

## Amendment No. 605

Senate Amendment to Assembly Bill No. 233

(BDR 14-1000)

Proposed by: Senate Committee on Judiciary

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 underlining* is newly added transitory language.

NCA/BAW



Date: 5/18/2013

A.B. No. 233—Revises provisions governing postconviction genetic marker analysis. (BDR 14-1000)



## ASSEMBLY BILL NO. 233—ASSEMBLYWOMAN FLORES

MARCH 11, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing postconviction genetic marker analysis. (BDR 14-1000)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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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 genetic marker analysis; authorizing a person convicted of any felony to file a petition requesting genetic marker analysis; authorizing the appeal of an order granting or dismissing a petition for genetic marker analysis; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes a person who has been convicted of a category A or B felony, and who is currently under imprisonment for that conviction, to file a petition requesting genetic marker analysis of certain evidence within the possession or custody of the State. (NRS 176.0918) This bill authorizes ~~such~~ a person convicted of any felony, regardless of whether the person is under such imprisonment, to : (1) file a petition requesting genetic marker analysis of certain evidence within the possession or custody of the State; and (2) file an appeal of an order dismissing such a petition for genetic marker analysis. This bill further authorizes the State to appeal an order granting such a petition.

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 ~~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. 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:

1 (a) The Attorney General; and

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

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

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

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

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

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

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

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

24 (a) ~~Dismiss~~ **Enter an order dismissing** the petition without a hearing if the  
25 court determines, based on the information contained in the petition, that the  
26 petitioner does not meet the requirements set forth in this section;

27 (b) After determining whether the petitioner is indigent pursuant to NRS  
28 171.188 and whether counsel was appointed in the case which resulted in the  
29 conviction, appoint counsel for the limited purpose of reviewing, supplementing  
30 and presenting the petition to the court; or

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

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

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

41 (3) Within 90 days, submit a copy of the inventory to the petitioner, the  
42 prosecuting attorney and the court.

43 5. Within 90 days after the inventory of all evidence is prepared pursuant to  
44 subsection 4, the prosecuting attorney may file a written response to the petition  
45 with the court.

46 6. If the court holds a hearing on a petition filed pursuant to this section, the  
47 hearing must be presided over by the judge who conducted the trial that resulted in  
48 the conviction of the petitioner, unless that judge is unavailable. Any evidence  
49 presented at the hearing by affidavit must be served on the opposing party at least  
50 15 days before the hearing.

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

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

4 (b) The evidence to be analyzed exists; and

5 (c) Except as otherwise provided in subsection 8, the evidence was not  
6 previously subjected to a genetic marker analysis.

7 8. If the evidence was previously subjected to a genetic marker analysis, the  
8 court shall order a genetic marker analysis pursuant to subsection 7 if the court  
9 finds that:

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

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

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

16 9. If the court orders a genetic marker analysis pursuant to subsection 7 or 8,  
17 the court shall:

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

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

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

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

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

30 (1) Be specified in the order; and

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

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

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

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

43 10. If the court orders a genetic marker analysis pursuant to subsection 7 or  
44 8, the State may appeal to the Supreme Court within 30 days after the notice of  
45 the entry of the order by filing a notice of appeal with the clerk of the district  
46 court.

47 11. If the results of a genetic marker analysis performed pursuant to this  
48 section are favorable to the petitioner:

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

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

1 ~~111~~ 12. The court shall ~~dismiss~~ *enter an order dismissing* a petition filed  
2 pursuant to this section if:

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

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

7 ~~112~~ 13. *If the court enters an order dismissing a petition pursuant to this*  
8 *section, the person aggrieved by the order may appeal to the Supreme Court*  
9 *within 30 days after the notice of the entry of the order by filing a notice of*  
10 *appeal with the clerk of the district court.*

11 ~~113~~ 14. For the purposes of a genetic marker analysis pursuant to this  
12 section, a person who files a petition pursuant to this section shall be deemed to  
13 consent to the:

14 (a) Submission of a biological specimen by the petitioner to determine genetic  
15 marker information; and

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

17 ~~113~~ ~~114~~ 15. The petitioner shall pay the cost of a genetic marker analysis  
18 performed pursuant to this section, unless the petitioner is incarcerated at the time  
19 the petitioner files the petition, found to be indigent pursuant to NRS 171.188 and  
20 the results of the genetic marker analysis are favorable to the petitioner. If the  
21 petitioner is not required to pay the cost of the analysis pursuant to this subsection,  
22 the expense of an analysis ordered pursuant to this section is a charge against the  
23 Department of Corrections and must be paid upon approval by the Board of State  
24 Prison Commissioners as other claims against the State are paid.

25 ~~114~~ ~~115~~ 16. The remedy provided by this section is in addition to, is not a  
26 substitute for and is not exclusive of any other remedy, right of action or  
27 proceeding available to a person convicted of a crime.

28 ~~115~~ ~~116~~ 17. If a petitioner files a petition pursuant to this section, the court  
29 schedules a hearing on the petition and a victim of the crime for which the  
30 petitioner was convicted has requested notice pursuant to NRS 178.5698, the  
31 district attorney in the county in which the petitioner was convicted shall provide to  
32 the victim notice of:

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

34 (b) The time and place of the hearing scheduled by the court as a result of the  
35 petition; and

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