

1 (b) A petition for postsentencing DNA testing may be
2 filed or considered at any time following the date that the
3 judgment and sentence in the case becomes final. Except as
4 ~~provided in subparagraph 2., a petition for postsentencing DNA~~
5 ~~testing may be filed or considered:~~

6 1. ~~Within 4 years following the date that the judgment~~
7 ~~and sentence in the case becomes final if no direct appeal is~~
8 ~~taken, within 4 years following the date that the conviction~~
9 ~~is affirmed on direct appeal if an appeal is taken, within 4~~
10 ~~years following the date that collateral counsel is appointed~~
11 ~~or retained subsequent to the conviction being affirmed on~~
12 ~~direct appeal in a capital case, or by October 1, 2005,~~
13 ~~whichever occurs later; or~~

14 2. ~~At any time if the facts on which the petition is~~
15 ~~predicated were unknown to the petitioner or the petitioner's~~
16 ~~attorney and could not have been ascertained by the exercise~~
17 ~~of due diligence.~~

18 (2) Method for seeking postsentencing DNA testing.--

19 (a) The petition for postsentencing DNA testing must
20 be made under oath by the sentenced defendant and must include
21 the following:

22 1. A statement of the facts relied on in support of
23 the petition, including a description of the physical evidence
24 containing DNA to be tested and, if known, the present
25 location or the last known location of the evidence and how it
26 was originally obtained;

27 2. A statement that the evidence was not previously
28 tested for DNA or a statement that the results of any previous
29 DNA testing were inconclusive and that subsequent scientific
30 developments in DNA testing techniques would likely produce a
31 definitive result;

1 3. A statement that the sentenced defendant is
2 innocent and how the DNA testing requested by the petition
3 will exonerate the defendant of the crime for which the
4 defendant was sentenced or will mitigate the sentence received
5 by the defendant for that crime;

6 4. A statement that identification of the defendant is
7 a genuinely disputed issue in the case, and why it is an
8 issue;

9 5. Any other facts relevant to the petition; and

10 6. A certificate that a copy of the petition has been
11 served on the prosecuting authority.

12 (b) Upon receiving the petition, the clerk of the
13 court shall file it and deliver the court file to the assigned
14 judge.

15 (c) The court shall review the petition and deny it if
16 it is insufficient. If the petition is sufficient, the
17 prosecuting authority shall be ordered to respond to the
18 petition within 30 days.

19 (d) Upon receiving the response of the prosecuting
20 authority, the court shall review the response and enter an
21 order on the merits of the petition or set the petition for
22 hearing.

23 (e) Counsel may be appointed to assist the sentenced
24 defendant if the petition proceeds to a hearing and if the
25 court determines that the assistance of counsel is necessary
26 and makes the requisite finding of indigency.

27 (f) The court shall make the following findings when
28 ruling on the petition:

29 1. Whether the sentenced defendant has shown that the
30 physical evidence that may contain DNA still exists;

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1 2. Whether the results of DNA testing of that physical
2 evidence would be admissible at trial and whether there exists
3 reliable proof to establish that the evidence has not been
4 materially altered and would be admissible at a future
5 hearing; and

6 3. Whether there is a reasonable probability that the
7 sentenced defendant would have been acquitted or would have
8 received a lesser sentence if the DNA evidence had been
9 admitted at trial.

10 (g) If the court orders DNA testing of the physical
11 evidence, the cost of such testing may be assessed against the
12 sentenced defendant unless he or she is indigent. If the
13 sentenced defendant is indigent, the state shall bear the cost
14 of the DNA testing ordered by the court.

15 (h) Any DNA testing ordered by the court shall be
16 carried out by the Department of Law Enforcement or its
17 designee, as provided in s. 943.3251.

18 (i) The results of the DNA testing ordered by the
19 court shall be provided to the court, the sentenced defendant,
20 and the prosecuting authority.

21 (3) Right to appeal; rehearing.--

22 (a) An appeal from the court's order on the petition
23 for postsentencing DNA testing may be taken by any adversely
24 affected party.

25 (b) An order denying relief shall include a statement
26 that the sentenced defendant has the right to appeal within 30
27 days after the order denying relief is entered.

28 (c) The sentenced defendant may file a motion for
29 rehearing of any order denying relief within 15 days after
30 service of the order denying relief. The time for filing an
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1 appeal shall be tolled until an order on the motion for
2 rehearing has been entered.

3 (d) The clerk of the court shall serve on all parties
4 a copy of any order rendered with a certificate of service,
5 including the date of service.

6 (4) Preservation of evidence.--

7 (a) Governmental entities that may be in possession of
8 any physical evidence in the case, including, but not limited
9 to, any investigating law enforcement agency, the clerk of the
10 court, the prosecuting authority, or the Department of Law
11 Enforcement shall maintain any physical evidence collected at
12 the time of the crime for which a postsentencing testing of
13 DNA may be requested.

14 (b) ~~Except for a case in which the death penalty is~~
15 ~~imposed, the evidence shall be maintained for at least the~~
16 ~~period of time set forth in subparagraph (1)(b)1.~~ In a case in
17 which the death penalty is imposed, the evidence shall be
18 maintained for 60 days after execution of the sentence. In all
19 other cases, a governmental entity may dispose of the physical
20 evidence if the term of the sentence imposed in the case has
21 expired and

22 (c) ~~A governmental entity may dispose of the physical~~
23 ~~evidence before the expiration of the period of time set forth~~
24 ~~in paragraph (1)(b) if all of the conditions set forth below~~
25 ~~are met.~~

26 1. ~~The governmental entity notifies all of the~~
27 ~~following individuals of its intent to dispose of the~~
28 ~~evidence: the sentenced defendant, any counsel of record, the~~
29 ~~prosecuting authority, and the Attorney General.~~

30 2. ~~The notifying entity does not receive, within 90~~
31 ~~days after sending the notification, either a copy of a~~

