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SENATE BILL 363

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Michael S. Sanchez

FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; REMOVING THE TIME LIMIT FOR
POST-CONVICTION CONSIDERATION OF DNA EVIDENCE; AMENDING A
SECTION OF THE CRIMINAL PROCEDURE ACT.

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

Section 1. Section 31-1A-1 NMSA 1978 (being Laws 2001,
Chapter 29, Section 1) is amended to read:

"31-1A-1. 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
petition shall be served on the district attorney for the

1 judicial district in which the district court is located.

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

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

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

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

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

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

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

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

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

24 (5) the evidence he wants the court to order
25 DNA testing upon was subject to a chain of custody sufficient

1 to establish that it was not substituted, tampered with,
2 replaced or altered in any material respect;

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

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

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

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

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

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

24 E. The district court may impose any additional,
25 reasonable conditions on the DNA testing to protect the

underscored material = new
[bracketed material] = delete

1 state's interests in the integrity of the evidence.

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

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

8 ~~[H. A petitioner shall file a petition pursuant to~~
9 ~~the provisions of this section prior to July 1, 2002. The~~
10 ~~district court shall not accept any petitions after that date.~~

11 ~~I.]~~ H. As used in this section, "DNA" means
12 deoxyribonucleic acid. "