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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL PROCEDURE; AMENDING PROCEDURES FOR POST-  
CONVICTION CONSIDERATION OF DNA EVIDENCE.

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

SECTION 1. Section 31-1A-2 NMSA 1978 (being Laws 2003,  
Chapter 27, Section 1) is amended to read:

"31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION OF  
DNA EVIDENCE--REQUIREMENTS.--

A. A person convicted of a felony, who claims that  
DNA evidence will establish ~~[his]~~ the person's innocence, may  
petition the district court of the judicial district in which  
~~[he]~~ the person was convicted to order the disclosure,  
preservation, production and testing of evidence that can be  
subjected to DNA testing. A copy of the petition shall be  
served on the district attorney for the judicial district in

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1 which the district court is located. A petitioner shall be  
2 granted full, fair and prompt proceedings upon filing the  
3 petition.

4 B. As a condition to the district court's  
5 acceptance of [~~his~~] the person's petition, the petitioner  
6 shall:

7 (1) submit to DNA testing ordered by the  
8 district court; and

9 (2) authorize the district attorney's use of  
10 the DNA test results to investigate all aspects of the case  
11 that the petitioner is seeking to reopen.

12 C. DNA samples obtained pursuant to Subsection B of  
13 this section shall be submitted for DNA testing according to  
14 the procedures in the DNA Identification Act, and the DNA  
15 record shall be entered into the federal bureau of  
16 investigation's national DNA index system for storage and  
17 exchange of DNA records submitted by forensic DNA laboratories.

18 [~~G.~~] D. The petitioner shall show, by a  
19 preponderance of the evidence, that:

20 (1) [~~he~~] the petitioner was convicted of a  
21 felony;

22 (2) evidence exists that can be subjected to  
23 DNA testing;

24 (3) the evidence to be subjected to DNA  
25 testing:

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1 (a) has not previously been subjected to  
2 DNA testing;

3 (b) has not previously been subjected to  
4 the type of DNA testing that is now being requested; or

5 (c) was previously subjected to DNA  
6 testing, but was tested incorrectly or interpreted incorrectly;

7 (4) the DNA testing [~~he~~] the petitioner is  
8 requesting will be likely to produce admissible evidence; and

9 (5) identity was an issue in [~~his~~] the  
10 petitioner's case or that if the DNA testing [~~he~~] the  
11 petitioner is requesting had been performed prior to [~~his~~] the  
12 petitioner's conviction and the results had been exculpatory,  
13 there is a reasonable probability that the petitioner would not  
14 have pled guilty or been found guilty.

15 [~~D-~~] E. If the petitioner satisfies the  
16 requirements set forth in Subsection [~~E~~] D of this section, the  
17 district court shall appoint counsel for the petitioner, unless  
18 the petitioner waives counsel or retains [~~his~~] the petitioner's  
19 own counsel.

20 [~~E-~~] F. After reviewing a petition, the district  
21 court may dismiss the petition, order a response by the  
22 district attorney or issue an order for DNA testing.

23 [~~F-~~] G. The district court shall order all evidence  
24 secured that is related to the petitioner's case and that could  
25 be subjected to DNA testing. The evidence shall be preserved

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1 during the pendency of the proceeding. The district court may  
2 impose appropriate sanctions, including dismissal of the  
3 petitioner's conviction or criminal contempt, if the court  
4 determines that evidence was intentionally destroyed after  
5 issuance of the court's order to secure evidence.

6 ~~[G.]~~ H. The district court shall order DNA testing  
7 if the petitioner satisfies the requirements set forth in  
8 Subsections B and ~~[G]~~ D of this section.

9 ~~[H.]~~ I. If the results of the DNA testing are  
10 exculpatory, the district court may set aside the petitioner's  
11 judgment and sentence, may dismiss the charges against the  
12 petitioner with prejudice, may grant the petitioner a new trial  
13 or may order other appropriate relief.

14 ~~[I.]~~ J. The cost of DNA testing ordered pursuant to  
15 this section shall be borne by the state or the petitioner, as  
16 the district court may order in the interest of justice.  
17 Provided, that a petitioner shall not be denied DNA testing  
18 because of ~~[his]~~ the petitioner's inability to pay for the cost  
19 of DNA testing. Testing under this provision shall only be  
20 performed by a laboratory that meets the minimum standards of  
21 the national DNA index system.

22 ~~[J.]~~ K. The provisions of this section shall not be  
23 interpreted to limit:

- 24 (1) other circumstances under which a person  
25 may obtain DNA testing; or

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1 (2) post-conviction relief a petitioner may  
2 seek pursuant to other provisions of law.

3 [~~K-~~] L. The petitioner shall have the right to  
4 appeal a district court's denial of the requested DNA testing,  
5 a district court's final order on a petition or a district  
6 court's decision regarding relief for the petitioner. The  
7 state shall have the right to appeal any final order issued by  
8 the district court. An appeal shall be filed by a party within  
9 thirty days to the court of appeals.

10 [~~H-~~] M. The state shall preserve all evidence that  
11 is secured in relation to an investigation or prosecution of a  
12 crime, and that could be subjected to DNA testing, for not less  
13 than the period of time that a person remains subject to  
14 incarceration or [~~supervision~~] on probation or parole in  
15 connection with the investigation or prosecution.

16 [~~M-~~] N. The state may dispose of evidence before  
17 the expiration of the time period set forth in Subsection [~~K~~] M  
18 of this section if:

19 (1) no other law, regulation or court order  
20 requires that the evidence be preserved;

21 (2) the evidence must be returned to its  
22 rightful owner;

23 (3) preservation of the evidence is  
24 impractical due to the size, bulk or physical characteristics  
25 of the evidence; and

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(4) the state takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

O. In proceedings under this section, the Rules of Evidence and the Rules of Civil Procedure for the District Courts shall apply.

~~[N.]~~ P. As used in this section, "DNA" means deoxyribonucleic acid."

**SECTION 2. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2019.