

SECTION 4. Tennessee Code Annotated, Section 40-30-117(a)(2), is amended by deleting the subdivision and substituting instead the following:

(2) The claim in the motion is based upon new evidence of actual innocence as described in § 40-30-102(b)(2); or

SECTION 5. This act shall take effect July 1, 2019, the public welfare requiring it.