

**C**Connecticut General Statutes Annotated [Currentness](#)

Title 54. Criminal Procedure

↳ [Chapter 961](#). Trial and Proceedings After Conviction↳ [Part IIC](#). Post-Conviction Remedies**→ § 54-102kk. DNA testing of biological evidence**

(a) Notwithstanding any other provision of law governing postconviction relief, any person who was convicted of a crime and sentenced to incarceration may, at any time during the term of such incarceration, file a petition with the sentencing court requesting the DNA testing of any evidence that is in the possession or control of the Division of Criminal Justice, any law enforcement agency, any laboratory or the Superior Court. The petitioner shall state under penalties of perjury that the requested testing is related to the investigation or prosecution that resulted in the petitioner's conviction and that the evidence sought to be tested contains biological evidence.

(b) After notice to the prosecutorial official and a hearing, the court shall order DNA testing if it finds that:

(1) A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing;

(2) The evidence is still in existence and is capable of being subjected to DNA testing;

(3) The evidence, or a specific portion of the evidence identified by the petitioner, was never previously subjected to DNA testing, or the testing requested by the petitioner may resolve an issue that was never previously resolved by previous testing; and

(4) The petition before the Superior Court was filed in order to demonstrate the petitioner's innocence and not to delay the administration of justice.

(c) After notice to the prosecutorial official and a hearing, the court may order DNA testing if it finds that:

(1) A reasonable probability exists that the requested testing will produce DNA results which would have altered the verdict or reduced the petitioner's sentence if the results had been available at the prior proceedings leading to the judgment of conviction;

(2) The evidence is still in existence and is capable of being subjected to DNA testing;

(3) The evidence, or a specific portion of the evidence identified by the petitioner, was never previously subjected to DNA testing, or the testing requested by the petitioner may resolve an issue that was never previously resolved by previous testing; and

(4) The petition before the Superior Court was filed in order to demonstrate the petitioner's innocence and not to delay the administration of justice.

(d) The costs of DNA testing ordered pursuant to this section shall be borne by the state or the petitioner, as the court may order in the interests of justice, except that DNA testing shall not be denied because of the inability of the petitioner to pay the costs of such testing.

(e) In a proceeding under this section, the petitioner shall have the right to be represented by counsel and, if the petitioner is indigent, the court shall appoint counsel for the petitioner in accordance with [section 51-296](#).

CREDIT(S)

[\(2003, P.A. 03-242, § 7.\)](#)

## HISTORICAL AND STATUTORY NOTES

2007 Electronic Pocket Part Update

### **Codification**

Gen.St., Rev. to 2005, codified [2003, P.A. 03-242](#), § 7 as C.G.S.A. § 54- 102kk.

## LAW REVIEW AND JOURNAL COMMENTARIES

The innocence revolution and our "evolving standard of decency" in death penalty jurisprudence. Mark A. Godsey and Thomas Pulley, [29 U. Dayton L. Rev. 265 \(2004\)](#).

## RESEARCH REFERENCES

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Encyclopedias

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

## NOTES OF DECISIONS

### **Construction with federal law [1/2](#)**

#### **Habeas corpus proceedings [1](#)**

[1/2](#). Construction with federal law

The State of Connecticut fully satisfies the requirements of § 413 of the Justice for All Act of 2004, with regard to both postconviction DNA testing and the preservation of biological evidence; specifically: (1) Connecticut satisfies the applicable requirements of § 413(2)(A)(i) in that C.G.S.A. § 54-102kk ensures a reasonable process for resolving claims of actual innocence based upon DNA evidence; (2) [C.G.S.A. § 51-36](#) renders Connecticut in compliance with § 413(2)(B)(i) with regard to evidence secured in relation to the prosecution of State offenses; (3) [C.G.S.A. § 54-36a](#) directs that when property is seized in connection with a criminal arrest or pursuant to a search warrant without an arrest, the law enforcement agency seizing the property must file an inventory of the property seized with the court in the geographical area in which the criminal offense is alleged to have been committed or in which the search

warrant was issued, thereby enhancing the accountability and tracking of evidence, including evidence containing biological samples, that is collected in the course of any investigation either resulting in a prosecution or conducted using a search warrant; and (4) Connecticut's collection practice ensures that with regard to criminal investigations, reasonable measures are in fact taken, not only with respect to evidence secured in relation to the prosecution of a state offense, but also with regard to evidence secured in relation to the investigation of a State offense. Op. Atty. Gen. No. 06-024 ([November 9, 2006](#)), [2006 WL 4336134](#).

1. Habeas corpus proceedings

Habeas court abused its discretion in denying defendant's motion for continuance to stay habeas proceeding for him to bring his petition for DNA testing to sentencing court; it was not in interest of judicial economy to require defendant to file a separate petition with sentencing court and then to refile a new habeas petition, commissioner of correction, as respondent, would not have suffered any prejudice as result of continuance, defendant was prejudiced by denial of continuance because any new petition filed would be heard later than the one he already had filed, and defendant had substantial due process right to prove his actual innocence, particularly because he was incarcerated. [Mitchell v. Commissioner of Correction \(2006\) 891 A.2d 25, 93 Conn.App. 719](#), certification denied [896 A.2d 104, 278 Conn. 902](#). Habeas Corpus ↪ 741

Habeas court acted within its discretion in denying defendant's petition for DNA testing of a sex crime kit and, under testing statute, deferring matter to sentencing court. [Mitchell v. Commissioner of Correction \(2006\) 891 A.2d 25, 93 Conn.App. 719](#), certification denied [896 A.2d 104, 278 Conn. 902](#). Habeas Corpus ↪ 688

C. G. S. A. § 54-102kk, CT ST § 54-102kk

Current through the 2007 Jan. Reg. Sess. and public acts from the June Sp. Sess. approved by the Gov. on or before June 29, 2007.

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