

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.

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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 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; 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,*



- 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 all the evidence within the*
18 *possession or custody of the State, an investigating agency and the*
19 *court that may be subjected to analysis 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 shall hold a hearing on a petition filed pursuant*
24 *to this section.*
- 25 6. *The court shall order a genetic marker analysis if the court*
26 *finds that:*
- 27 (a) *A reasonable possibility exists that the petitioner would not*
28 *have been prosecuted or convicted if exculpatory results had been*
29 *obtained through a genetic marker analysis of the evidence*
30 *identified in the petition;*
31 (b) *The evidence to be analyzed exists; and*
32 (c) *The evidence was not previously subjected to:*
33 (1) *A genetic marker analysis involving the petitioner; or*
34 (2) *The method of analysis requested in the petition, and*
35 *the method of additional analysis may resolve an issue not*
36 *resolved by a previous analysis.*
- 37 7. *If the court orders a genetic marker analysis pursuant to*
38 *subsection 6, the court shall:*
- 39 (a) *Order the analysis to be conducted promptly under*
40 *reasonable conditions designed to protect the interest of the State*
41 *in the integrity of the evidence and the analysis process.*
42 (b) *Select a forensic laboratory to conduct or oversee the*
43 *analysis. The forensic laboratory selected by the court must:*
44 (1) *Be operated by this state or one of its political*
45 *subdivisions, when possible; and*



1 (2) Satisfy the standards for quality assurance that are
2 established for forensic laboratories by the Federal Bureau of
3 Investigation.
4 (c) Order the forensic laboratory selected pursuant to
5 paragraph (b) to perform a genetic marker analysis of evidence.
6 The analysis to be performed and evidence to be analyzed must:
7 (1) Be specified in the order; and
8 (2) Include such analysis, testing and comparison of
9 genetic marker information contained in the evidence and the
10 genetic marker information of the petitioner as the court
11 determines appropriate under the circumstances.
12 (d) Order the production of any reports that are prepared by a
13 forensic laboratory in connection with the analysis and any data
14 and notes upon which the report is based.
15 (e) Order the preservation of evidence used in a genetic
16 marker analysis performed pursuant to this section for purposes of
17 a subsequent proceeding or analysis, if any.
18 8. If the results of a genetic marker analysis performed
19 pursuant to this section are favorable to the petitioner, the court
20 shall arrest judgment as provided in NRS 176.525.
21 9. The court shall dismiss a petition filed pursuant to this
22 section if:
23 (a) The requirements for ordering a genetic marker analysis
24 pursuant to this section are not satisfied; or
25 (b) The results of a genetic marker analysis performed
26 pursuant to this section are not favorable to the petitioner.
27 10. An order of a court granting or dismissing a petition
28 pursuant to this section is final and not subject to judicial review.
29 11. For the purposes of a genetic marker analysis pursuant to
30 this section, a person under sentence of death who files a petition
31 pursuant to this section shall be deemed to consent to the:
32 (a) Submission of a biological specimen by him to determine
33 his genetic marker information; and
34 (b) Release and use of genetic marker information concerning
35 the petitioner.
36 12. The expense of an analysis ordered pursuant to this
37 section is a charge against the Department of Corrections and
38 must be paid upon approval by the Board of State Prison
39 Commissioners as other claims against the State are paid.
40 13. The remedy provided by this section is in addition to, is
41 not a substitute for and is not exclusive of any other remedy, right
42 of action or proceeding available to a person convicted of a crime
43 and under sentence of death.
44 **Sec. 3. 1.** After a judge grants a petition requesting a
45 genetic marker analysis pursuant to section 2 of this act, if a judge



1 *determines that the genetic marker analysis cannot be completed*
2 *before the date of the execution of the petitioner, the judge shall*
3 *stay the execution of the judgment of death pending the results of*
4 *the analysis.*

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

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

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

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

19 176.525 The court shall arrest judgment if the indictment,
20 information or complaint does not charge an offense , ~~for~~ if the
21 court was without jurisdiction of the offense charged ~~[-The]~~ *or if*
22 *the results of a genetic marker analysis performed pursuant to*
23 *section 2 of this act are favorable to the petitioner. Except when*
24 *the motion is based upon the results of a genetic marker analysis*
25 *performed pursuant to section 2 of this act, the* motion in arrest of
26 judgment ~~[shall]~~ *must* be made within 7 days after determination of
27 guilt or within such further time as the court may fix during the
28 7-day period.

29 **Sec. 5.** The Department of Corrections, in consultation with
30 the Attorney General, shall, on or before August 1, 2003:

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

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

36 **Sec. 6.** This act becomes effective upon passage and approval.

