

Clock ticks on inmates chance to clear names - Lawmakers may extend law that lets the convicted dig up DNA evidence

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By Tony Manolatos / The Detroit News
March 20, 2004

Ronald Kramer swears he's not guilty. Never mind that he has now served 14 years in prison, convicted of killing a friend by stabbing her 48 times.

"I'm innocent. I've said that since day one. But nobody ends up believing me," Kramer said recently from Detroit's Ryan Correctional Facility, where he's spent the last 14 years of his life.

Kramer, a former Detroit resident, is one of at least 140 Michigan prisoners who are pinning their hopes for freedom on a move to extend a state law to give their lawyers more time to dig up DNA evidence that may exonerate them. The state House passed the three-year extension this week, and the Senate is expected to consider it soon.

Fewer than a dozen cases have been reopened under the law since it was created in 2001, and only one prisoner has been freed -- former Clinton Township resident Ken Wyniemko. Yet without the law, which is set to expire at the end of the year, just about any chance an inmate would have at overturning a conviction with DNA evidence would be lost.

Kramer is among the prisoners working to convince police, coroners and hospitals to dig through evidence rooms -- a tedious process that can take years -- in search of clothing, bedding, rape kits, blood-stained carpet and anything else that can be tested for a person's DNA.

In most cases, the evidence is missing, lawyers and inmates say. But requests for new searches are made weekly, which is why the calls for more time are growing louder.

The Macomb County Bar Association and the Lansing-based Innocence Project, which represents 140 Michigan inmates trying to track down DNA evidence, is fervently trying to extend the cutoff date. They say there should be no statute of limitations on innocence. Prosecutors say many such cases are frivolous, further traumatizing victims, and the petition process is too broad.

In the middle of the debate are the prisoners, who insist DNA evidence would prove what they've said all along: they're innocent. They're already fighting for something that's rarely within reach, and now time is an issue.

"I just always thought the government was supposed to be looking out for the innocent, but it doesn't seem that way," Kramer said.

His case is among the claims the Innocence Project is pursuing. Wyniemko referred Kramer to the law school clinic, a group of law students and professors at the Thomas M. Cooley Law School who uses DNA evidence to try and free inmates it believes were wrongfully convicted.

Wyniemko -- the 129th person of 158 freed nationwide with DNA evidence since 1995 -- wrote a letter from his cell that convinced the Innocence Project to take a look at his case.

Missing evidence

Kramer, who has exhausted all of his appeals, was convicted in 1985 of second degree murder and is serving 60 to 90 years in prison. He says he would be freed if not for missing evidence.

"The coroner's office sent me a letter saying they sent blood and skin samples from underneath the victim's fingernails to the Detroit Police crime lab, but nobody knows where those samples are," said Kramer, 41, a former Detroit scrap worker. "I had my mother request it, and the police said they can't find it."

Norman Fell, co-chairman of the Innocence Project and professor of law at Cooley, says post-conviction DNA petitions have been filed in circuit courts on behalf of eight Michigan inmates, including Wyniemko.

While DNA evidence in Wyniemko's case cleared him, it was inconclusive in three of the other cases. In the other four, the DNA confirmed the prisoners were guilty.

"I don't think we can finish a good number of the active cases we have before the statute sunsets, so these people would be out of luck," Fell said. **Jacqueline Shelton's husband is among the prisoners who might not have a chance to request DNA testing. If David Shelton's last court appeal is denied, his wife said he would ask for tests of pubic hair left on the woman he was convicted of raping. The 38-year-old has served 12 years of a 40- to 60-year sentence.**

"They can't just let my husband die in prison," said Jacqueline Shelton of Oak Park. "He shouldn't be in prison."

Some 'don't belong there'

Hundreds of cases sent to the Innocence Project are tossed out because they don't meet statutory requirements, Fell said. Defendants who plead guilty, for example, can't request a new trial under the law.

But the biggest obstacle facing prisoners is evidence, or a lack thereof, Fell said. Many times, police no longer have evidence from crime scenes that were investigated years ago. But a check with the county coroner or state police crime labs might turn up the evidence.

All this digging takes time.

"Just to determine if it's a DNA case -- if biological evidence was left at the scene -- could take a year, and it could take another year to locate that evidence," Fell said. Under the statute, law enforcement agencies are required to hold onto evidence from cases decided prior to 2001, as long as the defendant is behind bars. Prior to the statute, there was no requirement governing evidence preservation among Michigan's law enforcement departments, meaning material that could be tested for DNA was lost or destroyed in numerous cases, Fell said.

If the statute dies, so would the evidence-preservation provision, meaning proof that's already difficult to find could be tossed out with the trash. That possibility fuels advocates like Fell.

"There's a good number of people in prison who don't belong there," he said. .

There is a separate post-conviction process that allows inmates to request a new trial, but only if newly discovered exculpatory evidence is located in their case.

"It's a very limited application, much more restrictive than the one we're trying to save," Fell said.

Michigan pays testing costs

More than 35 states have passed laws that allow post-conviction DNA tests, but eligibility standards vary, said Joshua Marquis, co-chairman of the National District Attorneys Association's capital litigation committee in Alexandria, Va.

Marquis, district attorney in Astoria, Ore., is against broad statutes such as Michigan's. He believes prisoners should pay for their own DNA testing. In Michigan, the state pays for the testing.

To Marquis, this means many inmates with no real cases can claim innocence.

"You have to draw a line somewhere, otherwise you will literally litigate these cases forever," Marquis said, noting the victims in these cases usually have already gone through several trials. "There has to be some degree of finality for the victims."

Marquis said Michigan and other states should boil down post-conviction DNA laws, excluding all requests that wouldn't definitively prove an inmate's innocence.

Rep. Tonya Schuitmaker, R-Lawton, is sponsoring House Bill 4413, which calls for extending Michigan's current statute until 2009.

"When this bill was originally approved, nobody really knew how long it would take to gather this information," Schuitmaker said. Fell of the Innocence Project says the

Prosecuting Attorneys Association of Michigan isn't planning to challenge the bill.

Oakland County Prosecutor David Gorcyca is vice president of the association.

"It's unlikely we would oppose that kind of legislation," Gorcyca said. "It benefits the criminal justice system, because 9 times out of 10 it further inculpates rather than exonerates the defendant."

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Article 3/11/2005