

M E M O R A N D U M

To New England Innocence Project File

From

Re Post-conviction DNA Legislation Update
Includes: Access to and preservation of DNA evidence, requirements for expungement of records after exoneration, compensation for wrongful conviction, and provisions to create Innocence Commissions to study causes of wrongful convictions.

Date July 28, 2008

Introduction

This memo summarizes and evaluates all bills—enacted and pending—since November 2006, concerning post-conviction DNA exoneration.

Since the *Analysis of the September 2006 Report of the Justice Initiative* memo was written in November 2006, nine bills concerning post-conviction DNA exoneration have been enrolled in nine different states. Eleven bills in six different states are still pending. These bills concern access to and preservation of DNA evidence, requirement for expungement of records after exoneration, compensation for wrongful conviction, and provisions to create Innocence Commissions to study causes of wrongful convictions. In Massachusetts there is no statutory mechanism for the preservation of evidence, or for convicted persons to gain access to and testing of the evidence from their case, though a bill is currently being considered in the Massachusetts House of Representatives.

Part I of this memo includes a table of all bills introduced since November 2006 (enacted, pending, and dead) concerning post-conviction DNA exoneration. Part II summarizes and analyzes bills enacted since November 2006 and determines whether these new bills change the conclusions of the “Preservation of and Access to Evidence and DNA Testing” and the “Innocence Commissions” sections of the *Analysis of the September 2006 Report of the Justice Initiative* memo. The texts of all enacted and pending bills are contained in a supplemental binder titled *Postconviction DNA/Exoneration Bills Introduced/Enacted in 2006-2008*

I. Bills introduced after *Analysis of September 2006 Report of the Justice Initiative Memo* (Nov. 13, 2006):

ST	BILL #	SPONSOR	SUMMARY	STATUS	YEAR
AL	SB127	Sanders	“This bill would allow an individual serving a term of imprisonment or awaiting execution for a capital offense to file a motion to obtain forensic DNA testing on evidence that was secured in relation to the trial which resulted in his or her conviction.”	Indefinitely postponed in house of origin	2007
AL	HB340	Hall	“Existing law does not provide for postjudgment motions for a new trial for DNA analysis and testing after a guilty verdict, judgment of not guilty by reason of mental disease or defect, or an adjudication of a juvenile as delinquent. This bill would make such provisions.”	Died in Committee	2007
AL	SB46	Sanders	“This bill would allow an individual serving a term of imprisonment or awaiting execution for a capital offense to file a motion to obtain forensic DNA testing on evidence that was secured in relation to the trial which resulted in his or her conviction.”	Indefinitely postponed in house of origin	2008
AL	SB595	Smitherman	“Existing law does not provide for postjudgment motions for a new trial for DNA analysis and testing after a guilty verdict, judgment of not guilty by reason of mental disease or defect, or an adjudication of a juvenile as delinquent. This bill would make such provisions.”	Indefinitely postponed in house of origin	2008
AK	HB325	LEDOUX, Kertula, Lynn, Gruenberg	Allows post-conviction DNA testing for persons incarcerated, provided DNA evidence exists and provided applicant shows convincing evidence that results of DNA test could establish a reasonable doubt as to the applicants guilt of the crime for which he was convicted.	Withdrawn by Sponsor	2005-2006
AZ	SB1412	Huppenthal, Allen, Gray, Johnson	“SB 1412 requires governmental agencies to retain biological evidence in a condition that is suitable for DNA testing for the duration of the convicted person’s incarceration or supervised release or for 55 years in a cold case.”	ENACTED	2008
CA	AB2387	Saldana	“This bill would require a state agency that maintains biosamples in refrigerated storage to implement an automated biosample archival and retrieval system that meets prescribed requirements, and label each biosample with a unique combination of nonhuman DNA sequences, as provided.”	In committee: Set, second hearing. Held under submission	2008

CA	AB3032	Lieber	<p>“This bill would establish within the office of the State Public Defender, the Innocence Protection Grants Program. The purpose of the program would be to investigate criminal convictions of defendants who may be factually innocent and to bring appropriate legal actions to overturn wrongful convictions.”</p> <p>“This bill would require that any right to a DNA test that may exist for a person subject to the sexually violent predator provisions, be in conformity with those provisions applicable to incarcerated persons, and would declare that it does not limit any other legal or equitable right to request DNA testing.”</p>	In committee: Set, second hearing. Held under Submission.	2008
CA	SB542	Romero	<p>Ensures that the wrongfully convicted have the same access to resources as ex-offenders. Also mandates that criminal records relating to a wrongful conviction are sealed, and would adjust the amount of compensation for wrongful conviction to reflect federal standards.</p>	ENACTED	2008
CA	AB2937	Solorio	<p>“To provide a form of restitution to a person who was wrongfully convicted and incarcerated to compensate such person and such person's family for the loss of freedom, pain and suffering.”</p>	Awaiting Committee Action	2008
CT	HB6671	Marie	<p>“To establish a procedure for the state to compensate persons determined to have been wrongfully convicted and incarcerated for a crime or crimes such persons did not commit.”</p>	Died in Committee	2007
CT	HB5933	Judiciary	<p>Requesting a task force to review and report on improving eyewitness identification and standards regarding proper identification, collection, preservation, storage, cataloguing, and organization of biological evidence.</p>	ENACTED	2008
HI	HCR133	BERTRAM, Evans, Souki	<p>The purpose of this measure is to reduce the number of repetitious and vexatious challenges to criminal convictions by establishing a time limitation for filing habeas corpus complaints and limiting successive complaints.</p>	Died in Committee	2008
HI	SB3204	Hanabusa	<p>Provides that a defendant may make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of DNA testing on evidence that was secured in relation to the trial which resulted in his or her conviction, but which was not subject to the testing which is now requested because the technology for the testing was not available at the time of trial.</p>	ENACTED (Public Act 95-0688)	2007-2008
IL	SB1023	Wilhelmi, Jones	<p>Labels destroying, altering , concealing, disguising, or otherwise tampering with evidence collected under Section 107-2.5 of the Code of Criminal Procedure of 1963 or Section 5-4-3 of the Unified Code of Corrections “obstruction of</p>	Referred to Rules Committee	2007-2008

			justice.”		
IL	HB2753	Madigan, Currie, Molaro	Amends the Code of Criminal Procedure of 1963. Makes a technical change in the Section concerning the preservation of evidence for forensic testing.	Re-referred to Rules Committee	2007-2008
KS	HB2446	Appropriations	Provides access to post conviction testing for death row inmates	Died in Committee	2007
LA	HB777	Richmond	Provides for post-conviction access to DNA material provided offender pays for testing	Died in Committee	2008
LA	HB778	Richmond	To amend and reenact the Code of Criminal Procedure concerning post-conviction relief DNA testing; to extend the time period in which to file an application for post-conviction DNA testing; to extend the time period for preservation of biological material which can be subject to DNA testing once application for DNA testing has been served	ENACTED (act 297)	2008
MA	HB1636	O’Flaherty	Relative to the use of forensic and scientific analysis in determining wrongful convictions.	Still in Committee	2007-2008
MI	HB5089	Condino	“The bill[] would extend the time period for a petition to retest DNA evidence in a felony conviction and request a new trial, expand the eligibility of convicted felons who could request the retest of DNA evidence and new trial, [and] revise the criteria used by a court to justify a new trial.”	Referred to Committee on Judiciary	2007-2008
MI	HB 6092	Condino	This bill “would add a new section to the Michigan Penal Code...to prohibit an individual from intentionally making a material false statement in a petition or supporting affidavit filed under Section 16 of Chapter X of the Code of Criminal Procedure (to retest DNA evidence and request a new trial). A violation would be a felony punishable by not more than five years of imprisonment and/or a fine of not more than \$10,000.”	Referred to Committee on Judiciary	2008
MI	HB6093	Coulouris	This bill “would amend the Code of Criminal Procedure (MCL 777.16v) to specify that making a material false statement in a petition seeking the review of DNA evidence would have a maximum term of imprisonment of five years.”	Referred to Committee on Judiciary	2008
MS	SB2844	Albritton	An act to authorize pose-conviction DNA testing upon application of a defendant	Died On Calendar	2007
MS	SB2812	Albritton	An act requiring preservation of DNA evidence	Died in Judiciary	2007

				Committee	
MS	HB620	Brown	Requires DNA testing in capital cases based on the availability of evidence Established procedures for obtaining DNA samples. Provides for post-conviction motions for DNA testing.	Died in Judiciary Committee	2007
MS	HB621	Brown	Requires DNA testing in capital cases based on the availability of evidence Established procedures for obtaining DNA samples. Provides for post-conviction motions for DNA testing.	Died in Judiciary Committee	2007
MS	HB390	Brown	An act allowing post-conviction access to and requiring preservation of DNA evidence in capital cases	Died in Judiciary Committee	2008
MS	HB389	Brown	An act to require DNA testing in capital cases based on the availability of evidence; to establish procedure for obtaining DNA samples; to provide for post-conviction motions for DNA testing for all capital death penalty cases	Died in Judiciary Committee	2008
MS	SB2619	Tollison	An act to create a task force to recommend procedures and practices to improve the preservation and testing of biological evidence	ENACTED (Chapter # 535)	2008
MO	HB584	Johnson	Requires preservation of DNA evidence from a class A, B, C, or nonclass felony with a possible sentence of at least seven years' imprisonment for as long as the individual remains incarcerated. Limits post-conviction DNA testing to those convicted of a class A, B, C, or nonclass felony with a possible prison sentence of at least seven years.	Died in Committee	2007
NE	LR214	Chambers	Bill expressing legislative support of all efforts to learn from DNA exonerations to increase the accuracy and reliability of criminal investigations, strengthen prosecutions, protect the innocent, and enhance public safety.	ENACTED	2007-2008
NY	A3687	Lentol	Provides for DNA testing, collection and record keeping; indictments by fictitious name in DNA cases; and creating the innocence research project program.	Referred to codes	2007-2008
OH	HB218	Chandler	Bill Requires that an inmate who pleaded guilty or no contest to a felony, was sentenced to a prison term or death, and is eligible to apply for postconviction DNA testing may apply for such DNA testing under the same procedures as the application for postconviction DNA testing of an eligible inmate who was convicted of a felony offense and sentenced to a prison term or death.	Referred to Criminal Justice Committee	2007-2008

PA	SR381	Greenleaf	A Resolution directing the Joint State Government Commission to establish an advisory committee to study the underlying causes of wrongful convictions and to make findings and recommendations to reduce the possibility that in the future innocent persons will be wrongfully convicted.	ENACTED	2005-2006
SC	SB429	Malloy	“Post Conviction DNA Procedures Act.” Permits access to post conviction DNA testing under certain circumstances.	Vetoed by Governor	2007-2008
TN	HB1333	Briley	“Tennessee Innocence Commission Act.” Requires commission to investigate all postconviction exonerations and pardons	Died in Committee	2007-2008
TN	SB538	Jackson	Same as above	Died in Committee	2007-2008
TX	HB681	Hochberg et al.	Bill adds forensic testing, other than certain DNA testing, to the list of items a court may order to resolve controverted, previously unresolved facts that are material to the legality of the confinement of an applicant for a writ of habeas corpus. Also sets out circumstances under which the state pays for the testing and under which the applicant pays for the testing.	ENACTED	2007
UT	HB179	Fowlke	This bill modifies the Utah Code of Criminal Procedure regarding granting an expungement for any crime that has been pardoned by the Board of Pardons and Parole. Provides that post conviction DNA tests must be made using scientifically accepted procedure. The tests will be paid through a state DNA account if the court has ordered the DNA test upon petition from the defendant, the state crime lab does not have the resources to conduct the ordered DNA test, and the defendant is incarcerated and indigent.	Defeated in Senate	2007
UT	HB356	Litvak	Exoneration and Innocence Assistance Act. Modifies provisions regarding post conviction DNA testing and creates process for post conviction claims of factual innocence. Also provides financial assistance if the petitioner is found to be factually innocent.	ENACTED	2007
UT	HB154	Litvak	This bill modifies the Utah Code of Criminal Procedure regarding granting an expungement for any crime that has been pardoned by the Board of Pardons and Parole.	Defeated in Senate	2007
UT	HB70	Fowlke	This bill modifies the Utah Code of Criminal Procedure regarding granting an expungement for any crime that has been pardoned by the Board of Pardons and Parole.	ENACTED	2008

UT	SB277	Bell	This bill amends the Post-Conviction Remedies Act. This bill establishes procedures and requirements for post-conviction actions by a person convicted of a criminal offense.	ENACTED	2008
UT	SB 16	Bell	This bill modifies provisions regarding postconviction DNA testing and creates a process for postconviction claims of factual innocence and for financial assistance if the petitioner is found to be factually innocent.	ENACTED	2008
VT	JRS033	Sears	Requesting that the attorney general, and the department of public safety, examine DNA related exonerations nationally in order to improve the accuracy and fairness of Vermont's criminal Justice System.	Died in Committee	2007-2008
VT	S0006	Sears, Campbell, Collins, Condos	Criminal procedure bill allowing inmates claiming wrongful conviction to petition for postconviction DNA testing, allows for compensation for wrongful convictions, sets up standards for preservation of evidence, and eyewitness identification and custodial interrogation study committees	ENACTED	2007-2008
VT	H0050	Flory, Marek	This bill proposes to establish innocence protection measures to protect against wrongful criminal convictions.	Died in Committee	2007-2008
WV	SB590	Kessler	Requires the biological material collected in the investigation or prosecution of a criminal case to be preserved for the duration of the defendant's incarceration resulting from said investigation or prosecution	Died in Committee	2007
WV	HB2124	Overington	Provides for post-conviction motions for DNA testing for all capital death penalty cases.	Died in Committee	2007
WV	SB308	Kessler	Requires the biological material collected in the investigation or prosecution of a criminal case to be preserved for the duration of the defendant's incarceration resulting from said investigation or prosecution	Died in Committee	2008
WV	HB4485	Webster	Requires the biological material collected in the investigation or prosecution of a criminal case to be preserved for the duration of the defendant's incarceration resulting from said investigation or prosecution	Died in Committee	2008
WY	SF0065	Judiciary	Establishes a process for filing petitions for post-conviction relief petitions, based on DNA evidence.	ENACTED	2008

II. Bills Enacted since November 2006:

1. Arizona: § 13-4221; originally SB 1412

Summary: This enacted bill requires governmental agencies to retain biological evidence in a condition suitable for DNA testing for the period of time that a person convicted of a felony sexual offense or homicide remains incarcerated for said offense or until the completion of the person's supervised release. It requires retention of biological evidence in a cold-case for 55 years. It does not include sanctions for governmental agencies for failing to conform to law (though such sanctions are included in statute § 13-4240).

Does it change conclusions in 2006 Memo?: Arizona was already included in the 2006 memo as a state which most closely resembles the "gold standard" recommended by NEIP in January 2006. Enacted House Bill 1412 brings Arizona even closer to the gold standard, which recommended that legislation should "require the state to preserve biological evidence for a reasonable period of time." Previously the state was only required to preserve evidence after a petition was filed (Ariz. Rev. Stat. § 13-4240 (H)).

2. California: § 6603; originally SB542

Summary: This bill requires that any right to DNA testing provided for incarcerated persons is extended to persons subject to violent predator provisions (under California law, prior to release from custody, a person convicted of certain crimes of a sexual nature may be referred for a court hearing to determine whether that person requires treatment in a secure facility). The bill does not limit any other legal or equitable right to request DNA testing.

Does it change conclusions in 2006 Memo?: In the 2006 memo, California is included as a state which closely resembles the "gold standard" recommended by NEIP in January 2006. This bill extends access to DNA testing, but not substantively enough to affect the conclusions in the 2006 memo.

3. Connecticut: § 08-143; originally HB5933

Summary: A wrongfully convicted person will be awarded damages on the basis of relevant factors presented to the Claims Commissioner. Relevant factors include: claims for loss of liberty and enjoyment of life; loss of earnings; loss of earning capacity; loss of familial relationships; loss of reputation; physical pain and suffering; mental pain and suffering; attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration; whether any negligence or misconduct by an officer, agent, employee or official of the state or any political subdivision of the state contributed to arrest, prosecution, conviction, or incarceration. The Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services a wrongfully convicted person may need to facilitate his reintegration into the community. The wrongfully convicted person must file within two years of either a pardon or the dismissal of the complaint.

The bill also requires the Advisory Commission on Wrongful Convictions to monitor the procedure the bill establishes for compensating wrongfully incarcerated persons, the pilot

program to electronically record interrogations of arrested persons, and eyewitness identification procedures that, when practicable, use a double-blind administration. The Commission will report its findings not later than January 7, 2009

Does it change conclusions in 2006 Memo?: Compensation laws were not addressed in the 2006 memo. With this enacted bill, Connecticut joins 24 other states plus Washington, D.C., in providing some form of compensation for the wrongfully convicted. But, as the New York Innocence Project website (www.innocenceproject.org) states, “even some of these laws don’t meet society’s moral obligation to help exonerated people recover from the injustice they suffered and the years of freedom they lost.”

The “Innocence Commissions” section of the 2006 memo states, “Connecticut’s commission, though the first to be established by statute and empowered to access police, court and prosecution records, has yet to issue a report to the joint standing committee of the General Assembly as required by statute.” In 2008, the committee still has yet to issue a report, though act § 08-143 sets January 7, 2009 as the deadline for such a report.

4. Illinois: § 95-0688; originally SB 1023

Summary: Allows a defendant claiming actual innocence to make a motion before the trial court that entered the judgment of conviction in his or her case for the performance of fingerprint, integrated ballistic identification system, or forensic DNA testing which resulted in his or her conviction and 1) was, at the time of the trial, not subject to the testing which is currently requested; or 2) was tested at the time of the trial but can be tested again using a method not scientifically available at the time that provides a reasonable likelihood of more probative results.

Does it change conclusions in 2006 memo?: In the 2006 memo, Illinois was not included on the list of states most closely resembling the “gold standard” of NEIP’s January 2006 recommendations. This bill does not change Illinois’ overall post-conviction DNA legislation substantively enough to include Illinois on the list now.

5. Louisiana: Act No. 297; originally HB 778

Summary: This bill extends the time period in which to file an application for post-conviction DNA testing to 2014. Also extends period of time for preservation of biological material which can be subject to DNA testing once the application for DNA testing has been served to 2014.

Does it change conclusions in 2006 memo?: In the 2006 memo, Louisiana was not included on the list of states most closely resembling the “gold standard” of NEIP’s January 2006 recommendations. This bill makes technical changes to the Code of Criminal Procedure, but no substantive changes, therefore the bill does not change Louisiana’s overall post-conviction DNA legislation substantively enough to include Louisiana on the list now.

6. Mississippi: Chapter Number 535; originally SB 2619

Summary: This bill creates a taskforce to recommend statewide standards regarding proper identification, collection, preservation, storage, cataloguing and organization of biological evidence; recommend training programs for law enforcement officers and other relevant employees who are charged with preserving and retrieving biological evidence; and centralize and standardize a DNA catalogue and tracking system.

Does it change conclusions in 2006 memo?: The 2006 memo includes an independent section on Innocence Commissions: which states have standing commissions and which have temporary commissions. Mississippi can now be included in the list of states that have temporary commissions (the Mississippi task force is to be dissolved on December 31, 2008 after reporting its findings no later than December 1, 2008). The Mississippi task force has not yet released a report.

Nebraska: Cannot find statute; originally LR 214

Summary: This bill reads, “Be it resolved...that the Legislature expresses support of all efforts to learn from DNA exonerations to increase the accuracy and reliability of criminal investigations, strengthen prosecutions, protect the innocent, and enhance public safety.”

Does it change conclusions in 2006 memo?: This bill is merely a bill of support of efforts to learn from DNA exonerations. Nebraska was already included in the 2006 memo as a state that comes close to achieving the “gold standard” set out by NEIP. This particular resolution makes no substantive changes to the Nebraska code nor to the conclusions in the 2006 memo.

Pennsylvania: Cannot find statute; originally SR 381

Summary: This bill resolves to establish an advisory committee made up of representatives of academia, the faith community, private and public organizations involved with criminal justice issues, and other criminal justice experts to study the underlying cause of wrongful convictions so as to develop a consensus on recommendations intended to reduce the possibility that in the future innocent persons will be wrongfully convicted. The committee is to report to the Senate with its findings no later than November 30, 2008.

Does it change conclusions in the 2006 memo?: The 2006 memo includes an independent section on Innocence Commissions: which states have standing commissions and which have temporary commissions. Pennsylvania can now be included in the list of states that have temporary commissions. The Pennsylvania advisory committee has not yet released a report.

Texas: Amends Section 3, article 11.07 and Section 2 article 64.01 and Section 3 Article 64.02 and Section 4 64.03 and Section 3 Article 11.07; originally HB 681

Summary: Amends Code of Criminal Procedure, art. 11.07, sec. 3 to allow a court to order additional forensic testing to resolve issues of material fact regarding the legality of a defendant’s confinement resulting from a felony judgment imposing a penalty other than death. The state would pay the cost of the testing, except that the defendant would pay the

cost if the defendant retained counsel to file an application for a writ of habeas corpus. The additional forensic testing would not include forensic DNA testing as provided in Code of Criminal Procedure, ch. 64. CSHB 681 also would amend Code of Criminal Procedure, Art. 64.03(c)-(d) to allow a court to order that forensic DNA testing be done by a laboratory independent of DPS when good cause had been shown. If the court ordered that the forensic DNA testing be done by a non-DPS laboratory, the state would not be liable for the cost of testing unless good cause for payment of that testing had been shown. The bill would take effect on September 1, 2007, and would apply only to writs and motions filed on or after that date.

Does it change conclusions in the 2006 memo?: This bill allows for DNA testing in independent labs thereby reducing backlogs in DPS and allowing inmates access to the most current technology and the latest scientific procedures. Texas was not included in the 2006 memo as a state that most closely comports with NEIP’s “gold standard” and though this bill does provide flexibility in where and how the testing is conducted (on of the requirements of the “gold standard”), it does not change the Texas code substantively enough to change the conclusions in the 2006 memo.

Utah:

Amends Section § 53-10-407 and Section §78-35a-301; originally HB 356

Summary: This bill provides that when a convicted person requests a DNA analysis in order to prove innocence, the test must be made using a scientifically accepted procedure and will be paid for from monies appropriated to the DNA Specimen Restricted Account for use of the Department of Corrections, if: the court has ordered the DNA test upon petition from the defendant, the state crime laboratory does not have the resources to conduct the ordered DNA test and the defendant is incarcerated and indigent.

Amends Section § 77-18-11 and Section § 77-18-12; originally HB 70

Summary: This bill provides that a person who has been granted a pardon by the Board of Pardons and Parole for a criminal offense may also petition for the expungement of the record of the pardoned offense; and provides that prior offenses that have been pardoned may not be considered regarding eligibility for an expungement.

Amends Section § 78B-9-101, Section § 78B-9-102, Section § 78B-9-104, Section § 78B-9-105, Section § 78B-9-106, Section § 78B-9-107, Section § 78B-9-108, Section § 78B-9-109, Section § 78B-9-202; originally SB 277

Summary: This bill establishes procedures and requirement for post-conviction actions by a person convicted of a criminal offense. Chapter is to be known as the “Post-Conviction Remedies Act.”

Amends Section § 78-35a-107, Section § 78-35a-401, Section § 78-35a-303; Enacts Section § 78-35a-300.5, Section § 78-35a-401, Section § 78-35a-402, Section § 78-35a-403, Section § 78-35a-404, Section § 78-35a-405

Summary: This bill tolls the statute of limitations during a postconviction petition for DNA testing for exoneration or petition claiming factual innocence (one year after cause of action has accrued); changes the current reference term “actually innocent” to “factually innocent” regarding postconviction DNA testing; establishes a process for a postconviction petition and hearing to determine the factual innocence regarding a felony conviction, including: defining factual innocence, grounds for filing a petition, grounds for presentation of evidence that may be considered by the court (including newly discovered evidence), right of the victims to attend the hearing, and appointment of pro bono counsel; provides that a petitioner who is convicted of a felony and is imprisoned, and is then found to be factually innocent is entitled to financial assistance from the state for the period of imprisonment; provides that the financial assistance amount shall be the monetary equivalent of the average annual wage earner in Utah for each year of imprisonment for a maximum of 15 years imprisonment; and provides that a petitioner found to be factually innocent shall receive two years’ financial assistance in a lump sum, and the balance shall be paid out quarterly to the person from the Commission on Criminal and Juvenile Justice beginning no later than one year after the legislative appropriation of the funds is made and ending no later than ten years after the appropriation is made.

Do these bills change conclusions in the 2006 memo?: Utah was not included in the 2006 memo as one of the states most closely comports with the “gold standard” set out by NEIP. After the enactment of these bills, Utah *should be included* in that list. Utah now has legislation that (1) includes a reasonable standard of proof at the testing stage; (2) does not set an absolute deadline when DNA access will expire, (3) allows convicted persons to appeal from orders denying DNA testing, (4) mandates full, fair, and prompt proceedings once the DNA testing motion has been filed, and (5) focuses on currently available DNA technology, not its ‘availability’ at the time of trial. Utah also provides automatic compensation for wrongful conviction and automatic expungement of criminal records if convicted person is found factually innocent.

Vermont: § 5561; originally SB 6

Summary: Criminal procedure bill allowing inmates claiming wrongful conviction to petition for postconviction DNA testing. Also allows for compensation for wrongful convictions, sets up standards for preservation of evidence, and eyewitness identification and custodial interrogation study committees.

Does it change the conclusions in the 2006 memo?: Vermont was not included in the 2006 memo as one of the states most closely comports with the “gold standard” set out by NEIP. While this bill takes Vermont much close to the “gold standard,” Vermont is still missing several key requirements such as “no unfunded mandates.”

Wyoming: W.S. § 7-12-302 through 7-12-316; originally SF 65

Summary: Creates a post conviction DNA testing act, establishes procedures for post-conviction motions for DNA testing, authorizes new trials as specified, prohibits waiver of rights as specified, limits appeals of court decisions as specified, provides a right to counsel for motions, authorizes legal representation for needy persons, providing for costs, authorizes

consensual DNA testing, requires victim notification, requires a report to the legislature, and amends requirements for retention of evidence.

Does it change the conclusions in the 2006 memo?: Wyoming was not included in the 2006 memo as one of the states most closely comporting with the “gold standard” set out by NEIP. After the enactment of this bill, Wyoming *should be included* in that list. This bill comports with many of the key requirements such as (1) reasonable standard of proof at the testing stage, (2) allows access to DNA testing wherever it can establish innocence, including cases where the defendant pled guilty (though only if defendant pled guilty *before* January 1, 2000), (3) requires the state to preserve biological evidence for a reasonable period of time, (4) requires state officials to account for evidence in their custody. The bill also provides for automatic expungement of criminal record if the convicted person is found to be factually innocent, and also provides for monetary compensation for years the wrongfully convicted person spent in jail. Some requirements are notably absent such as allowing the convicted person to appeal from orders denying DNA testing and providing the money to back up the initiatives Wyoming creates.

This bill also amends the Innocence Commission section of the 2006 memo to include Wyoming. The commissions have not yet released any reports.