

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 a person convicted of any felony to file a petition requesting genetic marker analysis; authorizing the appeal of an order granting or 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 a person
5 convicted of any felony, regardless of whether the person is under such
6 imprisonment, to: (1) file a petition requesting genetic marker analysis of certain
7 evidence within the possession or custody of the State; and (2) file an appeal of an
8 order dismissing such a petition for genetic marker analysis. This bill further
9 authorizes the State to appeal an order granting such a petition.

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~~
5 who 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



* A B 2 3 3 R 1 *

1 contain genetic marker information relating to the investigation or
2 prosecution that resulted in the judgment of conviction. If the case
3 involves a sentence of death, the petition must include, without
4 limitation, the date scheduled for the execution, if it has been
5 scheduled.

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

10 (a) The Attorney General; and

11 (b) The district attorney in the county in which the petitioner
12 was convicted.

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

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

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

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

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

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

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

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

43 (b) After determining whether the petitioner is indigent pursuant
44 to NRS 171.188 and whether counsel was appointed in the case
45 which resulted in the conviction, appoint counsel for the limited



1 purpose of reviewing, supplementing and presenting the petition to
2 the court; or

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

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

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

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

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

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

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

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

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

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

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

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

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



1 (c) The requested analysis would provide results that are
2 significantly more accurate and probative of the identity of the
3 perpetrator than the previous analysis.

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

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

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

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

14 (2) Satisfy the standards for quality assurance that are
15 established for forensic laboratories by the Federal Bureau of
16 Investigation.

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

20 (1) Be specified in the order; and

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

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

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

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

35 10. *If the court orders a genetic marker analysis pursuant to*
36 *subsection 7 or 8, the State may appeal to the Supreme Court*
37 *within 30 days after the notice of the entry of the order by filing a*
38 *notice of appeal with the clerk of the district court.*

39 11. If the results of a genetic marker analysis performed
40 pursuant to this section are favorable to the petitioner:

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

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



1 ~~111~~ 12. The court shall ~~dismiss~~ *enter an order dismissing* a
2 petition filed pursuant to this section if:

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

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

7 ~~112~~ 13. *If the court enters an order dismissing a petition*
8 *pursuant to this section, the person aggrieved by the order may*
9 *appeal to the Supreme Court within 30 days after the notice of the*
10 *entry of the order by filing a notice of appeal with the clerk of the*
11 *district court.*

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

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

17 (b) Release and use of genetic marker information concerning
18 the petitioner.

19 ~~113~~ 15. The petitioner shall pay the cost of a genetic marker
20 analysis performed pursuant to this section, unless the petitioner is
21 incarcerated at the time the petitioner files the petition, found to be
22 indigent pursuant to NRS 171.188 and the results of the genetic
23 marker analysis are favorable to the petitioner. If the petitioner is
24 not required to pay the cost of the analysis pursuant to this
25 subsection, the expense of an analysis ordered pursuant to this
26 section is a charge against the Department of Corrections and must
27 be paid upon approval by the Board of State Prison Commissioners
28 as other claims against the State are paid.

29 ~~114~~ 16. The remedy provided by this section is in addition to,
30 is not a substitute for and is not exclusive of any other remedy, right
31 of action or proceeding available to a person convicted of a crime.

32 ~~115~~ 17. If a petitioner files a petition pursuant to this section,
33 the court schedules a hearing on the petition and a victim of the
34 crime for which the petitioner was convicted has requested notice
35 pursuant to NRS 178.5698, the district attorney in the county in
36 which the petitioner was convicted shall provide to the victim notice
37 of:

38 (a) The fact that the petitioner filed a petition pursuant to this
39 section;

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

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

