

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:

"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 judicial district in which the district court is located.

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

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

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

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

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

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

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

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

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

(5) the evidence he wants the court to order DNA testing upon was subject to a chain of custody sufficient to establish that it was not substituted, tampered with, replaced or altered in any material respect;

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

(7) the evidence he wants the court to order DNA testing upon will be highly likely to produce evidentiary results that would have been admissible at the

petitioner's initial trial; and

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

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

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

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

E. The district court may impose any additional, reasonable conditions on the DNA testing to protect the state's interests in the integrity of the evidence.

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

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

H. A petitioner shall file a petition pursuant to the provisions of this section prior to July 1, 2002. The

district court shall not accept any petitions after that date.

I. 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, 2001. _____