

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 491

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING PROCEDURES FOR POST-
CONVICTION CONSIDERATION OF DNA EVIDENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-1A-2 NMSA 1978 (being Laws 2003,
Chapter 27, Section 1) is amended to read:

"31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION OF
DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a felony, who claims that
DNA evidence will establish ~~[his]~~ the person's innocence, may
petition the district court of the judicial district in which
~~[he]~~ the person was convicted to order the disclosure,
preservation, production and testing of evidence that can be
subjected to DNA testing. A copy of the petition shall be
served on the district attorney for the judicial district in

1 which the district court is located. A petitioner shall be
2 granted full, fair and prompt proceedings upon filing the
3 petition.

4 B. As a condition to the district court's
5 acceptance of [~~his~~] the person's petition, the petitioner
6 shall:

7 (1) submit to DNA testing ordered by the
8 district court; and

9 (2) authorize the district attorney's use of
10 the DNA test results to investigate all aspects of the case
11 that the petitioner is seeking to reopen.

12 C. Samples submitted pursuant to Subsection B of
13 this section shall be submitted according to the procedures in
14 the DNA Identification Act and shall be entered into CODIS, as
15 defined in that act.

16 [~~G.~~] D. The petitioner shall show, by a
17 preponderance of the evidence, that:

18 (1) [~~he~~] the petitioner was convicted of a
19 felony;

20 (2) evidence exists that can be subjected to
21 DNA testing;

22 (3) the evidence to be subjected to DNA
23 testing:

24 (a) has not previously been subjected to
25 DNA testing;

1 (b) has not previously been subjected to
2 the type of DNA testing that is now being requested; or

3 (c) was previously subjected to DNA
4 testing, but was tested incorrectly or interpreted incorrectly;

5 (4) the DNA testing [~~he~~] the petitioner is
6 requesting will be likely to produce admissible evidence; and

7 (5) identity was an issue in [~~his~~] the
8 petitioner's case or that if the DNA testing [~~he~~] the
9 petitioner is requesting had been performed prior to [~~his~~] the
10 petitioner's conviction and the results had been exculpatory,
11 there is a reasonable probability that the petitioner would not
12 have pled guilty or been found guilty.

13 [~~D.~~] E. If the petitioner satisfies the
14 requirements set forth in Subsection [~~G~~] D of this section, the
15 district court shall appoint counsel for the petitioner, unless
16 the petitioner waives counsel or retains [~~his~~] the petitioner's
17 own counsel.

18 [~~E.~~] F. After reviewing a petition, the district
19 court may dismiss the petition, order a response by the
20 district attorney or issue an order for DNA testing.

21 [~~F.~~] G. The district court shall order all evidence
22 secured that is related to the petitioner's case and that could
23 be subjected to DNA testing. The evidence shall be preserved
24 during the pendency of the proceeding. The district court may
25 impose appropriate sanctions, including dismissal of the

1 petitioner's conviction or criminal contempt, if the court
2 determines that evidence was intentionally destroyed after
3 issuance of the court's order to secure evidence.

4 ~~[G.]~~ H. The district court shall order DNA testing
5 if the petitioner satisfies the requirements set forth in
6 Subsections B and ~~[G]~~ D of this section.

7 ~~[H.]~~ I. If the results of the DNA testing are
8 exculpatory, the district court may set aside the petitioner's
9 judgment and sentence, may dismiss the charges against the
10 petitioner with prejudice, may grant the petitioner a new trial
11 or may order other appropriate relief.

12 ~~[I.]~~ J. The cost of DNA testing ordered pursuant to
13 this section shall be borne by the state or the petitioner, as
14 the district court may order in the interest of justice.

15 Provided, that a petitioner shall not be denied DNA testing
16 because of ~~[his]~~ the petitioner's inability to pay for the cost
17 of DNA testing. Testing under this provision shall only be
18 performed by a laboratory that meets the minimum standards of
19 the national DNA index system.

20 ~~[J.]~~ K. The provisions of this section shall not be
21 interpreted to limit:

22 (1) other circumstances under which a person
23 may obtain DNA testing; or

24 (2) post-conviction relief a petitioner may
25 seek pursuant to other provisions of law.

1 ~~[K-]~~ L. The petitioner shall have the right to
2 appeal a district court's denial of the requested DNA testing,
3 a district court's final order on a petition or a district
4 court's decision regarding relief for the petitioner. The
5 state shall have the right to appeal any final order issued by
6 the district court. An appeal shall be filed by a party within
7 thirty days to the court of appeals.

8 ~~[L-]~~ M. The state shall preserve all evidence that
9 is secured in relation to an investigation or prosecution of a
10 crime, and that could be subjected to DNA testing, for not less
11 than the period of time that a person remains subject to
12 incarceration or ~~[supervision]~~ on probation or parole in
13 connection with the investigation or prosecution.

14 ~~[M-]~~ N. The state may dispose of evidence before
15 the expiration of the time period set forth in Subsection ~~[K]~~ M
16 of this section if:

17 (1) no other law, regulation or court order
18 requires that the evidence be preserved;

19 (2) the evidence must be returned to its
20 rightful owner;

21 (3) preservation of the evidence is
22 impractical due to the size, bulk or physical characteristics
23 of the evidence; and

24 (4) the state takes reasonable measures to
25 remove and preserve portions of the evidence sufficient to

.193991.3

1 permit future DNA testing.

2 O. In proceedings under this section, the Rules of
3 Evidence and the Rules of Civil Procedure for the District
4 Courts shall apply.

5 [~~N.~~] P. As used in this section, "DNA" means
6 deoxyribonucleic acid."

7 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
8 provisions of this act is July 1, 2013.

9 - 6 -

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

underscoring material = new
[bracketed material] = delete