

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 390

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CRIMINAL PROCEDURE; ESTABLISHING PROCEDURES FOR
POST-CONVICTION CONSIDERATION OF DNA EVIDENCE; ENACTING A NEW
SECTION OF THE CRIMINAL PROCEDURE ACT; REPEALING A SECTION OF
THE NMSA 1978.

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 POST-CONVICTION
CONSIDERATION OF DNA EVIDENCE-- REQUIREMENTS. --

A. A person convicted of a felony, who claims that
DNA evidence will establish his innocence, may petition the
district court of the judicial district in which he was
convicted to order the disclosure, preservation, production and
testing of evidence that can be subjected to DNA testing. A

. 145224. 1

underscoring material = new
[bracketed material] = delete

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

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

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

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

11 C. The petitioner shall make a reasonable showing
12 that:

13 (1) he was convicted of a 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 is requesting will be
25 likely to produce admissible evidence; and

1 (5) if the DNA testing he is requesting had
2 been performed prior to his conviction and the results had been
3 exculpatory, there is a reasonable probability that the
4 petitioner would not have pled guilty or been found guilty.

5 D. If the petitioner satisfies the requirements set
6 forth in Subsection C of this section, the district court shall
7 appoint counsel for the petitioner, unless the petitioner
8 waives counsel or retains his own counsel.

9 E. The district court shall order all evidence
10 secured that is related to the petitioner's case and that could
11 be subjected to DNA testing. The evidence shall be preserved
12 during the pendency of the proceeding. The district court may
13 impose appropriate sanctions, including dismissal of the
14 petitioner's conviction or criminal contempt, if the court
15 determines that evidence was intentionally destroyed after
16 issuance of the court's order to secure evidence.

17 F. The district court shall order DNA testing if
18 the petitioner satisfies the requirements set forth in
19 Subsections B and C of this section.

20 G. If the results of the DNA testing are
21 exculpatory, the district court shall order appropriate relief
22 for the petitioner. The district court may set aside the
23 petitioner's judgment and sentence, may dismiss the charges
24 against the petitioner with prejudice, may grant the petitioner
25 a new trial or may order other appropriate relief.

1 H. The cost of DNA testing ordered pursuant to this
2 section shall be borne by the state or the petitioner, as the
3 district court may order in the interest of justice. Provided,
4 that a petitioner shall not be denied DNA testing because of
5 his inability to pay for the cost of DNA testing. Testing
6 under this provision shall only be performed by a laboratory
7 that meets the minimum standards of the national DNA index
8 system.

9 I. The provisions of this section shall not be
10 interpreted to limit:

11 (1) other circumstances under which a person
12 may obtain DNA testing; or

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

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

22 K. The state shall preserve all evidence that is
23 secured in relation to an investigation or prosecution of a
24 crime and that could be subjected to DNA testing, for not less
25 than the period of time that a person remains subject to

1 incarceration or supervision in connection with the
2 investigation or prosecution.

3 L. The state may dispose of evidence before the
4 expiration of the time period set forth in Subsection K of this
5 section if:

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

8 (2) the evidence must be returned to its
9 rightful owner;

10 (3) preservation of the evidence is
11 impractical due to the size, bulk or physical characteristics
12 of the evidence; and

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

16 M. As used in this section, "DNA" means
17 deoxyribonucleic acid. "

18 Section 2. REPEAL. -- Section 31-1A-1 NMSA 1978 (being Laws
19 2001, Chapter 29, Section 1) is repealed.

20 Section 3. EFFECTIVE DATE. -- The effective date of the
21 provisions of this act is July 1, 2003.