

## 42 Pa.C.S.A. § 9543.1

C

Effective: September 09, 2002

Purdon's Pennsylvania Statutes and Consolidated Statutes [Currentness](#)Title 42 Pa.C.S.A. Judiciary and Judicial Procedure [\(Refs & Annos\)](#)Part VIII. Criminal Proceedings [\(Refs & Annos\)](#)    <sup>↖</sup> [Chapter 95.](#) Post-Trial Matters        <sup>↖</sup> [Subchapter B.](#) Post Conviction Relief [\(Refs & Annos\)](#)

## → § 9543.1. Postconviction DNA testing

**(a) Motion.--**

(1) An individual convicted of a criminal offense in a court of this Commonwealth and serving a term of imprisonment or awaiting execution because of a sentence of death may apply by making a written motion to the sentencing court for the performance of forensic DNA testing on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction.

(2) The evidence may have been discovered either prior to or after the applicant's conviction. The evidence shall be available for testing as of the date of the motion. If the evidence was discovered prior to the applicant's conviction, the evidence shall not have been subject to the DNA testing requested because the technology for testing was not in existence at the time of the trial or the applicant's counsel did not seek testing at the time of the trial in a case where a verdict was rendered on or before January 1, 1995, or the applicant's counsel sought funds from the court to pay for the testing because his client was indigent and the court refused the request despite the client's indigency.

**(b) Notice to the Commonwealth.--**

(1) Upon receipt of a motion under subsection (a), the court shall notify the Commonwealth and shall afford the Commonwealth an opportunity to respond to the motion.

(2) Upon receipt of a motion under subsection (a) or notice of the motion, as applicable, the Commonwealth and the court shall take the steps reasonably necessary to ensure that any remaining biological material in the possession of the Commonwealth or the court is preserved pending the completion of the proceedings under this section.

**(c) Requirements.--**In any motion under subsection (a), under penalty of perjury, the applicant shall:

(1) (i) specify the evidence to be tested;

(ii) state that the applicant consents to provide samples of bodily fluid for use in the DNA testing; and

(iii) acknowledge that the applicant understands that, if the motion is granted, any data ob-

tained from any DNA samples or test results may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

(2) (i) assert the applicant's actual innocence of the offense for which the applicant was convicted; and

(ii) in a capital case:

(A) assert the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under [section 9711\(d\)](#) (relating to sentencing procedure for murder of the first degree) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(B) assert that the outcome of the DNA testing would establish a mitigating circumstance under [section 9711\(e\)\(7\)](#) if that mitigating circumstance was presented to the sentencing judge or jury and facts as to that issue were in dispute at the sentencing hearing.

(3) present a prima facie case demonstrating that the:

(i) identity of or the participation in the crime by the perpetrator was at issue in the proceedings that resulted in the applicant's conviction and sentencing; and

(ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:

(A) the applicant's actual innocence of the offense for which the applicant was convicted;

(B) in a capital case, the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under [section 9711\(d\)](#) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(C) in a capital case, a mitigating circumstance under [section 9711\(e\)\(7\)](#) under the circumstances set forth in subsection (c)(1)(iv).

**(d) Order.--**

(1) Except as provided in paragraph (2), the court shall order the testing requested in a motion under subsection (a) under reasonable conditions designed to preserve the integrity of the evidence and the testing process upon a determination, after review of the record of the applicant's trial, that the:

(i) requirements of subsection (c) have been met;

(ii) evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been altered in any material respect; and

(iii) motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

(2) The court shall not order the testing requested in a motion under subsection (a) if, after review of the record of the applicant's trial, the court determines that there is no reasonable possibility that the testing would produce exculpatory evidence that:

(i) would establish the applicant's actual innocence of the offense for which the applicant was convicted;

(ii) in a capital case, would establish the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under [section 9711\(d\)](#) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(iii) in a capital case, would establish a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in subsection (c)(1)(iv).

**(e) Testing procedures.--**

(1) Any DNA testing ordered under this section shall be conducted by:

(i) a laboratory mutually selected by the Commonwealth and the applicant;

(ii) if the Commonwealth and the applicant are unable to agree on a laboratory, a laboratory selected by the court that ordered the testing; or

(iii) if the applicant is indigent, the testing shall be conducted by the Pennsylvania State Police or, at the Pennsylvania State Police's sole discretion, by a laboratory designated by the Pennsylvania State Police.

(2) The costs of any testing ordered under this section shall be paid:

(i) by the applicant; or

(ii) in the case of an applicant who is indigent, by the Commonwealth of Pennsylvania.

(3) Testing conducted by the Pennsylvania State Police shall be carried out in accordance with the protocols and procedures established by the Pennsylvania State Police.

**(f) Posttesting procedures.--**

(1) After the DNA testing conducted under this section has been completed, the applicant may, pursuant to [section 9545\(b\)\(2\)](#) (relating to jurisdiction and proceedings), during the 60-day period beginning on the date on which the applicant is notified of the test results, petition to the court for postconviction relief pursuant to [section 9543\(a\)\(2\)\(vi\)](#) (relating to eligibility for relief).

(2) Upon receipt of a petition filed under paragraph (1), the court shall consider the petition along with any answer filed by the Commonwealth and shall conduct a hearing thereon.

(3) In any hearing on a petition for postconviction relief filed under paragraph (1), the court shall determine whether the exculpatory evidence resulting from the DNA testing conducted under this section would have changed the outcome of the trial as required by [section](#)

[9543\(a\)\(2\)\(vi\)](#).

**(g) Effect of motion.**--The filing of a motion for forensic DNA testing pursuant to subsection (a) shall have the following effect:

(1) The filing of the motion shall constitute the applicant's consent to provide samples of bodily fluid for use in the DNA testing.

(2) The data from any DNA samples or test results obtained as a result of the motion may be entered into law enforcement databases, may be used in the investigation of other crimes and may be used as evidence against the applicant in other cases.

**(h) Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Applicant." The individual who files a motion under subsection (a).

"DNA." Deoxyribonucleic acid.

CREDIT(S)

[2002, July 10, P.L. 745, No. 109, § 1](#), effective in 60 days.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Recent developments in postconviction relief. Thomas M. Place, [74 Pa.B.A.Q. 78 \(2003\)](#).

#### RESEARCH REFERENCES

2007 Electronic Update

#### ALR Library

[125 ALR 5th 497](#), DNA Evidence as Newly Discovered Evidence Which Will Warrant Grant of New Trial or Other Postconviction Relief in Criminal Case.

#### Encyclopedias

[92 Am. Jur. Proof of Facts 3d 379](#), Proof of Reliability of Eyewitness and Earwitness Testimony.

#### Treatises and Practice Aids

[Standard Pennsylvania Practice § 138:39](#), Unlawfully Induced Guilty Plea.

[Standard Pennsylvania Practice § 138:42](#), Discovery of Exculpatory Evidence.

[Standard Pennsylvania Practice § 138:66](#), Exceptions to Filing Period--Newly Discovered Evidence.

**42 Pa.C.S.A. § 9543.1**

[Standard Pennsylvania Practice § 138:103](#), Notice to Commonwealth.

[Standard Pennsylvania Practice § 138:104](#), Requirements for Motion.

[Standard Pennsylvania Practice § 138:105](#), Court Order.

[Standard Pennsylvania Practice § 138:106](#), Testing Procedures.

[Standard Pennsylvania Practice § 138:107](#), Petition Based on Newly Discovered Evidence; Hearing.

[2 West's Pennsylvania Practice § 1.8](#), Motion for Preservation of Physical Evidence.

[2 West's Pennsylvania Practice § 9.0](#), Introductory Comment.

[2 West's Pennsylvania Practice § 17.0](#), Scope of Post Conviction Relief Act.

[2 West's Pennsylvania Practice § 17.7](#), Discovery and Other Pre-Hearing Matters.

[16 West's Pennsylvania Practice § 17:8](#), Defendant's Right to Pretrial Discovery and Inspection Generally.

[16B West's Pennsylvania Practice § 29:11](#), Fingerprints, Voiceprints, Neutron Activation Tests, Dog Tracking, Electrophoresis, DNA/RFLP Test; Experimental Testing.

[16C West's Pennsylvania Practice § 34:11](#), Applicability of the PCRA; Motion for Post-Conviction DNA Testing; Special Provisions for Death Penalty Cases: Notice; Waiver of PCRA Rights.

[16C West's Pennsylvania Practice § 34:17](#), Time for Filing Petition: [42 Pa.C.S.A. § 9545\(B\)](#).

[16C West's Pennsylvania Practice § 34:18](#), Timing Exceptions: [42 Pa.C.S.A. § 9545\(B\)\(1\)](#).

[16C West's Pennsylvania Practice § 34:28](#), [42 Pa.C.S.A. § 9543\(A\)\(2\)\(iii\)](#): Unlawful Guilty Plea.

[16C West's Pennsylvania Practice § 34:31](#), [42 Pa.C.S.A. § 9543\(A\)\(2\)\(vi\)](#): Newly Discovered Exculpatory Evidence.

[16C West's Pennsylvania Practice § 34:42](#), Disposition Without Hearing.

[16C West's Pennsylvania Practice § 34:43](#), Hearings.

## UNITED STATES CODE ANNOTATED

Debbie Smith Act of 2004 (DNA evidence), see [18 U.S.C.A. §§ 3297](#) and [3600](#); [42 U.S.C.A. §§ 14135](#), [14136](#), [14136a](#), [14136b](#).

Innocence Protection Act of 2004, see [18 U.S.C.A. §§ 3600A](#); [42 U.S.C.A. §§ 14136e](#), [14163](#) et seq.

## NOTES OF DECISIONS

**Claim that test will prove innocence** [6](#)

**Confessions or guilty pleas** [4](#)

**Construction and application** [1](#)

**Guilty pleas** [4](#)

**Limitations** [7](#)

**Requirement to order testing, generally** [5](#)

**Review** [8](#)

**Tolling** [2](#)

**Waiver** [3](#)

[1](#). Construction and application

A motion for DNA testing, while clearly separate and distinct from claims pursuant to other sections of the postconviction relief act, nonetheless constitutes a postconviction petition under the postconviction relief act. [Com. v. Williams, 909 A.2d 383](#), Super.2006. Criminal Law ↪ 1590

Defendant failed to establish prima facie requirements for postconviction DNA testing; identity of perpetrator was not at issue because defendant admitted that he had sexual intercourse with victim. [Com. v. Williams, 909 A.2d 383](#), Super.2006. Criminal Law ↪ 1590

Where a pro se defendant's sole request in a petition for postconviction relief (PCRA petition) is equivalent to a petition for postconviction forensic DNA testing, the trial court and Superior Court may address it on its merits; to consider a request for DNA testing as untimely based solely on the nomenclature used, by, for instance, a defendant's use of the standard form for PCRA petitions, would merely elevate form over substance. [Com. v. Young, 873 A.2d 720](#), Super.2005, appeal denied [891 A.2d 733, 586 Pa. 739](#). Criminal Law ↪ 1590

[2](#). Tolling

New postconviction DNA testing act does not directly toll the one-year limitations period for filing a Postconviction Relief Act (PCRA) petition; rather, it allows for a convicted individual to first obtain DNA testing which could then be used within a PCRA petition to establish new facts in order to satisfy the requirements of an exception to the limitations period. [Com. v. Weeks, 831 A.2d 1194](#), Super.2003. Criminal Law ↪ 1586

[3](#). Waiver

Post-conviction movant waived any claim of entitlement to post-conviction DNA testing, or of trial court error in failing to appoint counsel to assist him in securing such testing, by refusing to submit to DNA testing at time of trial. [Com. v. McLaughlin, 835 A.2d 747](#), Super.2003. Criminal Law ↪ 1590

[4](#). Confessions or guilty pleas

While a confession in and of itself generally would not bar a request for postconviction forensic DNA testing, a defendant cannot assert a claim of actual innocence where the validity of a confession has been finally litigated, found not to be coerced, and was knowingly and

voluntarily given. [Com. v. Young, 873 A.2d 720](#), Super.2005, appeal denied [891 A.2d 733, 586 Pa. 739](#). Criminal Law ↻ 1457; Criminal Law ↻ 1590

Defendant's pro se petition for postconviction forensic DNA testing was facially insufficient to warrant testing, since defendant, upon his arrest, had confessed to stabbing victim to death, which in turn barred any claim of actual innocence, and victim's son unequivocally identified defendant as the person who had broken into his home and ordered him and his little sister out of the bedroom while producing a knife and holding it toward victim. [Com. v. Young, 873 A.2d 720](#), Super.2005, appeal denied [891 A.2d 733, 586 Pa. 739](#). Criminal Law ↻ 1590

Statute allowing for post-conviction DNA testing outside one-year limitations period did not apply to defendant who pleaded guilty to endangering welfare of children, since identity of perpetrator was never at issue. [Williams v. Erie County Dist. Attorney's Office, 848 A.2d 967](#), Super.2004, appeal denied [864 A.2d 530, 581 Pa. 692](#). Criminal Law ↻ 1590

#### 5. Requirement to order testing, generally

Defendant was not entitled to a free-standing postconviction DNA test, where he was not convicted of a crime prior to the existence of, or general availability of, DNA testing. [Com. v. Williams, 899 A.2d 1060, 587 Pa. 304](#), Sup.2006. Criminal Law ↻ 1590

Post-conviction movant's willingness to submit to DNA testing did not require post-conviction court to order such testing, where rape kit prepared in connection with criminal incident 14 years previously had been destroyed without fault on part of prosecution or of testing laboratory, due at least in part to movant's categorical refusal to submit to DNA test, and where movant's identity had not been at issue in his original trial. [Com. v. McLaughlin, 835 A.2d 747](#), Super.2003. Criminal Law ↻ 1590

#### 6. Claim that test will prove innocence

Post-conviction petitioner's unsupported assertion that absence of his DNA from victim's fingernails would establish his innocence was insufficient to entitle him to post-conviction DNA testing of victim's fingernail clippings; even if DNA testing showed absence of defendant's DNA from victim's fingernails, result would not establish defendant's innocence of victim's murder, and premise on which defendant relied to support his speculation that assailant's DNA was deposited onto victim's fingernails, that victim scratched her assailant, such that his blood and/or skin cells were deposited onto her fingernails, was entirely speculative. [Com. v. Smith, 889 A.2d 582](#), Super.2005, appeal denied [905 A.2d 500, 588 Pa. 769](#). Criminal Law ↻ 1590

Defendant, who petitioned for post-conviction DNA testing under the Post-Conviction Relief Act (PCRA) following his conviction for first-degree murder, failed to present a prima facie case by demonstrating that the DNA testing of specific evidence, assuming exculpatory results, would have established his actual innocence; victim was shot twice, once in the head and once in the stomach, and even if defendant's DNA was not at the crime scene, it would have proved nothing. [Com. v. Brooks, 875 A.2d 1141](#), Super.2005. Criminal Law ↻ 1590

Post-conviction petitioner's unsupported and conclusory assertion that absence of his DNA from crime scene items and items removed from murder victim's body would conclusively establish his innocence was insufficient to entitle him to post-conviction DNA testing, where

**42 Pa.C.S.A. § 9543.1**

certain particular items with respect to which petitioner sought testing were never linked to petitioner or offered at his trial to suggest that he had any connection therewith, DNA testing of other specified items, including gunshot residue, would reveal nothing, and presence of semen not matching petitioner's profile on victim's body or clothing would not have been conclusive, in that victim was a prostitute. [Com. v. Heilman, 867 A.2d 542](#), Super.2005, appeal denied [876 A.2d 393, 583 Pa. 669](#). Criminal Law ↪ 1590

**7. Limitations**

Defendant could not use his post-conviction petition for DNA testing to raise extraneous issues not related to DNA testing in an effort to avoid the Post-Conviction Relief Act's (PCRA's) one-year statute of limitations. [Com. v. Brooks, 875 A.2d 1141](#), Super.2005. Criminal Law ↪ 1586; Criminal Law ↪ 1590

Pro se defendant's petition for postconviction relief was not subject to one-year time bar under Post-Conviction Relief Act (PCRA), but was instead afforded review as a petition for postconviction forensic DNA testing, where, although he used the standard form for PCRA petitions, defendant's sole request sought DNA testing of blood evidence entered at trial. [Com. v. Young, 873 A.2d 720](#), Super.2005, appeal denied [891 A.2d 733, 586 Pa. 739](#). Criminal Law ↪ 1578

**8. Review**

In reviewing the propriety of an order granting or denying relief under the Post-Conviction Relief Act (PCRA), great deference is granted to the findings of the PCRA court, and these findings will not be disturbed unless they have no support in the certified record. [Com. v. Watson, 927 A.2d 274](#), Super.2007. Criminal Law ↪ 1158(1)

In reviewing the propriety of an order granting or denying relief under the Post-Conviction Relief Act (PCRA), the Superior Court is limited to determining whether the evidence of record supports the determination of the PCRA court, and whether the ruling is free of legal error. [Com. v. Watson, 927 A.2d 274](#), Super.2007. Criminal Law ↪ 1134(10)

**42 Pa.C.S.A. § 9543.1, PA ST 42 Pa.C.S.A. § 9543.1**

Current through Act 2007-56

Copr. © 2007 Thomson/West

END OF DOCUMENT