

Assembly Bill No. 268—Assemblymen Watkins, Fumo, Ohrenschall, Jauregui, Bilbray-Axelrod; Brooks, Edwards, Frierson, Kramer, Monroe-Moreno, Neal, Tolles and Yeager

Joint Sponsor: Senator Hardy

CHAPTER.....

AN ACT relating to criminal procedure; revising provisions relating to a postconviction petition for a genetic marker analysis; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes a person convicted of a felony to file a postconviction petition requesting a genetic marker analysis of evidence within the possession or custody of the State which may contain genetic marker information relating to the investigation or prosecution that resulted in the judgment of conviction. After such a petition is filed, the court may schedule a hearing on the petition. (NRS 176.0918) Existing law requires the court to order a genetic marker analysis if, after considering the information contained in the petition and any other evidence, the court makes certain findings. (NRS 176.09183) **Section 5.7** of this bill revises such findings.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Sections 1-5.5. (Deleted by amendment.)

Sec. 5.7. NRS 176.09183 is hereby amended to read as follows:

176.09183 1. The court shall order a genetic marker analysis, after considering the information contained in the petition pursuant to subsection 3 of NRS 176.0918 and any other evidence, if the court finds that:

(a) ~~A reasonable possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis of the evidence identified in the petition;~~

~~(b)~~ The evidence to be analyzed exists; ~~and~~

~~(e)~~ *(b)* Except as otherwise provided in subsection 2, the evidence was not previously subjected to a genetic marker analysis ~~+~~, *including, without limitation, because such an analysis was not available at the time of trial; and*

(c) One or more of the following situations applies:

(1) A reasonable possibility exists that the petitioner would not have been prosecuted or convicted if exculpatory results had



been obtained through a genetic marker analysis of the evidence identified in the petition;

(2) The petitioner alleges and supports with facts that he or she asked his or her attorney to request to have a genetic marker analysis conducted, but the attorney refused or neglected to do so; or

(3) The court previously ordered a genetic marker analysis to be conducted, but an analysis was never conducted.

2. If the evidence was previously subjected to a genetic marker analysis, the court shall order a genetic marker analysis pursuant to subsection 1 if the court finds that:

(a) The result of the previous analysis was inconclusive;

(b) The evidence was not subjected to the type of analysis that is now requested and the requested analysis may resolve an issue not resolved by the previous analysis; or

(c) The requested analysis would provide results that are significantly more accurate and probative of the identity of the perpetrator than the previous analysis.

3. If the court orders a genetic marker analysis pursuant to subsection 1 or 2, the court shall:

(a) Order the analysis to be conducted promptly under reasonable conditions designed to protect the interest of the State and the petitioner in the integrity of the evidence and the analysis process.

(b) Select a forensic laboratory to conduct or oversee the analysis. The forensic laboratory selected by the court must:

(1) Be operated by this state or one of its political subdivisions, when possible; and

(2) Satisfy the standards for quality assurance that are established for forensic laboratories by the Federal Bureau of Investigation.

(c) Order the forensic laboratory selected pursuant to paragraph (b) to perform a genetic marker analysis of evidence. The analysis to be performed and evidence to be analyzed must:

(1) Be specified in the order; and

(2) Include such analysis, testing and comparison of genetic marker information contained in the evidence and the genetic marker information of the petitioner as the court determines appropriate under the circumstances.

(d) Order the production of any reports that are prepared by a forensic laboratory in connection with the analysis and any data and notes upon which the report is based.



(e) Order the preservation of evidence used in a genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09187 for purposes of a subsequent proceeding or analysis, if any.

(f) Order the results of the genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09187 to be sent to the State Board of Parole Commissioners if the results of the genetic marker analysis are not favorable to the petitioner.

4. If the court orders a genetic marker analysis pursuant to subsection 1 or 2, the State may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of the entry of the order by filing a notice of appeal with the clerk of the district court.

5. The court shall enter an order dismissing a petition filed pursuant to NRS 176.0918 if:

(a) The requirements for ordering a genetic marker analysis pursuant to this section and NRS 176.0918 and 176.09187 are not satisfied; or

(b) The results of a genetic marker analysis performed pursuant to this section and NRS 176.0918 and 176.09187 are not favorable to the petitioner.

6. If the court enters an order dismissing a petition filed pursuant to NRS 176.0918, the person aggrieved by the order may appeal to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of the entry of the order by filing a notice of appeal with the clerk of the district court.

Sec. 6. This act becomes effective on July 1, 2017.



