

VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1282

An Act to amend and reenact § 19.2-327.1 of the Code of Virginia, relating to post-conviction testing of DNA.

[S 1071]

Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-327.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-327.1. Motion by a convicted felon or person adjudicated delinquent for scientific analysis of newly discovered or previously untested scientific evidence; procedure.

A. Notwithstanding any other provision of law or rule of court, any person convicted of a felony or any person who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult may, by motion to the circuit court that entered the original conviction or the adjudication of delinquency, apply for a new scientific investigation of any human biological evidence related to the case that resulted in the felony conviction or adjudication of delinquency if: (i) the evidence was not known or available at the time the conviction or adjudication of delinquency became final in the circuit court or the evidence was not previously subjected to testing ~~because the testing procedure was not available at the Department of Forensic Science at the time the conviction or adjudication of delinquency became final in the circuit court~~; (ii) the evidence is subject to a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way; (iii) the testing is materially relevant, noncumulative, and necessary and may prove the actual innocence of the convicted person or the person adjudicated delinquent; (iv) the testing requested involves a scientific method ~~employed by the Department of Forensic Science generally accepted within the relevant scientific community~~; and (v) the person convicted or adjudicated delinquent has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available ~~at the Department of Forensic Science~~.

B. The petitioner shall assert categorically and with specificity, under oath, the facts to support the items enumerated in subsection A and (i) the crime for which the person was convicted or adjudicated delinquent, (ii) the reason or reasons the evidence was not known or tested by the time the conviction or adjudication of delinquency became final in the circuit court, and (iii) the reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the person convicted or adjudicated delinquent. Such motion shall contain all relevant allegations and facts that are known to the petitioner at the time of filing and shall enumerate and include all previous records, applications, petitions, and appeals and their dispositions.

C. The petitioner shall serve a copy of such motion upon the attorney for the Commonwealth. The Commonwealth shall file its response to the motion within 30 days of the receipt of service. The court shall, no sooner than 30 and no later than 90 days after such motion is filed, hear the motion. Motions made by a petitioner under a sentence of death shall be given priority on the docket.

D. The court shall, after a hearing on the motion, set forth its findings specifically as to each of the items enumerated in subsections A and B and either (i) dismiss the motion for failure to comply with the requirements of this section or (ii) dismiss the motion for failure to state a claim upon which relief can be granted or (iii) order that the testing be done ~~by the Department of Forensic Science based on a finding of clear and convincing evidence that the requirements of subsection A have been met~~.

E. The court shall order the tests to be performed by:

1. *A laboratory mutually selected by the Commonwealth and the applicant; or*
2. *A laboratory selected by the court that ordered the testing if the Commonwealth and the applicant are unable to agree on a laboratory.*

If the testing is conducted by the Department of Forensic Science and, the court shall prescribe in its order, pursuant to standards and guidelines established by the Department, the method of custody, transfer, and return of evidence submitted for scientific investigation sufficient to insure and protect the Commonwealth's interest in the integrity of the evidence. The results of any such testing shall be furnished simultaneously to the court, the petitioner and his attorney of record and the attorney for the Commonwealth. The Department of Forensic Science shall give testing priority to cases in which a sentence of death has been imposed. The results of any tests performed and any hearings held pursuant to this section shall become a part of the record.

If the testing is not conducted by the Department of Forensic Science, it shall be conducted by a laboratory that is accredited by an accrediting body that requires conformance to forensic-specific requirements and that is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement with a scope of accreditation that covers the testing being performed

and follows the appropriate Quality Assurance Standards issued by the Federal Bureau of Investigation.

F. Nothing in this section shall constitute grounds to delay setting an execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to clause (iii) or (iv) of § 53.1-232.1.

G. An action under this section or the performance of any attorney representing the petitioner under this section shall not form the basis for relief in any habeas corpus proceeding or any other appeal. Nothing in this section shall create any cause of action for damages against the Commonwealth or any of its political subdivisions or any officers, employees or agents of the Commonwealth or its political subdivisions.

H. In any petition filed pursuant to this chapter, the petitioner is entitled to representation by counsel subject to the provisions of Article 3 (§ 19.2-157 et seq.) of Chapter 10.