
ASSEMBLY BILL NO. 16—COMMITTEE ON JUDICIARY

(ON BEHALF OF LEGISLATIVE COMMITTEE TO STUDY
DEATH PENALTY AND RELATED DNA TESTING
(ACR 3 OF THE 17TH SPECIAL SESSION))

PREFILED JANUARY 27, 2003

Referred to Committee on Judiciary

SUMMARY—Provides for genetic marker analysis of certain evidence related to conviction of certain offenders sentenced to death. (BDR 14-200)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Contains Appropriation not included in Executive Budget.

~

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

AN ACT relating to crimes; providing for genetic marker analysis of certain evidence relating to the conviction of certain offenders who have been sentenced to death; providing for a stay of execution pending the results of the analysis; requiring a court to arrest judgment if such an analysis is favorable to the petitioner; making an appropriation; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 176 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.
3 **Sec. 2. 1.** *A person convicted of a crime and under*
4 *sentence of death who meets the requirements of this section may*
5 *file a postconviction petition requesting a genetic marker analysis*
6 *of evidence within the possession or custody of the State which*
7 *may contain genetic marker information relating to the*
8 *investigation or prosecution that resulted in the judgment of*
9 *conviction and sentence of death. The petition must include,*



* A B 1 6 *

- 1 *without limitation, the date scheduled for the execution, if it has*
2 *been 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*
5 *form prescribed by the Department of Corrections. A copy of the*
6 *petition 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. *If a petition is filed pursuant to this section, the court shall*
11 *immediately issue an order requiring, during the pendency of the*
12 *proceeding, the prosecuting attorney to preserve all evidence*
13 *within the possession or custody of the State that may be subjected*
14 *to genetic marker analysis pursuant to this section.*
- 15 4. *Within 30 days after receiving notice of a petition pursuant*
16 *to this section, the prosecuting attorney:*
- 17 (a) *Shall prepare an inventory of the evidence within the*
18 *possession or custody of the State that may be subjected to analysis*
19 *pursuant to this section;*
20 (b) *Shall submit a copy of the inventory to the petitioner and*
21 *the court; and*
22 (c) *May file a written response to the petition with the court.*
- 23 5. *The court, in its sole discretion, may order a hearing on*
24 *the petition.*
- 25 6. *The court shall order a genetic marker analysis if the court*
26 *finds that:*
- 27 (a) *A reasonable probability exists that the petitioner would*
28 *not have been prosecuted or convicted if exculpatory results had*
29 *been obtained through a genetic marker analysis of the evidence*
30 *identified in the petition;*
31 (b) *The evidence to be analyzed exists and is in a condition*
32 *that allows genetic marker analysis to be conducted as requested*
33 *in the petition; and*
34 (c) *The evidence was not previously subjected to:*
35 (1) *A genetic marker analysis involving the petitioner; or*
36 (2) *The method of analysis requested in the petition, and*
37 *the method of additional analysis may resolve an issue not*
38 *resolved by a previous analysis.*
- 39 7. *If the court orders a genetic marker analysis pursuant to*
40 *subsection 6, the court shall:*
- 41 (a) *Order the analysis to be conducted promptly under*
42 *reasonable conditions designed to protect the interest of the State*
43 *in the integrity of the evidence and the analysis process.*



- 1 ***(b) Select a forensic laboratory to conduct or oversee the***
2 ***analysis. The forensic laboratory selected by the court must:***
3 ***(1) Be operated by this state or one of its political***
4 ***subdivisions; and***
5 ***(2) Satisfy or exceed the standards for quality assurance***
6 ***that are established by the Federal Bureau of Investigation for***
7 ***participation in CODIS. As used in this subparagraph, "CODIS"***
8 ***has the meaning ascribed to it in NRS 176.0911.***
9 ***(c) Order the forensic laboratory selected pursuant to***
10 ***paragraph (b) to perform a genetic marker analysis of evidence.***
11 ***The analysis to be performed and evidence to be analyzed must:***
12 ***(1) Be specified in the order; and***
13 ***(2) Include such analysis, testing and comparison of***
14 ***genetic marker information contained in the evidence and the***
15 ***genetic marker information of the petitioner as the court***
16 ***determines appropriate under the circumstances.***
17 ***(d) Order the production of any reports that are prepared by a***
18 ***forensic laboratory in connection with the analysis and any data***
19 ***and notes upon which the report is based.***
20 ***(e) Order the preservation of evidence used in a genetic***
21 ***marker analysis performed pursuant to this section for purposes of***
22 ***a subsequent proceeding or analysis, if any.***
23 ***8. If the results of a genetic marker analysis performed***
24 ***pursuant to this section are favorable to the petitioner, the court***
25 ***shall arrest judgment as provided in NRS 176.525.***
26 ***9. The court shall dismiss a petition filed pursuant to this***
27 ***section if:***
28 ***(a) The requirements for ordering a genetic marker analysis***
29 ***pursuant to this section are not satisfied; or***
30 ***(b) The results of a genetic marker analysis performed***
31 ***pursuant to this section are not favorable to the petitioner.***
32 ***10. An order of a court granting or dismissing a petition***
33 ***pursuant to this section is final and not subject to judicial review.***
34 ***11. For the purposes of a genetic marker analysis pursuant to***
35 ***this section, a person under sentence of death who files a petition***
36 ***pursuant to this section shall be deemed to consent to the:***
37 ***(a) Extraction of a specimen, including, without limitation, a***
38 ***sample of blood, from him to determine his genetic marker***
39 ***information; and***
40 ***(b) Release and use of genetic marker information concerning***
41 ***the petitioner.***



1 12. *The expense of an analysis ordered pursuant to this*
2 *section is a charge against the Department of Corrections and*
3 *must be paid upon approval by the Board of State Prison*
4 *Commissioners as other claims against the State are paid.*

5 **Sec. 3.** 1. *After a judge grants a petition requesting a*
6 *genetic marker analysis pursuant to section 2 of this act, if a judge*
7 *determines that the genetic marker analysis cannot be completed*
8 *before the date of the execution of the petitioner, the judge shall*
9 *stay the execution of the judgment of death pending the results of*
10 *the analysis.*

11 2. *If the results of an analysis ordered and conducted*
12 *pursuant to section 2 of this act are not favorable to the petitioner:*

13 (a) *Except as otherwise provided in paragraph (b), the Director*
14 *of the Department of Corrections shall, in due course, execute the*
15 *judgment of death.*

16 (b) *If the judgment of death has been stayed pursuant to*
17 *subsection 1, the judge shall cause a certified copy of his order*
18 *staying the execution of the judgment and a certified copy of the*
19 *report of genetic marker analysis that indicates results which are*
20 *not favorable to the petitioner to be immediately forwarded by the*
21 *clerk of the court to the district attorney. Upon receipt, the district*
22 *attorney shall pursue the issuance of a new warrant of execution*
23 *of the judgment of death in the manner provided in NRS 176.495.*

24 **Sec. 4.** NRS 176.525 is hereby amended to read as follows:

25 176.525 The court shall arrest judgment if the indictment,
26 information or complaint does not charge an offense , ~~for~~ if the
27 court was without jurisdiction of the offense charged ~~[-The]~~ *or if*
28 *the results of a genetic marker analysis performed pursuant to*
29 *section 2 of this act are favorable to the petitioner. Except when*
30 *the motion is based upon the results of a genetic marker analysis*
31 *performed pursuant to section 2 of this act, the* motion in arrest of
32 judgment ~~shall~~ *must* be made within 7 days after determination of
33 guilt or within such further time as the court may fix during the
34 7-day period.

35 **Sec. 5.** 1. There is hereby appropriated from the State
36 General Fund to the Department of Corrections the sum of \$6,250
37 for the expense of genetic marker analyses performed pursuant to
38 section 2 of this act.

39 2. Any remaining balance of the appropriation made by
40 subsection 1 must not be committed for expenditure after June 30,
41 2005, and reverts to the State General Fund as soon as all payments
42 of money committed have been made.



1 **Sec. 6.** The Department of Corrections, in consultation with
2 the Attorney General, shall, on or before August 1, 2003:

3 1. Prescribe the form for a petition requesting the genetic
4 marker analysis of evidence pursuant to section 2 of this act; and

5 2. Provide a copy of the form and a copy of the provisions of
6 section 2 of this act to each person in the custody of the Department
7 who is under a sentence of death.

8 **Sec. 7.** This act becomes effective upon passage and approval.

Ⓢ

