

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 408

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL JUSTICE; PROVIDING FOR THE PRESERVATION 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

.199488.2

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1 which the district court is located.

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

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

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.

10 C. The petitioner shall show, by a preponderance of
11 the evidence, that:

12 (1) [~~he~~] the petitioner was convicted of a
13 felony;

14 (2) evidence exists that can be subjected to
15 DNA testing;

16 (3) the evidence to be subjected to DNA
17 testing:

18 (a) has not previously been subjected to
19 DNA testing;

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

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

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

.199488.2

underscored material = new
[bracketed material] = delete

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

7 D. If the petitioner satisfies the requirements set
8 forth in Subsection C of this section, the district court shall
9 appoint counsel for the petitioner, unless the petitioner
10 waives counsel or retains [~~his~~] the petitioner's own counsel.

11 E. After reviewing a petition, the district court
12 may dismiss the petition, order a response by the district
13 attorney or issue an order for DNA testing.

14 F. The district court shall order all evidence
15 secured that is related to the petitioner's case and that could
16 be subjected to DNA testing. The evidence shall be preserved
17 during the pendency of the proceeding. [~~The district court may~~
18 ~~impose appropriate sanctions, including dismissal of the~~
19 ~~petitioner's conviction or criminal contempt, if the court~~
20 ~~determines that evidence was intentionally destroyed after~~
21 ~~issuance of the court's order to secure evidence.]~~

22 G. The district court shall order DNA testing if
23 the petitioner satisfies the requirements set forth in
24 Subsections B and C of this section.

25 H. If the results of the DNA testing are

1 exculpatory, the district court may set aside the petitioner's
2 judgment and sentence, may dismiss the charges against the
3 petitioner with prejudice, may grant the petitioner a new trial
4 or may order other appropriate relief.

5 I. The cost of DNA testing ordered pursuant to this
6 section shall be borne by the state or the petitioner, as the
7 district court may order in the interest of justice. Provided,
8 that a petitioner shall not be denied DNA testing because of
9 [~~his~~] the petitioner's inability to pay for the cost of DNA
10 testing. Testing under this provision shall only be performed
11 by a laboratory that meets the minimum standards of the
12 national DNA index system.

13 J. The provisions of this section shall not be
14 interpreted to limit:

15 (1) other circumstances under which a person
16 may obtain DNA testing; or

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

19 K. The petitioner shall have the right to appeal a
20 district court's denial of the requested DNA testing, a
21 district court's final order on a petition or a district
22 court's decision regarding relief for the petitioner. The
23 state shall have the right to appeal any final order issued by
24 the district court. An appeal shall be filed by a party within
25 thirty days to the court of appeals.

underscored material = new
[bracketed material] = delete

1 L. The state shall preserve all evidence that is
2 secured in relation to an investigation or prosecution of a
3 crime and that could be subjected to DNA testing, for not less
4 than the period of time that a person remains subject to
5 incarceration or supervision, civil commitment or subject to
6 sex offender registration in connection with the investigation
7 or prosecution. If the court finds that biological evidence
8 was destroyed in violation of the provisions of this section,
9 it may impose appropriate sanctions, including dismissal of the
10 petitioner's conviction.

11 M. The state may dispose of evidence before the
12 expiration of the time period set forth in Subsection K of this
13 section if:

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

16 (2) the evidence must be returned to its
17 rightful owner;

18 (3) preservation of the evidence is
19 impractical due to the size, bulk or physical characteristics
20 of the evidence; and

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

24 N. The state may destroy any evidence pursuant to
25 Subsection M of this section if:

.199488.2

underscored material = new
[bracketed material] = delete

1 (1) the state sends by certified mail notice
2 of intent to destroy the evidence to:

3 (a) all persons who remain committed, in
4 custody or under supervision as a result of the criminal
5 conviction;

6 (b) the attorney of record for each
7 person convicted;

8 (c) the chief public defender;

9 (d) the district attorney in the county
10 of conviction; and

11 (e) the attorney general; and

12 (2) no person who is notified pursuant to
13 Paragraph (1) of this subsection does any of the following
14 within one hundred eighty days after the date on which the
15 person received the notice:

16 (a) files a petition for testing of
17 evidence pursuant to Subsection A of this section; or

18 (b) files an objection to the
19 destruction of the evidence or a motion to preserve evidence
20 with the district court in the county of conviction.

21 O. The district court shall, at its discretion,
22 hold an evidentiary hearing if an objection or motion to
23 preserve evidence is filed with the court pursuant to
24 Subsection N of this section following the notice of intent to
25 destroy evidence.

.199488.2

underscoring material = new
~~[bracketed material] = delete~~

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

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

- 7 -