

Amendment No. 162

Assembly Amendment to Assembly Bill No. 179

(BDR 14-869)

Proposed by: Assembly Committee on Corrections, Parole, and Probation**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NMB/RRY



Date: 4/14/2009

A.B. No. 179—Revises provisions governing postconviction genetic marker analysis. (BDR 14-869)



ASSEMBLY BILL NO. 179—ASSEMBLYMEN HORNE, SEGERBLOM, KIHUEN, ANDERSON; AIZLEY, ARBERRY, ATKINSON, BUCKLEY, CARPENTER, CONKLIN, DONDERO LOOP, HAMBRICK, HARDY, KIRKPATRICK, MANENDO, MASTROLUCA, MCARTHUR, MCCLAIN, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL, PIERCE, SPIEGEL AND STEWART

FEBRUARY 16, 2009

JOINT SPONSORS: SENATORS PARKS, CARE;
BREEDEN, COFFIN AND HORSFORD

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Revises provisions governing postconviction genetic marker analysis. (BDR 14-869)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 criminal procedure; authorizing certain persons convicted of a category A or B felony to petition the court for postconviction genetic marker analysis; providing the information that must be contained in a petition for such postconviction genetic marker analysis; revising the circumstances under which genetic marker analysis must be performed for those persons; requiring certain notices to be provided to the victims of the crimes allegedly committed by those persons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person convicted of a crime and sentenced to death may petition a court to conduct postconviction genetic marker analysis to prove a credible claim of innocence if the person meets certain requirements. For example, the person must show that the evidence has not previously been submitted to such analysis or that the method of analysis requested and the additional analysis may resolve an issue not resolved by previous analysis. (NRS 176.0918)

Section 1 of this bill amends existing law to allow any person who is convicted of a category A or B felony and under a sentence of imprisonment, regardless of whether he is under a sentence of death, to petition the court for postconviction genetic marker analysis after meeting certain other requirements. This section provides that a petition must be made under penalty of perjury and must contain certain information. Further, this section provides for the court to determine whether to dismiss the petition, schedule a hearing or assign counsel to further review, supplement and present the petition to the court. This section also amends existing law to provide that genetic marker analysis may be performed on evidence previously submitted to analysis if: (1) the results of a previous

analysis were inconclusive; (2) the evidence was not previously submitted to the type of analysis requested and the requested analysis may resolve an issue not resolved by the previous analysis; or (3) the requested analysis would provide results significantly more accurate and probative of the identity of the perpetrator. This section further requires the district attorney of the appropriate county under certain circumstances, to notify the victims of the crime at issue in the petition of certain information related to the petition. (NRS 176.0918)

Section 3 of this bill provides that the new procedures set forth in the bill apply to persons who were convicted of an offense before, on or after the effective date of this bill.

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

Section 1. NRS 176.0918 is hereby amended to read as follows:

176.0918 1. A person convicted of a ~~crime and under sentence of death~~
category A or B felony who is under sentence of imprisonment for that conviction
and who otherwise meets the requirements of this section may file a postconviction
petition requesting a genetic marker analysis of evidence within the possession or
custody of the State which may contain genetic marker information relating to the
investigation or prosecution that resulted in the judgment of conviction. ~~and~~
~~sentence of death. The~~ If the case involves a sentence of death, the petition must
include, without limitation, the date scheduled for the execution, if it has been
scheduled.

2. Such a petition must be filed with the clerk of the district court for the
county in which the petitioner was convicted on a form prescribed by the
Department of Corrections. A copy of the petition must be served by registered
mail upon:

(a) The Attorney General; and

(b) The district attorney in the county in which the petitioner was convicted.

3. A petition filed pursuant to this section must be accompanied by a
declaration under penalty of perjury attesting that the information contained in
the petition does not contain any material misrepresentation of fact and that the
petitioner has a good faith basis relying on particular facts for the request. The
petition must include, without limitation:

(a) Information identifying specific evidence either known or believed to be
in the possession or custody of the State that can be subject to genetic marker
analysis;

(b) The rationale for why a reasonable possibility exists that the petitioner
would not have been prosecuted or convicted if exculpatory results had been
obtained through a genetic marker analysis of the evidence identified in
paragraph (a);

(c) An identification of the type of genetic marker analysis the petitioner is
requesting to be conducted on the evidence identified in paragraph (a);

(d) If applicable, the results of all prior genetic marker analysis performed
on evidence in the trial which resulted in the petitioner's conviction; and

(e) A statement that the type of genetic marker analysis the petitioner is
requesting was not available at the time of trial or, if it was available, that the
failure to request genetic marker analysis before the petitioner was convicted was
not a result of a strategic or tactical decision as part of the representation of the
petitioner at the trial.

4. If a petition is filed pursuant to this section, the court ~~shall~~ may:

(a) Dismiss the petition without a hearing if the court determines, based on the information contained in the petition, that the petitioner does not meet the requirements set forth in this section;

(b) After determining whether the petitioner is indigent pursuant to NRS 171.188 and whether counsel was appointed in the case which resulted in the conviction, appoint counsel for the limited purpose of reviewing, supplementing and presenting the petition to the court; or

(c) Schedule a hearing on the petition. If the court schedules a hearing on the petition, the court shall determine which person or agency has possession or custody of the evidence and shall immediately issue an order requiring, during the pendency of the proceeding, each person or agency in possession or custody of the evidence to:

~~[(a)]~~ (1) Preserve all evidence within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section;

~~[(b)]~~ (2) Within ~~[(30)]~~ 90 days, prepare an inventory of all evidence relevant to the claims in the petition within the possession or custody of the person or agency that may be subjected to genetic marker analysis pursuant to this section; and

~~[(c)]~~ (3) Within ~~[(30)]~~ 90 days, submit a copy of the inventory to the petitioner, the prosecuting attorney and the court.

~~[(4)]~~ 5. Within ~~[(30)]~~ 90 days after the inventory of all evidence is prepared pursuant to subsection ~~[(3)]~~ 4, the prosecuting attorney may file a written response to the petition with the court.

~~[(5)]~~ The

6. If the court ~~[(shall hold)]~~ holds a hearing on a petition filed pursuant to this section ~~[(~~

~~—6—)]~~, the hearing must be presided over by the judge who conducted the trial that resulted in the conviction of the petitioner, unless that judge is unavailable. Any evidence presented at the hearing by affidavit must be served on the opposing party at least 15 days before the hearing.

7. The court shall order a genetic marker analysis, after considering the information contained in the petition pursuant to subsection 3 and any other evidence, if the court finds that:

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

(b) The evidence to be analyzed exists; and

(c) ~~[(The)]~~ Except as otherwise provided in subsection ~~[(7)]~~ 8, the evidence was not previously subjected to ~~[(~~

~~—(1)—~~ (1) A genetic marker analysis. ~~[(involving the petitioner; or~~

~~—(2)—~~ (2) The method of analysis requested in the petition, and the method of additional analysis may resolve an issue not resolved by a previous analysis.]

~~[(8)]~~ 8. If the evidence was previously subjected to a genetic marker analysis, the court shall order a genetic marker analysis pursuant to subsection ~~[(6)]~~ 7 if the court finds that:

(a) The result of the previous analysis was inconclusive;

(b) The evidence was not subjected to the type of analysis that is now requested and the requested analysis may resolve an issue not resolved by the previous analysis; or

(c) The requested analysis would provide results that are significantly more accurate and probative of the identity of the perpetrator than the previous analysis.

~~[(8)]~~ 9. If the court orders a genetic marker analysis pursuant to subsection ~~[(6)]~~ ~~[(1)]~~ for ~~[(7)]~~ 7 or 8, the court shall:

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

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

(1) Be operated by this State or one of its political subdivisions, when possible; and

(2) Satisfy the standards for quality assurance that are established for forensic laboratories by the Federal Bureau of Investigation.

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

(1) Be specified in the order; and

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

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

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

(f) Order the results of the genetic marker analysis performed pursuant to this section to be sent to the State Board of Parole Commissioners if the results of the genetic marker analysis are not favorable to the petitioner.

~~18.1~~ ~~19.1~~ 10. If the results of a genetic marker analysis performed pursuant to this section are favorable to the petitioner:

(a) The petitioner may bring a motion for a new trial based on the ground of newly discovered evidence pursuant to NRS 176.515; and

(b) The restriction on the time for filing the motion set forth in subsection 3 of NRS 176.515 is not applicable.

~~19.1~~ ~~110.1~~ 11. The court shall dismiss a petition filed pursuant to this section if:

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

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

~~110.1~~ ~~111.1~~ 12. For the purposes of a genetic marker analysis pursuant to this section, a person ~~under sentence of death~~ who files a petition pursuant to this section shall be deemed to consent to the:

(a) Submission of a biological specimen by him to determine his genetic marker information; and

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

~~111.1~~ ~~112. The~~

13. The petitioner shall pay the cost of a genetic marker analysis performed pursuant to this section, unless the petitioner is incarcerated at the time he files the petition, found to be indigent pursuant to NRS 171.188 and the results of the genetic marker analysis are favorable to the petitioner. If the petitioner is not required to pay the cost of the analysis pursuant to this subsection, the expense of an analysis ordered pursuant to this section is a charge against the Department of Corrections and must be paid upon approval by the Board of State Prison Commissioners as other claims against the State are paid.

~~[12.] [13.]~~ 14. The remedy provided by this section is in addition to, is not a substitute for and is not exclusive of any other remedy, right of action or proceeding available to a person convicted of a crime . ~~[and under sentence of death.]~~

~~[14.]~~ 15. *If a petitioner files a petition pursuant to this section, the court schedules a hearing on the petition and a victim of the crime for which the petitioner was convicted has requested notice pursuant to NRS 178.5698, the district attorney in the county in which the petitioner was convicted shall provide to ~~[any victim of the crime for which the petitioner was convicted]~~ the victim notice of:*

(a) The fact that the petitioner filed a petition pursuant to this section;

(b) The time and place of ~~[any]~~ the hearing ~~[that may be held]~~ scheduled by the court as a result of the petition; and

(c) The outcome of any hearing on the petition.

Sec. 2. NRS 176.0919 is hereby amended to read as follows:

176.0919 1. After a judge grants a petition requesting a genetic marker analysis pursuant to NRS 176.0918, if *the case involves a sentence of death and* a judge determines that the genetic marker analysis cannot be completed before the date of the execution of the petitioner, the judge shall stay the execution of the judgment of death pending the results of the analysis.

2. If *the case involves a sentence of death and* the results of an analysis ordered and conducted pursuant to NRS 176.0918 are not favorable to the petitioner:

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

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

Sec. 3. This act applies to a person who was convicted of an offense before, on or after October 1, 2009.