

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 637

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Daniel Foley

AN ACT

**RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR
THE CONSIDERATION OF DNA EVIDENCE NOT AVAILABLE AT THE TIME OF
AN OFFENDER'S CRIMINAL TRIAL; ENACTING A NEW SECTION OF THE
CRIMINAL PROCEDURE ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. A new section of the Criminal Procedure Act
is enacted to read:**

**" NEW MATERIAL PROCEDURES FOR CONSIDERATION OF DNA
EVIDENCE-- REQUIREMENTS. --**

**A. A person convicted of a criminal offense, who
claims that DNA evidence not available at the time of his
initial trial will establish his innocence, may petition the
district court in which he was convicted to set aside his
judgment and sentence or grant him a new trial. A copy of the**

underscored material = new
[bracketed material] = delete

1 petition shall be served on the district attorney for the
2 judicial district in which the district court is located.

3 B. As a condition to the district court's
4 acceptance of his petition, the petitioner shall:

5 (1) submit to DNA testing ordered by the
6 district court;

7 (2) authorize the district attorney's use of
8 the DNA test results to investigate all aspects of the case
9 that the petitioner is seeking to reopen; and

10 (3) authorize the district attorney's use of
11 the DNA test results to investigate or prosecute cases
12 unrelated to the case that the petitioner is seeking to
13 reopen.

14 C. The petitioner shall prove by clear and
15 convincing evidence that:

16 (1) he was convicted of the criminal offense
17 at a bench trial or a jury trial;

18 (2) he has no pending appeal regarding his
19 conviction for the criminal offense;

20 (3) his identity was an issue during the
21 initial trial;

22 (4) the evidence he wants the court to order
23 DNA testing upon was secured and preserved by the law
24 enforcement agency that investigated the case;

25 (5) the evidence he wants the court to order

1 DNA testing upon was subject to a chain of custody sufficient
2 to establish that it was not substituted, tampered with,
3 replaced or altered in any material respect;

4 (6) the evidence he wants the court to order
5 DNA testing upon was not tested previously because the
6 technology for performing DNA testing was not available at the
7 time of the petitioner's initial trial;

8 (7) the evidence he wants the court to order
9 DNA testing upon will be highly likely to produce evidentiary
10 results that would have been admissible at the petitioner's
11 initial trial; and

12 (8) if the evidence he wants the court to
13 order DNA testing upon had been admitted at the petitioner's
14 initial trial, a reasonable judge or jury would not have been
15 able to find him guilty beyond a reasonable doubt.

16 D. The district court may grant the petition and
17 order DNA testing if the petitioner satisfies the requirements
18 set forth in Subsection C of this section and the court finds
19 that:

20 (1) the DNA test has the scientific potential
21 to produce new, noncumulative evidence material to the
22 petitioner's assertion of innocence; and

23 (2) the DNA test employs a scientific method
24 generally accepted within the relevant scientific community.

25 E. The district court may impose any additional,

underscored material = new
[bracketed material] = delete

1 reasonable conditions on the DNA testing to protect the
2 state's interests in the integrity of the evidence.

3 F. The district court may order the petitioner to
4 pay for the expense of the DNA testing.

5 G. The district court shall make specific, written
6 findings of fact with respect to the requirements or
7 conditions set forth in Subsections C, D and E of this
8 section.

9 H. As used in this section, "DNA" means
10 deoxyribonucleic acid. "

11 Section 2. EFFECTIVE DATE. --The effective date of the
12 provisions of this act is July 1, 2001.