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West's New Mexico Statutes Annotated [Currentness](#)

Chapter 31. Criminal Procedure

▢ [Article 1A](#). DNA Evidence

→ **§ 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 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 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; and
- (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.

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

- (1) he was convicted of a felony;
- (2) evidence exists that can be subjected to DNA testing;
- (3) the evidence to be subjected to DNA testing:
 - (a) has not previously been subjected to DNA testing;
 - (b) has not previously been subjected to the type of DNA testing that is now being requested; or
 - (c) was previously subjected to DNA testing, but was tested incorrectly or interpreted incorrectly;
- (4) the DNA testing he is requesting will be likely to produce admissible evidence; and
- (5) identity was an issue in his case or that if the DNA testing he is requesting had been performed prior to his

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

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

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

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

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

H. If the results of the DNA testing are exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may order other appropriate relief.

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

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

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

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

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

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

incarceration or supervision in connection with the investigation or prosecution.

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

- (1) no other law, regulation or court order requires that the evidence be preserved;
- (2) the evidence must be returned to its rightful owner;
- (3) preservation of the evidence is impractical due to the size, bulk or physical characteristics of the evidence;
and
- (4) the state takes reasonable measures to remove and preserve portions of the evidence sufficient to permit future DNA testing.

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

CREDIT(S)

[L. 2003, Ch. 27, § 1, eff. July 1, 2003; L. 2005, Ch. 28, § 1, eff. June 17, 2005.](#)

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