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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-FIFTH  
SESSION

**HOUSE FILE NO. 1109**

February 19, 2007

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The bill was read for the first time and referred to the Committee on Public Safety and Civil Justice

1.1 A bill for an act  
1.2 relating to postconviction remedies; changing evidentiary standards for  
1.3 postconviction relief; expanding the scope of evidence retained for postconviction  
1.4 relief; amending Minnesota Statutes 2006, sections 590.01, subdivision 4;  
1.5 590.10, subdivision 1.

1.6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.7 Section 1. Minnesota Statutes 2006, section 590.01, subdivision 4, is amended to read:

1.8 Subd. 4. **Time limit.** (a) No petition for postconviction relief may be filed more  
1.9 than two years after the later of:

1.10 (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or

1.11 (2) an appellate court's disposition of petitioner's direct appeal.

1.12 (b) Notwithstanding paragraph (a), a court may hear a petition for postconviction  
1.13 relief if:

1.14 (1) the petitioner establishes that a physical disability or mental disease precluded  
1.15 a timely assertion of the claim;

1.16 (2) the petitioner alleges the existence of newly discovered evidence, ~~including~~  
1.17 ~~scientific evidence~~, that could not have been ascertained by the exercise of due diligence  
1.18 by the petitioner or petitioner's attorney within the two-year time period for filing a  
1.19 postconviction petition, and the evidence is not cumulative to evidence presented at trial,  
1.20 is not for impeachment purposes, and establishes by a ~~clear and convincing standard~~  
1.21 reasonable probability that the petitioner is innocent of the offense or offenses for which  
1.22 the petitioner was convicted;

1.23 (3) the petitioner asserts a new interpretation of federal or state constitutional  
1.24 or statutory law by either the United States Supreme Court or a Minnesota appellate

2.1 court and the petitioner establishes that this interpretation is retroactively applicable to  
2.2 the petitioner's case;

2.3 (4) the petition is brought pursuant to subdivision 3; or

2.4 (5) the petitioner establishes to the satisfaction of the court that the petition is not  
2.5 frivolous and is in the interests of justice.

2.6 (c) Any petition invoking an exception provided in paragraph (b) must be filed  
2.7 within two years of the date the claim arises.

2.8 Sec. 2. Minnesota Statutes 2006, section 590.10, subdivision 1, is amended to read:

2.9 Subdivision 1. **Preservation.** Notwithstanding any other provision of law, all  
2.10 appropriate governmental entities shall retain any biological evidence relating to the  
2.11 identification of a perpetrator secured in relationship to an investigation or a defendant  
2.12 used to secure a conviction in a criminal case until expiration of sentence unless earlier  
2.13 disposition is authorized by court order after notice to the defendant and defense counsel.  
2.14 No order for earlier disposition of this evidence shall be issued if the defendant or defense  
2.15 counsel objects.

2.16 ~~The governmental entity need retain only the portion of such evidence as was~~  
2.17 ~~used to obtain an accurate biological sample used to obtain a conviction.~~ If the size of  
2.18 the biological sample requires that it be consumed in analysis, the Minnesota Rules of  
2.19 Criminal Procedure shall apply. If evidence is intentionally destroyed after the filing of a  
2.20 petition under section 590.01, subdivision 1a, the court may impose appropriate sanctions  
2.21 on the responsible party or parties.