

ASSEMBLY BILL NO. 354—ASSEMBLYMEN PRICE, BROWN,
CHOWNING AND MANENDO

MARCH 14, 2001

Referred to Committee on Judiciary

SUMMARY—Provides for genetic marker analysis of certain evidence related to conviction of certain offenders sentenced to death. (BDR 14-595)

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; 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 thereto
2 the provisions set forth as sections 2 and 3 of this act.
- 3 **Sec. 2. 1. *A person convicted of a crime and under sentence of***
4 *death who meets the requirements of this section may file a post-*
5 *conviction petition requesting a genetic marker analysis of evidence*
6 *within the possession or custody of the state which may contain genetic*
7 *marker information relating to the investigation or prosecution that*
8 *resulted in the judgment of conviction and sentence of death. The*
9 *petition must include the date upon which execution is scheduled, if it*
10 *has been scheduled.*
- 11 2. *Such a petition must be filed with the clerk of the district court for*
12 *the county in which the petitioner was convicted on a form prescribed by*
13 *the department of prisons. A copy of the petition must be served by*
14 *registered mail upon:*
- 15 (a) *The attorney general; and*
16 (b) *The district attorney in the county in which the petitioner was*
17 *convicted.*
- 18 3. *If a petition is filed pursuant to this section, the court shall*
19 *immediately issue an order requiring, during the pendency of the*
20 *proceeding, the prosecuting attorney to preserve all evidence within the*



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1 *possession or custody of the state that may be subjected to genetic marker*
2 *analysis pursuant to this section.*

3 4. *Within 30 days after receiving notice of a petition pursuant to this*
4 *section, the prosecuting attorney:*

5 (a) *Shall prepare an inventory of the evidence within the possession or*
6 *custody of the state that may be subjected to analysis pursuant to this*
7 *section;*

8 (b) *Shall submit a copy of the inventory to the petitioner and the*
9 *court; and*

10 (c) *May file a written response to the petition.*

11 5. *The court, in its sole discretion, may order a hearing on the*
12 *petition.*

13 6. *The court shall order a genetic marker analysis if the court finds*
14 *that:*

15 (a) *A reasonable probability exists that the petitioner would not have*
16 *been prosecuted or convicted if exculpatory results had been obtained*
17 *through a genetic marker analysis of the evidence identified in the*
18 *petition;*

19 (b) *The evidence to be analyzed exists and is in a condition that allows*
20 *genetic marker analysis to be conducted as requested in the petition; and*

21 (c) *The evidence was not previously subjected to:*

22 (1) *A genetic marker analysis involving the petitioner; or*

23 (2) *The method of analysis requested in the petition, and the*
24 *method of additional analysis may resolve an issue not resolved by a*
25 *previous analysis.*

26 7. *If the court orders a genetic marker analysis pursuant to*
27 *subsection 6, the court shall:*

28 (a) *Order the analysis to be promptly conducted under reasonable*
29 *conditions designed to protect the interest of the state in the integrity of*
30 *the evidence and the analysis process.*

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

33 (1) *Be operated by this state or one of its political subdivisions; and*

34 (2) *Satisfy or exceed the standards for quality assurance that are*
35 *established by the Federal Bureau of Investigation for participation in*
36 *CODIS. As used in this subparagraph, "CODIS" means the Combined*
37 *DNA Indexing System operated by the Federal Bureau of Investigation.*

38 (c) *Order the forensic laboratory selected pursuant to paragraph (b) to*
39 *perform a genetic marker analysis of evidence. The analysis to be*
40 *performed and evidence to be analyzed must:*

41 (1) *Be specified in the order; and*

42 (2) *Include such analysis, testing and comparison of genetic marker*
43 *information contained in the evidence and the genetic marker*
44 *information of the petitioner as the court determines appropriate under*
45 *the circumstances.*

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



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

4 8. If the results of a genetic marker analysis performed pursuant to
5 this section are favorable to the petitioner, the court shall immediately
6 notify the state board of pardons commissioners for appropriate
7 reconsideration of the results.

8 9. The court shall dismiss a petition filed pursuant to this section if:

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

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

13 10. An order of a court granting or dismissing a petition pursuant to
14 this section is final and not subject to judicial review.

15 11. For the purposes of a genetic marker analysis pursuant to this
16 section, a person under sentence of death who files a petition pursuant to
17 this section shall be deemed to consent to the:

18 (a) Extraction of a specimen, including, without limitation, a sample
19 of blood, from him to determine his genetic marker information; and

20 (b) Release and use of genetic marker information concerning the
21 petitioner.

22 12. The expense of an analysis ordered pursuant to this section is a
23 charge against the department of prisons and must be paid upon
24 approval by the board of state prison commissioners as other claims
25 against the state are paid.

26 **Sec. 3.** 1. After a judge grants a petition requesting a genetic
27 marker analysis pursuant to section 2 of this act, if a judge determines
28 that the genetic marker analysis cannot be completed before the date of
29 the execution of the petitioner, the judge shall stay the execution of the
30 judgment of death pending the results of the analysis.

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

33 (a) Except as otherwise provided in paragraph (b), the director of the
34 department of prisons shall, in due course, execute the judgment of
35 death.

36 (b) If the judgment of death has been stayed pursuant to subsection 1,
37 the judge shall cause a certified copy of his order staying the execution of
38 the judgment and a certified copy of the report of genetic marker analysis
39 that indicates results which are not favorable to a petitioner to be
40 immediately forwarded by the clerk of the court to the district attorney.
41 Upon receipt, the district attorney shall pursue the issuance of a new
42 warrant of execution of the judgment of death in the manner provided in
43 NRS 176.495.

44 **Sec. 4.** 1. There is hereby appropriated from the state general fund
45 to the department of prisons the sum of \$6,250 for the expense of genetic
46 marker analyses pursuant to section 2 of this act.

47 2. Any remaining balance of the appropriation made by subsection 1
48 must not be committed for expenditure after June 30, 2003, and reverts to



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1 the state general fund as soon as all payments of money committed have
2 been made.

3 **Sec. 5.** The department of prisons, in consultation with the attorney
4 general, shall, on or before August 1, 2001:

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

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

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

