



The Legislature  
of the  
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER \_\_\_\_\_

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 491

Introduced by

**POCKET VETOED**



1 AN ACT  
2 RELATING TO CRIMINAL PROCEDURE; AMENDING PROCEDURES FOR  
3 POST-CONVICTION CONSIDERATION OF DNA EVIDENCE.  
4

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

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

8 "31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION  
9 OF DNA EVIDENCE--REQUIREMENTS.--

10 A. A person convicted of a felony, who claims that  
11 DNA evidence will establish the person's innocence, may  
12 petition the district court of the judicial district in which  
13 the person was convicted to order the disclosure,  
14 preservation, production and testing of evidence that can be  
15 subjected to DNA testing. A copy of the petition shall be  
16 served on the district attorney for the judicial district in  
17 which the district court is located. A petitioner shall be  
18 granted full, fair and prompt proceedings upon filing the  
19 petition.

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

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

24 (2) authorize the district attorney's use of  
25 the DNA test results to investigate all aspects of the case

1 that the petitioner is seeking to reopen.

2 C. Samples submitted pursuant to Subsection B of  
3 this section shall be submitted according to the procedures  
4 in the DNA Identification Act and shall be entered into  
5 CODIS, as defined in that act.

6 D. The petitioner shall show, by a preponderance  
7 of the evidence, that:

8 (1) the petitioner was convicted of a  
9 felony;

10 (2) evidence exists that can be subjected to  
11 DNA testing;

12 (3) the evidence to be subjected to DNA  
13 testing:

14 (a) has not previously been subjected  
15 to DNA testing;

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

18 (c) was previously subjected to DNA  
19 testing, but was tested incorrectly or interpreted  
20 incorrectly;

21 (4) the DNA testing the petitioner is  
22 requesting will be likely to produce admissible evidence; and

23 (5) identity was an issue in the  
24 petitioner's case or that if the DNA testing the petitioner  
25 is requesting had been performed prior to the petitioner's

1 conviction and the results had been exculpatory, there is a  
2 reasonable probability that the petitioner would not have  
3 pled guilty or been found guilty.

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

9 F. After reviewing a petition, the district court  
10 may dismiss the petition, order a response by the district  
11 attorney or issue an order for DNA testing.

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

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

24 I. If the results of the DNA testing are  
25 exculpatory, the district court may set aside the

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

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

12 K. The provisions of this section shall not be  
13 interpreted to limit:

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

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

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

25 M. The state shall preserve all evidence that is

1 secured in relation to an investigation or prosecution of a  
2 crime, and that could be subjected to DNA testing, for not  
3 less than the period of time that a person remains subject to  
4 incarceration or on probation or parole in connection with  
5 the investigation or prosecution.

6 N. The state may dispose of evidence before the  
7 expiration of the time period set forth in Subsection M of  
8 this section if:

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

11 (2) the evidence must be returned to its  
12 rightful owner;

13 (3) preservation of the evidence is  
14 impractical due to the size, bulk or physical characteristics  
15 of the evidence; and

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

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

22 P. As used in this section, "DNA" means  
23 deoxyribonucleic acid."

24 SECTION 2. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2013.

s/John A. Sanchez  
John A. Sanchez, President  
Senate

s/Lenore M. Naranjo  
Lenore M. Naranjo, Chief Clerk  
Senate

s/W. Ken Martinez  
W. Ken Martinez, Speaker  
House of Representatives

s/Stephen R. Arias  
Stephen R. Arias, Chief Clerk  
House of Representatives

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

s/Governor Susana Martinez  
Governor Susana Martinez  
State of New Mexico

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