

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 245

Introduced by Pansing Brooks, 28.

Read first time January 14, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the DNA Testing Act; to amend section
- 2 29-4120, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to DNA testing of biological material; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-4120, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 29-4120 (1) Notwithstanding any other provision of law, a person in
4 custody pursuant to the judgment of a court may, at any time after
5 conviction, file a motion, with or without supporting affidavits, in the
6 court that entered the judgment requesting forensic DNA testing of any
7 biological material that:

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

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

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

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

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

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

31 (5) Upon consideration of affidavits or after a hearing, the court

1 shall order DNA testing pursuant to a motion filed under subsection (1)
2 of this section upon a determination that (a)(i) the biological material
3 was not previously subjected to DNA testing or (ii) the biological
4 material was tested previously, but current technology could provide a
5 reasonable likelihood of more accurate and probative results, (b) such
6 ~~testing was effectively not available at the time of trial, that the~~
7 biological material has been retained under circumstances likely to
8 safeguard the integrity of its original physical composition, and (c)
9 ~~that~~ such testing may produce noncumulative, exculpatory evidence
10 relevant to the claim that the person was wrongfully convicted or
11 sentenced.

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

18 Sec. 2. Original section 29-4120, Reissue Revised Statutes of
19 Nebraska, is repealed.