

West's Revised Statutes of Nebraska Annotated
Chapter 29. Criminal Procedure
Article 41. DNA Testing
(b) DNA Testing Act

Neb.Rev.St. § 29-4120

29-4120. DNA testing; procedure

Currentness

(1) Notwithstanding any other provision of law, a person in custody pursuant to the judgment of a court may, at any time after conviction, file a motion, with or without supporting affidavits, in the court that entered the judgment requesting forensic DNA testing of any biological material that:

(a) Is related to the investigation or prosecution that resulted in such judgment;

(b) Is in the actual or constructive possession or control of the state or is in the possession or control of others under circumstances likely to safeguard the integrity of the biological material's original physical composition; and

(c) Was not previously subjected to DNA testing or can be subjected to retesting with more current DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(2) Notice of such motion shall be served by the person in custody upon the county attorney of the county in which the prosecution was held.

(3) Upon receiving notice of a motion filed pursuant to subsection (1) of this section, the county attorney shall take such steps as are necessary to ensure that any remaining biological material that was secured by the state or a political subdivision in connection with the case is preserved pending the completion of proceedings under the DNA Testing Act.

(4) The county attorney shall prepare an inventory of all evidence that was secured by the state or a political subdivision in connection with the case and shall submit a copy of the inventory to the person or the person's counsel and to the court. If evidence is intentionally destroyed after notice of a motion filed pursuant to this section, the court shall impose appropriate sanctions, including criminal contempt.

(5) Upon consideration of affidavits or after a hearing, the court shall order DNA testing pursuant to a motion filed under subsection (1) of this section upon a determination that (a)(i) the biological material was not previously subjected to DNA testing or (ii) the biological material was tested previously, but current technology could provide a reasonable likelihood of more accurate and probative results, (b) the biological material has been retained under circumstances likely to safeguard the

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integrity of its original physical composition, and (c) such testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

(6) All forensic DNA tests shall be performed by a laboratory which is accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Credits

[Laws 2001, LB 659, § 5](#); [Laws 2015, LB 245, § 3](#), eff. Aug. 30, 2015.

[Notes of Decisions \(40\)](#)

Neb. Rev. St. § 29-4120, NE ST § 29-4120

Current through legislation effective March 31, 2016, of the 2nd Regular Session of the 104th Legislature (2016)

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