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AB 16

(Post Conviction)

BLUE = CURRENT WORDING IN THE BILL

BLACK = SUGGESTED CHANGES FROM LVMPD AND WCSO

**SECTION 2 / 4. Within 30 days after receiving notice of a petition pursuant 15
to this section, the prosecuting attorney: 16**

**(a) Shall prepare an inventory of the evidence within the 17
possession or custody of the State that may be subjected to analysis 18
pursuant to this section; 19**

**(b) Shall submit a copy of the inventory to the petitioner and 20
the court; and 21**

(c) May file a written response to the petition with the court. 22

Section 2 / #4 - The language here requires the prosecutor to prepare an inventory of the evidence. Since some of the evidence will be in the District Court vault and some will be in our evidence vault, I can foresee that the Dept will have to prepare inventories as well, creating additional work for us.

**SECTION 2 / 6. The court shall order a genetic marker analysis if the court 25
finds that: 26**

**(a) A reasonable probability exists that the petitioner would 27
not have been prosecuted or convicted if exculpatory results had 28
been obtained through a genetic marker analysis of the evidence 29
identified in the petition; 30**

**(b) The evidence to be analyzed exists and is in a condition 31
that allows genetic marker analysis to be conducted as requested 32
in the petition; and 33**

Section 2 / #6b - Whether or not evidence is "in a condition that allows genetic marker analysis to be conducted" will be a total unknown until the evidence is in the lab and often times until analysis is attempted.

**SECTION 2 / 7. If the court orders a genetic marker analysis pursuant to 39
subsection 6, the court shall: 40**

**(a) Order the analysis to be conducted promptly under 41
reasonable conditions designed to protect the interest of the State 42
in the integrity of the evidence and the analysis process. 43**

**- 3 -
(b) Select a forensic laboratory to conduct or oversee the 1
analysis. The forensic laboratory selected by the court must: 2**

**(1) Be operated by this state or one of its political 3
subdivisions; and 4**

**(2) Satisfy or exceed the standards for quality assurance 5
that are established by the Federal Bureau of Investigation for 6
participation in CODIS. As used in this subparagraph, "CODIS" 7
has the meaning ascribed to it in NRS 176.0911. 8**

**(c) Order the forensic laboratory selected pursuant to 9
paragraph (b) to perform a genetic marker analysis of evidence. 10
The analysis to be performed and evidence to be analyzed must: 11**

(1) Be specified in the order; and 12

**(2) Include such analysis, testing and comparison of 13
genetic marker information contained in the evidence and the 14
genetic marker information of the petitioner as the court 15**

ASSEMBLY JUDICIARY

DATE: 3-17-03 ROOM 3138 EXHIBIT C

SUBMITTED BY: Don L. Means

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determines appropriate under the circumstances. 16
(d) Order the production of any reports that are prepared by a 17
forensic laboratory in connection with the analysis and any data 18
and notes upon which the report is based. 19
(e) Order the preservation of evidence used in a genetic 20
marker analysis performed pursuant to this section for purposes of 21
a subsequent proceeding or analysis, if any. 22

Section 2 / #7a - We prefer that the word "promptly" - which is subject to interpretation - is removed from the phrase "Order the analysis to be conducted promptly", because it may imply that every one of these post conviction requests is going to be a rush analysis in the eyes of the court.

Section 2 / #7b - Does the phrase "select a forensic laboratory to conduct or oversee" cover us if we decide that the type of analysis required can only be conducted by an outside laboratory? (We think it does)

Section 2 / #7b-2 - VERY IMPORTANT - This paragraph must read: "Satisfy or exceed the *Quality Assurance Standards for Forensic DNA Testing Laboratories and Convicted Offender DNA Databasing Laboratories, Issued by the FBI Director*, including documented proof that these standards have been met."

The reference to CODIS needs to be removed because if either Nevada lab decides that the sample warrants another type of DNA analysis which cannot be performed in house (such as mitochondrial, Y-chromosome or single nucleotide polymorphisms), we want the ability to send it to an external laboratory. However, this external lab must be one that meets the quality assurance guidelines established by the FBI. Although non-governmental laboratories are not permitted to have CODIS, they may still be audited to meet these standards.

Section 2 / #7c - 2 (c) [see line 3-9] c: Order the forensic laboratory selected pursuant to paragraph (b) to perform an evidence review and then a genetic marker analysis of the evidence.

Section 2 / #7d - We are happy to produce reports and notes - but who is the central point for receiving this information, the court, or the division that is footing the bill?

**SECTION 2 / 11. For the purposes of a genetic marker analysis pursuant to 34
this section, a person under sentence of death who files a petition 35
pursuant to this section shall be deemed to consent to the: 36
(a) Extraction of a specimen, including, without limitation, a 37
sample of blood, from him to determine his genetic marker 38
information; and 39
(b) Release and use of genetic marker information concerning 40
the petitioner. 41**

Section 2 / #11a - VERY IMPORTANT - Wording must be changed to: "Submission of a biological specimen from him to determine his genetic marker information; and"

Very few labs are still collecting blood samples to determine genetic profiles. Buccal swabs are a cleaner and easier mechanism, however we should leave it rather generic so that any biological fluid can be utilized but we don't want to specify blood.

Section 2 / 11 (b) - [see line 3-40]: If this verbiage is referring to entry in CODIS it should say so specifically. Therefore, maybe this should read: Release and entry of the genetic marker information concerning the petitioner into CODIS.

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

**Section 2 / #12 - How are we going to get the money from Corrections? Do we have to bill them? Believe me that the
\$6250 will not go far - that's the cost of one mitochondrial case.**

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

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

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Section 5: Instead of a lump sum of \$6250, replace this figure - which we know won't go far - with a cost per sample.

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