

Amendment No. 434

Assembly Amendment to Assembly Bill No. 268	(BDR 14-638)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of A.B. 268 (§§ 1, 3).

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) variations of *green bold underlining* is language proposed to be added 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 proposed to be retained in this amendment.



ASSEMBLY BILL NO. 268—ASSEMBLYMEN WATKINS, FUMO, OHRENSCHALL, JAUREGUI, BILBRAY-AXELROD; BROOKS, EDWARDS, FRIERSON, KRAMER, MONROE-MORENO, NEAL, TOLLES AND YEAGER

MARCH 8, 2017

JOINT SPONSOR: SENATOR HARDY

Referred to Committee on Judiciary

SUMMARY—Authorizes certain persons to file a postconviction petition to pay the cost of a genetic marker analysis. (BDR 14-638)

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 criminal procedure; authorizing certain persons to file a postconviction petition to pay the cost of a genetic marker analysis; requiring a court to order a genetic marker analysis upon the filing of such a petition; authorizing the State to charge a reasonable fee for the cataloging of evidence subject to such a genetic marker analysis and the transferring of such evidence to a forensic laboratory in certain circumstances; requiring a petitioner to pay the cost of such a genetic marker analysis before the analysis is performed; providing that the provisions of this act are not severable; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes a person convicted of a felony to 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. After such a petition is filed, the court may schedule a hearing on the petition. (NRS 176.0918) Existing law requires the court to order a genetic marker analysis if, after considering the information contained in the petition and any other evidence, the court makes certain findings. (NRS 176.09183) Existing law further requires the petitioner to pay for the cost of the genetic marker analysis unless: (1) the petitioner is incarcerated at the time he or she files the petition and is found to be indigent; and (2) the results of the genetic marker analysis are favorable to the petitioner. If the petitioner is not required to pay the cost of the genetic marker analysis, the expense is a charge against the Department of Corrections. (NRS 176.09187)

**Section 1** of this bill authorizes a person convicted of a felony to file a postconviction petition requesting to pay the cost of a genetic marker analysis. **Section 1** provides that such a petition is generally subject to the same requirements imposed for a postconviction petition for a genetic marker analysis filed pursuant to existing law, but there is no requirement for a

hearing on such a petition. Section 1 also requires a petitioner to: (1) indicate in such a petition whether he or she prefers to have a specific forensic laboratory conduct the genetic marker analysis; and (2) select from certain forensic laboratories in certain circumstances. Section 3 of this bill requires a court to order a genetic marker analysis if such a petition is filed. Section 3 also provides that if the court selects a forensic laboratory that is not operated by this State or one of its political subdivisions to conduct or oversee such a genetic marker analysis, the State is authorized to charge the petitioner a reasonable fee for the cataloging of the evidence subject to the genetic marker analysis and the transferring of such evidence to the forensic laboratory. Section 4 of this bill provides that a petitioner who files ~~such~~ a petition requesting to pay the cost of a genetic marker analysis is required to pay the cost ~~{of the genetic marker analysis}~~ before the analysis is performed and is not eligible for an exemption from payment. Sections 2 and 5 of this bill make conforming changes.

Section 5.5 of this bill provides that the provisions of this bill are not severable and, if any portion of this bill is held to be unconstitutional or invalid for any reason by a court of competent jurisdiction, the remaining provisions of this bill shall be deemed to be invalid.

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

**Section 1.** Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person convicted of a felony may file a postconviction petition requesting to pay the cost of 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:*

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

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

*(d) An indication as to whether, subject to the provisions of subsection 5, the petitioner prefers to have a specific forensic laboratory conduct the genetic marker analysis.*

*4. If a petition is filed pursuant to this section, the court shall determine which person or agency has possession or custody of the evidence and shall*

1 immediately issue an order requiring each person or agency in possession or  
2 custody of the evidence to:

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

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

8 (c) Within 90 days, submit a copy of the inventory to the petitioner, the  
9 prosecuting attorney and the court.

10 5. If a petitioner does not wish to have a forensic laboratory that is operated  
11 by this State or one of its political subdivisions conduct the genetic marker  
12 analysis requested pursuant to this section and this State or one of its political  
13 subdivisions has a contract with two or more private forensic laboratories that are  
14 capable of conducting a genetic marker analysis, the petitioner shall, when  
15 indicating any preference for a forensic laboratory to conduct the genetic marker  
16 analysis pursuant to paragraph (d) of subsection 3, select such a private forensic  
17 laboratory with which the State or one of its political subdivisions has a contract.

18 6. If a petitioner files a petition pursuant to this section and a victim of the  
19 crime for which the petitioner was convicted has requested notice pursuant to  
20 NRS 178.5698, the district attorney in the county in which the petitioner was  
21 convicted shall provide to the victim notice of the fact that the petitioner filed a  
22 petition pursuant to this section.

23 Sec. 2. NRS 176.0911 is hereby amended to read as follows:

24 176.0911 As used in NRS 176.0911 to 176.0919, inclusive, and section 1 of  
25 this act, unless the context otherwise requires, the words and terms defined in NRS  
26 176.09111 to 176.09119, inclusive, have the meanings ascribed to them in those  
27 sections.

28 Sec. 3. NRS 176.09183 is hereby amended to read as follows:

29 176.09183 1. The court shall order a genetic marker analysis ~~if~~ if:

30 (a) The petition for the analysis was filed pursuant to NRS 176.0918 and,  
31 after considering the information contained in the petition ~~pursuant to subsection 3~~  
32 ~~of NRS 176.0918~~ and any other evidence, ~~if~~ the court finds that:

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

36 ~~(b)~~ (2) The evidence to be analyzed exists; and

37 ~~(c)~~ (3) Except as otherwise provided in subsection 2, the evidence was not  
38 previously subjected to a genetic marker analysis ~~if~~ if ; or

39 (b) The petition for the analysis was filed pursuant to section 1 of this act.

40 2. If the evidence was previously subjected to a genetic marker analysis, the  
41 court shall order a genetic marker analysis pursuant to paragraph (a) of subsection  
42 1 if the court finds that:

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

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

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

49 3. If the court orders a genetic marker analysis pursuant to subsection 1 or 2,  
50 the court shall:

51 (a) ~~Order~~ Subject to the provisions of subsection 4, order the analysis to be  
52 conducted promptly under reasonable conditions designed to protect the interest of  
53 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~~ If the analysis is ordered pursuant to paragraph (a) of subsection 1, be operated by this state or one of its political subdivisions, when possible; ~~and~~

(2) If the analysis is ordered pursuant to paragraph (b) of subsection 1, be the forensic laboratory indicated by the petitioner pursuant to paragraph (d) of subsection 3 of section 1 of this act, when possible, if the petitioner complied with the provisions of subsection 5 of section 1 of this act; and

(3) 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 ~~the~~ genetic marker analysis ~~performed pursuant to this section and NRS 176.0918 and 176.09187~~ for purposes of a subsequent proceeding or analysis, if any.

(f) Order the results of the genetic marker analysis ~~performed pursuant to this section and NRS 176.0918 and 176.09187~~ to be sent to the State Board of Parole Commissioners if the results of the genetic marker analysis are not favorable to the petitioner.

4. Notwithstanding the provisions of paragraph (a) of subsection 3, if the petition for a genetic marker analysis was filed pursuant to section 1 of this act, the forensic laboratory ordered to perform the analysis pursuant to paragraph (c) of subsection 3 shall not perform the analysis until the petitioner pays the cost of the analysis, as required by subsection 3 of NRS 176.09187.

5. If the court selects a forensic laboratory that is not operated by this State or one of its political subdivisions to conduct or oversee a genetic marker analysis pursuant to subparagraph (2) of paragraph (b) of subsection 3, the State may charge the petitioner a reasonable fee for the cataloging of the evidence subject to the genetic marker analysis and the transferring of such evidence to the forensic laboratory.

6. If the court orders a genetic marker analysis pursuant to subsection 1 or 2, the State may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of the entry of the order by filing a notice of appeal with the clerk of the district court.

~~5. 6. 7.~~ 7. The court shall enter an order dismissing a petition filed pursuant to NRS 176.0918 or section 1 of this act if:

(a) The requirements for ordering a genetic marker analysis pursuant to this section and NRS 176.0918 and 176.09187 are not satisfied; or

(b) The results of a genetic marker analysis performed ~~performed pursuant to this section and NRS 176.0918 and 176.09187~~ as the result of the petition are not favorable to the petitioner.

~~16. 7. 8.~~ 8. If the court enters an order dismissing a petition filed pursuant to NRS 176.0918 ~~or section 1 of this act~~, the person aggrieved by the order may

1 appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by  
2 the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution  
3 within 30 days after the notice of the entry of the order by filing a notice of appeal  
4 with the clerk of the district court.

5 **Sec. 4.** NRS 176.09187 is hereby amended to read as follows:

6 176.09187 1. If the results of a genetic marker analysis performed *as the*  
7 *result of a petition filed* pursuant to ~~this section and~~ NRS 176.0918 ~~and~~  
8 ~~176.09183~~ *or section 1 of this act* are favorable to the petitioner:

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

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

13 2. For the purposes of a genetic marker analysis, ~~pursuant to this section and~~  
14 ~~NRS 176.0918 and 176.09183~~ a person who files a petition pursuant to NRS  
15 176.0918 *or section 1 of this act* shall be deemed to consent to the:

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

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

19 3. ~~The~~ *Except as otherwise provided in subsection 4, the* petitioner shall  
20 pay the cost of a genetic marker analysis performed *as the result of a petition filed*  
21 pursuant to ~~this section and~~ NRS 176.0918 ~~and 176.09183, unless~~ *or section 1*  
22 *of this act. If the petition was filed pursuant to section 1 of this act, the petitioner*  
23 *must pay the cost of the analysis before the analysis is performed.*

24 4. *The petitioner is not responsible for paying the cost of a genetic marker*  
25 *analysis performed as the result of a petition filed pursuant to NRS 176.0918 if*  
26 *the petitioner is incarcerated at the time the petitioner files the petition, is* found to  
27 be indigent pursuant to NRS 171.188 and the results of the genetic marker analysis  
28 are favorable to the petitioner.

29 5. If the petitioner is not required to pay the cost of the analysis pursuant to  
30 ~~this~~ subsection ~~4~~, the expense of an analysis ~~ordered~~ *performed as the result*  
31 *of a petition filed* pursuant to ~~this section and~~ NRS 176.0918 ~~and 176.09183~~ is a  
32 charge against the Department of Corrections and must be paid upon approval by  
33 the Board of State Prison Commissioners as other claims against the State are paid.

34 ~~4~~ 6. The remedy provided by this section and NRS 176.0918 and  
35 176.09183 *and section 1 of this act* is in addition to, is not a substitute for and is  
36 not exclusive of any other remedy, right of action or proceeding available to a  
37 person convicted of a crime.

38 **Sec. 5.** NRS 176.0919 is hereby amended to read as follows:

39 176.0919 1. After a judge grants a petition requesting a genetic marker  
40 analysis pursuant to NRS 176.0918 ~~176.09183 and 176.09187~~ *or section 1 of*  
41 *this act*, if the case involves a sentence of death and a judge determines that the  
42 genetic marker analysis cannot be completed before the date of the execution of the  
43 petitioner, the judge shall stay the execution of the judgment of death pending the  
44 results of the analysis.

45 2. If the case involves a sentence of death and the results of an analysis  
46 ordered and conducted *as the result of a petition filed* pursuant to NRS 176.0918 ~~176.09183 and 176.09187~~ *or section 1 of this act* are not favorable to the  
47 petitioner:

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

50 (b) If the judgment of death has been stayed pursuant to subsection 1, the judge  
51 shall cause a certified copy of the order staying the execution of the judgment and a  
52 certified copy of the report of genetic marker analysis that indicates results which  
53

1 are not favorable to the petitioner to be immediately forwarded by the clerk of the  
2 court to the district attorney. Upon receipt, the district attorney shall pursue the  
3 issuance of a new warrant of execution of the judgment of death in the manner  
4 provided in NRS 176.495.

5 **Sec. 5.5. Notwithstanding the provisions of NRS 0.020, the provisions of**  
6 **this act are not severable. If any portion of this act is held to be**  
7 **unconstitutional or invalid for any reason by the decision of any court of**  
8 **competent jurisdiction, the remaining provisions of this act shall be deemed to**  
9 **be invalid.**

10 **Sec. 6.** This act becomes effective on July 1, ~~2017~~, **2018.**