

ASSEMBLY BILL NO. 233—ASSEMBLYWOMAN FLORES

MARCH 11, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing postconviction genetic marker analysis. (BDR 14-1000)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to genetic marker analysis; authorizing the appeal of an order dismissing a petition for genetic marker analysis; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes a person who has been convicted of a category A or B  
2 felony, and who is currently under imprisonment for that conviction, to file a  
3 petition requesting genetic marker analysis of certain evidence within the  
4 possession or custody of the State. (NRS 176.0918) This bill authorizes such a  
5 person to file an appeal of an order dismissing such a petition for genetic marker  
6 analysis.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 176.0918 is hereby amended to read as  
2 follows:  
3 176.0918 1. A person convicted of a category A or B felony  
4 who is under sentence of imprisonment for that conviction and who  
5 otherwise meets the requirements of this section may file a  
6 postconviction petition requesting a genetic marker analysis of  
7 evidence within the possession or custody of the State which may  
8 contain genetic marker information relating to the investigation or  
9 prosecution that resulted in the judgment of conviction. If the case  
10 involves a sentence of death, the petition must include, without



1 limitation, the date scheduled for the execution, if it has been  
2 scheduled.

3 2. Such a petition must be filed with the clerk of the district  
4 court for the county in which the petitioner was convicted on a form  
5 prescribed by the Department of Corrections. A copy of the petition  
6 must be served by registered mail upon:

7 (a) The Attorney General; and

8 (b) The district attorney in the county in which the petitioner  
9 was convicted.

10 3. A petition filed pursuant to this section must be  
11 accompanied by a declaration under penalty of perjury attesting that  
12 the information contained in the petition does not contain any  
13 material misrepresentation of fact and that the petitioner has a good  
14 faith basis relying on particular facts for the request. The petition  
15 must include, without limitation:

16 (a) Information identifying specific evidence either known or  
17 believed to be in the possession or custody of the State that can be  
18 subject to genetic marker analysis;

19 (b) The rationale for why a reasonable possibility exists that the  
20 petitioner would not have been prosecuted or convicted if  
21 exculpatory results had been obtained through a genetic marker  
22 analysis of the evidence identified in paragraph (a);

23 (c) An identification of the type of genetic marker analysis the  
24 petitioner is requesting to be conducted on the evidence identified in  
25 paragraph (a);

26 (d) If applicable, the results of all prior genetic marker analysis  
27 performed on evidence in the trial which resulted in the petitioner's  
28 conviction; and

29 (e) A statement that the type of genetic marker analysis the  
30 petitioner is requesting was not available at the time of trial or, if it  
31 was available, that the failure to request genetic marker analysis  
32 before the petitioner was convicted was not a result of a strategic or  
33 tactical decision as part of the representation of the petitioner at the  
34 trial.

35 4. If a petition is filed pursuant to this section, the court may:

36 (a) ~~Dismiss~~ *Enter an order dismissing* the petition without a  
37 hearing if the court determines, based on the information contained  
38 in the petition, that the petitioner does not meet the requirements set  
39 forth in this section;

40 (b) After determining whether the petitioner is indigent pursuant  
41 to NRS 171.188 and whether counsel was appointed in the case  
42 which resulted in the conviction, appoint counsel for the limited  
43 purpose of reviewing, supplementing and presenting the petition to  
44 the court; or



1 (c) Schedule a hearing on the petition. If the court schedules a  
2 hearing on the petition, the court shall determine which person or  
3 agency has possession or custody of the evidence and shall  
4 immediately issue an order requiring, during the pendency of the  
5 proceeding, each person or agency in possession or custody of the  
6 evidence to:

7 (1) Preserve all evidence within the possession or custody of  
8 the person or agency that may be subjected to genetic marker  
9 analysis pursuant to this section;

10 (2) Within 90 days, prepare an inventory of all evidence  
11 relevant to the claims in the petition within the possession or  
12 custody of the person or agency that may be subjected to genetic  
13 marker analysis pursuant to this section; and

14 (3) Within 90 days, submit a copy of the inventory to the  
15 petitioner, the prosecuting attorney and the court.

16 5. Within 90 days after the inventory of all evidence is  
17 prepared pursuant to subsection 4, the prosecuting attorney may file  
18 a written response to the petition with the court.

19 6. If the court holds a hearing on a petition filed pursuant to  
20 this section, the hearing must be presided over by the judge who  
21 conducted the trial that resulted in the conviction of the petitioner,  
22 unless that judge is unavailable. Any evidence presented at the  
23 hearing by affidavit must be served on the opposing party at least 15  
24 days before the hearing.

25 7. The court shall order a genetic marker analysis, after  
26 considering the information contained in the petition pursuant to  
27 subsection 3 and any other evidence, if the court finds that:

28 (a) A reasonable possibility exists that the petitioner would not  
29 have been prosecuted or convicted if exculpatory results had been  
30 obtained through a genetic marker analysis of the evidence  
31 identified in the petition;

32 (b) The evidence to be analyzed exists; and

33 (c) Except as otherwise provided in subsection 8, the evidence  
34 was not previously subjected to a genetic marker analysis.

35 8. If the evidence was previously subjected to a genetic marker  
36 analysis, the court shall order a genetic marker analysis pursuant to  
37 subsection 7 if the court finds that:

38 (a) The result of the previous analysis was inconclusive;

39 (b) The evidence was not subjected to the type of analysis that is  
40 now requested and the requested analysis may resolve an issue not  
41 resolved by the previous analysis; or

42 (c) The requested analysis would provide results that are  
43 significantly more accurate and probative of the identity of the  
44 perpetrator than the previous analysis.



1 9. If the court orders a genetic marker analysis pursuant to  
2 subsection 7 or 8, the court shall:

3 (a) Order the analysis to be conducted promptly under  
4 reasonable conditions designed to protect the interest of the State  
5 and the petitioner in the integrity of the evidence and the analysis  
6 process.

7 (b) Select a forensic laboratory to conduct or oversee the  
8 analysis. The forensic laboratory selected by the court must:

9 (1) Be operated by this state or one of its political  
10 subdivisions, when possible; and

11 (2) Satisfy the standards for quality assurance that are  
12 established for forensic laboratories by the Federal Bureau of  
13 Investigation.

14 (c) Order the forensic laboratory selected pursuant to paragraph  
15 (b) to perform a genetic marker analysis of evidence. The analysis to  
16 be performed and evidence to be analyzed must:

17 (1) Be specified in the order; and

18 (2) Include such analysis, testing and comparison of genetic  
19 marker information contained in the evidence and the genetic  
20 marker information of the petitioner as the court determines  
21 appropriate under the circumstances.

22 (d) Order the production of any reports that are prepared by a  
23 forensic laboratory in connection with the analysis and any data and  
24 notes upon which the report is based.

25 (e) Order the preservation of evidence used in a genetic marker  
26 analysis performed pursuant to this section for purposes of a  
27 subsequent proceeding or analysis, if any.

28 (f) Order the results of the genetic marker analysis performed  
29 pursuant to this section to be sent to the State Board of Parole  
30 Commissioners if the results of the genetic marker analysis are not  
31 favorable to the petitioner.

32 10. If the results of a genetic marker analysis performed  
33 pursuant to this section are favorable to the petitioner:

34 (a) The petitioner may bring a motion for a new trial based on  
35 the ground of newly discovered evidence pursuant to NRS 176.515;  
36 and

37 (b) The restriction on the time for filing the motion set forth in  
38 subsection 3 of NRS 176.515 is not applicable.

39 11. The court shall ~~dismiss~~ *enter an order dismissing* a  
40 petition filed pursuant to this section if:

41 (a) The requirements for ordering a genetic marker analysis  
42 pursuant to this section are not satisfied; or

43 (b) The results of a genetic marker analysis performed pursuant  
44 to this section are not favorable to the petitioner.



1 12. *If the court enters an order dismissing a petition pursuant*  
2 *to this section, the person aggrieved by the order may appeal to the*  
3 *Supreme Court within 30 days after the notice of the entry of the*  
4 *order by filing a notice of appeal with the clerk of the district*  
5 *court.*

6 13. For the purposes of a genetic marker analysis pursuant to  
7 this section, a person who files a petition pursuant to this section  
8 shall be deemed to consent to the:

9 (a) Submission of a biological specimen by the petitioner to  
10 determine genetic marker information; and

11 (b) Release and use of genetic marker information concerning  
12 the petitioner.

13 ~~H3-1~~ 14. The petitioner shall pay the cost of a genetic marker  
14 analysis performed pursuant to this section, unless the petitioner is  
15 incarcerated at the time the petitioner files the petition, found to be  
16 indigent pursuant to NRS 171.188 and the results of the genetic  
17 marker analysis are favorable to the petitioner. If the petitioner is  
18 not required to pay the cost of the analysis pursuant to this  
19 subsection, the expense of an analysis ordered pursuant to this  
20 section is a charge against the Department of Corrections and must  
21 be paid upon approval by the Board of State Prison Commissioners  
22 as other claims against the State are paid.

23 ~~H4-1~~ 15. The remedy provided by this section is in addition to,  
24 is not a substitute for and is not exclusive of any other remedy, right  
25 of action or proceeding available to a person convicted of a crime.

26 ~~H5-1~~ 16. If a petitioner files a petition pursuant to this section,  
27 the court schedules a hearing on the petition and a victim of the  
28 crime for which the petitioner was convicted has requested notice  
29 pursuant to NRS 178.5698, the district attorney in the county in  
30 which the petitioner was convicted shall provide to the victim notice  
31 of:

32 (a) The fact that the petitioner filed a petition pursuant to this  
33 section;

34 (b) The time and place of the hearing scheduled by the court as a  
35 result of the petition; and

36 (c) The outcome of any hearing on the petition.

