

DC ST § 22-4133

CDistrict of Columbia Official Code 2001 Edition [Currentness](#)

Division IV. Criminal Law and Procedure and Prisoners.

Title 22. Criminal Offenses and Penalties. ([Refs & Annos](#)) ↖ [Subtitle III-A](#). DNA Testing. ↖ [Chapter 41A](#). DNA Testing and Post-Conviction Relief for Innocent Persons.**→ § 22-4133. Post-conviction DNA testing.**

(a) A person in custody pursuant to the judgment of the Superior Court of the District of Columbia for a crime of violence may, at any time after conviction or adjudication as a delinquent, apply to the court for DNA testing of biological material that:

(1) Was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent or can otherwise be identified as evidence in the case;

(2) Is in the actual or constructive possession of the District of Columbia or the United States, or has been retained by any other person or entity under conditions sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; and

(3)(A) Was not previously subject to DNA testing because DNA testing was not readily available in criminal cases in the District of Columbia at the time of conviction or adjudication as a delinquent;

(B) Was not previously subjected to the type of DNA testing being requested and the new type of DNA testing would have a reasonable probability of providing a more probative result than tests previously conducted;

(C) Was not previously subjected to DNA testing because of circumstances that would entitle the applicant to relief under [§ 23-110](#) or [Rule 32 of the Superior Court Rules of Criminal Procedure](#); or

(D) Was not previously subjected to DNA testing because it is new evidence as defined in [§ 22-4131\(7\)\(A\)](#) or [\(B\)](#).

(b) The application shall:

(1) Include an affidavit by the applicant, under penalty of perjury, stating that the applicant is actually innocent of the crime that is the subject of the application; provided, that the denial of an application for testing or an inconclusive result produced by DNA testing shall not be admissible in any prosecution based on the filing of a false affidavit;

(2) Identify the specific evidence for which DNA testing is requested;

(3) Set forth the reason that the requested DNA testing was not previously obtained; and

- (4) Explain how the DNA evidence would help establish that the applicant is actually innocent despite having been convicted at trial or having pled guilty.
- (c) Unless the application and files and records of the case conclusively show that the applicant is entitled to no relief, the court shall notify the prosecution of an application made pursuant to subsection (a) of this section and shall afford the prosecution an opportunity to respond. Upon receiving notice of an application made pursuant to subsection (a) of this section, the prosecution shall take the necessary steps to ensure that any remaining biological material that was obtained in connection with the case or investigation is preserved pending the completion of proceedings under this section.
- (d) The court shall order DNA testing pursuant to an application made under subsection (a) of this section upon a determination that the application meets the criteria set forth in subsections (a) and (b) of this section and there is a reasonable probability that testing will produce non-cumulative evidence that would help establish that the applicant was actually innocent of the crime for which the applicant was convicted or adjudicated as delinquent.
- (e)(1) The cost of DNA testing ordered pursuant to subsection (d) of this section shall be paid by the District of Columbia, to the same extent provided for in [§ 11-2605](#), if the court finds that the applicant is financially unable to pay for the testing. If the applicant is financially able to pay for the testing, the cost shall be borne by the applicant.
- (2) The court may appoint counsel for an applicant for DNA testing pursuant to this section who is financially unable to obtain adequate representation.
- (3) The provisions of Chapter 26 of Title 11 shall apply with equal force to applications made pursuant to this section.
- (f) An order granting or denying relief under this section is a final order for purposes of appeal.

CREDIT(S)

([May 17, 2002, D.C. Law 14-134, § 4, 49 DCR 408.](#))

HISTORICAL AND STATUTORY NOTES

Legislative History of Laws

For Law 14-134, see notes following § 22-4131.

NOTES OF DECISIONS

Purpose [1](#)

Reasonable probability [2](#)

Waiver of testing [4](#)

[1.](#) Purpose

While the Innocence Protection Act (IPA) would afford a defendant an opportunity, prior to trial, to have further testing done after the government's test results were received, post-

conviction testing under the Act was intended to be limited to situations testing was not previously done, and has a reasonable probability of producing new evidence of actual innocence of the defendant. *U.S. v. Cuffey*, 132 WLR 385 (Super. Ct. 2004).

2. Reasonable probability

Defendant was not entitled to post-conviction DNA testing of biological material found at murder scene and on his clothing, under provisions of Innocence Protection Act (IPA), even though defendant believed testing would support defense theory that another individual had committed murder, where testimony of forensic DNA examiner conclusively excluded probability that comparison defendant requested would establish any match between blood in hall and any blood on defendant's jacket, and there was no reasonable probability of testing producing evidence of defendant's actual innocence. *U.S. v. Cuffey*, 132 WLR 385 (Super. Ct. 2004).

4. Waiver of testing

Defendant was not barred from requesting post-conviction relief pursuant to Innocence Protection Act (IPA) to obtain independent DNA testing on basis that he made knowing, intelligent, and voluntary waiver of DNA testing, in prosecution for child sexual abuse, as record did not support conclusion that defendant made a full voluntary waiver of such testing, given the absence of absence of a suitable colloquy in open court. [Veney v. U.S., 2007, 2007 WL 2197064](#). Criminal Law ↪ 1590

DC CODE § 22-4133

Current through October 2, 2007

Copyright © 2007 By The District of Columbia. All Rights Reserved.

END OF DOCUMENT