

West's Arkansas Code Annotated Currentness

Title 16. Practice, Procedure, and Courts

Subtitle 7. Particular Proceedings and Remedies (Chapters 105 to 126)

▣ [Chapter 112. Habeas Corpus \(Refs & Annos\)](#)

→ Subchapter 2. Motions Based on Scientific Evidence.

### **§ 16-112-201. Writ of Habeas Corpus--New scientific evidence**

(a) Except when direct appeal is available, a person convicted of a crime may commence a proceeding to secure relief by filing a petition in the court in which the conviction was entered to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate, if the person claims under penalty of perjury that:

- (1) Scientific evidence not available at trial establishes the petitioner's actual innocence; or
- (2) The scientific predicate for the claim could not have been previously discovered through the exercise of due diligence and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would find the petitioner guilty of the underlying offense.

(b) Nothing contained in this subchapter shall prevent the Arkansas Supreme Court or the Arkansas Court of Appeals, upon application by a party, from granting a stay of an appeal to allow an application to the trial court for an evidentiary hearing under this subchapter.

### **§ 16-112-202. Form of motion**

Except when direct appeal is available, a person convicted of a crime may make a motion for the performance of fingerprinting, forensic deoxyribonucleic acid (DNA) testing, or other tests which may become available through advances in technology to demonstrate the person's actual innocence if:

- (1) The specific evidence to be tested was secured as a result of the conviction of an offense's being challenged under [§ 16-112-201](#);
- (2) The specific evidence to be tested was not previously subjected to testing and the person making the motion under this section did not:
  - (A) Knowingly and voluntarily waive the right to request testing of the evidence in a court proceeding commenced on or after August 12, 2005; or
  - (B) Knowingly fail to request testing of the evidence in a prior motion for post-conviction testing;
- (3) The specific evidence was previously subjected to testing and the person making a motion under this section requests testing that uses a new method or technology that is substan-

tially more probative than the prior testing;

(4) The specific evidence to be tested is in the possession of the state and has been subject to a chain of custody and retained under conditions sufficient to ensure that the evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed testing;

(5) The proposed testing is reasonable in scope, utilizes scientifically sound methods, and is consistent with accepted forensic practices;

(6) The person making a motion under this section identifies a theory of defense that:

(A) Is not inconsistent with an affirmative defense presented at the trial of the offense being challenged under [§ 16-112-201](#); and

(B) Would establish the actual innocence of the person in relation to the offense being challenged under [§ 16-112-201](#);

(7) The identity of the perpetrator was at issue during the investigation or prosecution of the offense being challenged under [§ 16-112-201](#);

(8) The proposed testing of the specific evidence may produce new material evidence that would:

(A) Support the theory of defense described in subdivision (6) of this section; and

(B) Raise a reasonable probability that the person making a motion under this section did not commit the offense;

(9) The person making a motion under this section certifies that he or she will provide a deoxyribonucleic acid (DNA) or other sample or a fingerprint for comparison; and

(10) The motion is made in a timely fashion subject to the following conditions:

(A) There shall be a rebuttable presumption of timeliness if the motion is made within thirty-six (36) months of the date of conviction. The presumption may be rebutted upon a showing:

(i) That the motion for a test under this section is based solely upon information used in a previously denied motion; or

(ii) Of clear and convincing evidence that the motion filed under this section was filed solely to cause delay or harassment; and

(B) There shall be a rebuttable presumption against timeliness for any motion not made within thirty-six (36) months of the date of conviction. The presumption may be rebutted upon a showing:

(i) That the person making a motion under this section was or is incompetent and the incompetence substantially contributed to the delay in the motion for a test;

- (ii) That the evidence to be tested is newly discovered evidence;
- (iii) That the motion is not based solely upon the person's own assertion of innocence and a denial of the motion would result in a manifest injustice;
- (iv) That a new method of technology that is substantially more probative than prior testing is available; or
- (v) Of good cause.

#### **§ 16-112-203. Contents of motion**

(a) The petition filed under this subchapter shall be entitled in the name of the petitioner versus the State of Arkansas and shall contain:

(1)(A) A statement of the facts and the grounds upon which the petition is based and relief desired.

(B) All grounds for relief shall be stated in the petition or any amendment to the petition, unless the grounds could not reasonably have been set forth in the petition.

(C) The petition may contain argument or citation of authorities;

(2) An identification of the proceedings in which the petitioner was convicted, including the date of the entry of conviction and sentence or other disposition complained of;

(3) An identification of any previous proceeding, together with the grounds asserted in the previous proceeding, which sought to secure relief for the petitioner from the conviction and sentence or other disposition; and

(4)(A) The name and address of any attorney representing the petitioner; or

(B) If the petitioner is without counsel, the circuit clerk shall immediately transmit a copy of the petition to the judge and shall advise the petitioner of that referral.

(b) The filing of the petition and any related documents and any proceedings pursuant to the petition shall be without any costs or fees charged to the petitioner.

(c) The petition shall be:

(1)(A) Verified by the petitioner; or

(B) Signed by the petitioner's attorney; and

(2) Addressed to the court in which the conviction was entered.

(d) The circuit clerk shall deliver a copy of the petition to the prosecuting attorney and to the Attorney General.

#### **§ 16-112-204. Other pleadings**

(a) Within twenty (20) days after the filing of the petition, the prosecuting attorney or the Attorney General shall respond to the petition by answer or motion which shall be filed with the court and served on the petitioner if unrepresented or served on the petitioner's attorney.

(b)(1) No further pleadings are necessary except as the court may order.

(2) However, the court may at any time prior to its decision on the merits permit:

(A) A withdrawal of the petition;

(B) Amendments to the petition; and

(C) Amendments to the answer.

(3) The court shall examine the substance of the pleading and shall waive any irregularities or defects in form.

#### **§ 16-112-205. Hearing**

(a) Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response, promptly determine the issues, make findings of fact and conclusions of law, and either deny the petition or enter an order granting the appropriate relief.

(b) Hearings on a petition filed pursuant to this subchapter shall be open and shall be held in the court in which the conviction was entered.

(c)(1) The court may order the petitioner to be present at the hearing.

(2) If the petitioner is represented by an attorney, the attorney shall be present at any hearing.

(3) A verbatim record of any hearing shall be made and kept.

(4) Unless otherwise ordered by the court, the petitioner shall bear the burden of proving the facts alleged in the petition by a preponderance of the evidence.

(5) The court may receive evidence in the form of affidavit, deposition, or oral testimony.

(d) The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition if the issues raised in it have previously been decided by the Arkansas Court of Appeals or the Arkansas Supreme Court in the same case.

#### **§ 16-112-206. Appeals**

(a) The appealing party, within thirty (30) calendar days after the entry of the order, shall file a notice of appeal if the party wishes to appeal.

(b)(1) If the appeal is by the petitioner, the service shall be on the prosecuting attorney and the Attorney General.

(2) If the appeal is by the state, the service shall be on the petitioner or the petitioner's attorney.

(c) No fees or bond for costs shall be required for the appeal.

#### **§ 16-112-207. Appointment of counsel**

(a)(1) A person financially unable to obtain counsel who desires to pursue the remedy provided in this subchapter may apply for representation by the Arkansas Public Defender Commission or appointed private attorneys.

(2) The trial public defenders or appointed private attorneys may represent indigent persons who apply for representation under this section.

(b)(1)(A) With the approval of the court, petitioners may use the services of the State Crime Laboratory for latent fingerprinting identification, deoxyribonucleic acid (DNA) testing, and other tests which may become available through advances in technology.

(B)(i) If approved by the court, the State Crime Laboratory shall provide the requested services.

(ii) Samples shall be of sufficient quantity to allow testing by both the prosecution and the defense.

(iii) Neither the prosecution nor the defense shall consume the entire sample in testing in the absence of a court order allowing the sample to be entirely consumed in testing.

(2) Subdivision (b)(1) of this section shall not apply to any tests before trial of a matter that will be governed by relevant constitutional provisions, statutory law, or court rules.

(c) The Executive Director and the State Crime Laboratory shall give priority to claims based on factors including:

(1) The opportunity for conclusive or near conclusive proof through scientific evidence that the person is actually innocent; and

(2) A lengthy sentence of imprisonment or a death sentence.

#### **§ 16-112-208. Testing procedures**

(a)(1) A court that orders any deoxyribonucleic acid (DNA) testing under this subchapter shall direct the testing to be carried out by the State Crime Laboratory.

(2)(A) However, the court may order deoxyribonucleic acid (DNA) testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

(B) As used in this section, "qualified laboratory" means a laboratory that is accredited by the American Society of Crime Laboratory Directors or certified through the National Forensic Science Technology Center.

- (3) The court may order the person who requested any deoxyribonucleic acid (DNA) testing under this subchapter to pay for the cost of the testing if the court determines that the person has the ability to pay for the testing.
- (b) If the deoxyribonucleic acid (DNA) test results obtained under this subchapter are inconclusive, the court may order additional testing or deny further relief to the person who requested the testing.
- (c)(1) If deoxyribonucleic acid (DNA) test results obtained under this subchapter establish that the person who requested the testing was the source of the deoxyribonucleic acid (DNA) evidence, the court shall deny any relief to the person.
- (2) On motion of the state, the court shall determine if the person's assertion of actual innocence was false. If the court finds that the person's assertion of actual innocence was false, the court may:
- (A) Hold the person in contempt;
  - (B) Assess against the person the cost of any deoxyribonucleic acid (DNA) testing carried out under this subchapter;
  - (C) Forward the finding to the Board of Corrections for consideration in the awarding of meritorious good time to the person; or
  - (D) Forward the finding to the Parole Board for consideration in the granting of parole to the person.
- (d) In any prosecution of a person for perjury or other conduct resulting from a proceeding under this subchapter, upon conviction or a plea of guilty or nolo contendere the court shall sentence the person to a term of imprisonment that shall run consecutively to any other term of imprisonment the person is serving.
- (e)(1) If deoxyribonucleic acid (DNA) test results obtained under this subchapter exclude a person as the source of the deoxyribonucleic acid (DNA) evidence, the person may file a motion for a new trial or resentencing.
- (2) The court shall establish a reasonable schedule for the person to file a motion under subdivision (e)(1) of this section and for the state to respond to the motion.
- (3) The court may grant the motion of the person for a new trial or resentencing if the deoxyribonucleic acid (DNA) test results, when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, establish by compelling evidence that a new trial would result in an acquittal.
- (f) In a case in which a person is sentenced to death, any deoxyribonucleic acid (DNA) testing ordered under this subchapter shall be completed:
- (1) No later than sixty (60) days after the date on which the state responds to the motion described in [§§ 16-112-202](#) and [16-112-203](#); or

(2) No later than one hundred twenty (120) days after the date on which the deoxyribonucleic acid (DNA) testing was ordered under any post-conviction testing procedures under this subchapter.

(g)(1) The results of any deoxyribonucleic acid (DNA) testing ordered under this subchapter shall be simultaneously disclosed to the court, the person that requested the testing, and the State of Arkansas.

(2)(A) The state shall submit any test results relating to a person's deoxyribonucleic acid (DNA) to the National DNA Index System.

(B) If the deoxyribonucleic acid test (DNA) results obtained under this subchapter are inconclusive or show that the person tested was the source of the deoxyribonucleic acid (DNA) evidence, the deoxyribonucleic acid (DNA) sample of the person tested may be retained in the National DNA Index System and State DNA Data Base.

(C) If the deoxyribonucleic acid (DNA) test results obtained under this subchapter exclude the person tested as the source of the deoxyribonucleic acid (DNA) evidence but a comparison of the deoxyribonucleic acid (DNA) sample of the person tested results in a match between the person's sample and another offense, the State Crime Laboratory shall notify the appropriate agency and preserve the deoxyribonucleic acid (DNA) sample of the person tested.

(D) The State Crime Laboratory shall destroy the deoxyribonucleic acid (DNA) sample of the person tested and ensure that the information is not retained in the National DNA Index System or the State DNA Data Base if:

(i) The deoxyribonucleic acid (DNA) test results obtained under this subchapter exclude the person tested as the source of the deoxyribonucleic acid (DNA) evidence;

(ii) A comparison of the deoxyribonucleic acid (DNA) sample through a search of the data base or system does not match the person's sample and another offense; and

(iii) There is no other legal authority to retain the sample of the person tested in data base or system.

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