

CWest's Delaware Code Annotated [Currentness](#)

Title 11. Crimes and Criminal Procedure

└─ [Part II.](#) Criminal Procedure Generally└─ [Chapter 45.](#) Appeal; Stay of Execution; Postconviction Remedy**→ § 4504. Postconviction remedy**

(a) Except at a time when direct appellate review is available, and subject to the time limitations set forth in this subsection, a person convicted of a crime may file in the court that entered the judgement of conviction a motion requesting the performance of forensic DNA testing to demonstrate the person's actual innocence. Any such motion may not be filed more than 3 years after the judgement of conviction is final. The motion may be granted if:

(1) The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction;

(2) The evidence was not previously subject to testing because the technology for testing was not available at the time of the trial;

(3) The movant presents a prima facie case that identity was an issue in the trial;

(4) The movant presents a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered or replaced in any material aspect;

(5) The requested testing has the scientific potential to produce new, noncumulative evidence materially relevant to the person's assertion of actual innocence; and

(6) The requested testing employs a scientific method which is generally accepted within the relevant scientific community, and which satisfies the pertinent Delaware Rules of Evidence concerning the admission of scientific testimony or evidence.

(b) Except at a time when direct appellate review is available, a person convicted of a crime who claims that DNA evidence not available at trial establishes the petitioner's actual innocence may commence a proceeding to secure relief by filing a motion for a new trial in the court that entered the judgement of conviction. The court may grant a new trial if the person establishes by clear and convincing evidence that no reasonable trier of fact, considering the evidence presented at trial, evidence that was available at trial but was not presented or was excluded, and the evidence obtained pursuant to subsection (a) of this section would have convicted the person.

(c) The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

(d) Any motion filed pursuant to this section shall be served upon the State. The State shall have an absolute right to appeal to an appellate court any order granting a motion for a new trial pursuant to this section.

(e) The cost of DNA testing ordered under subsection (a) of this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

[72 Laws 2000, ch. 320, § 3, eff. Sept. 1, 2000.](#)


HISTORICAL AND STATUTORY NOTES

[72 Laws 2000, ch. 320, § 4, eff. Sept. 1, 2000](#), amended by [74 Laws 2003, ch. 72, § 1, eff. June 30, 2003](#), provides:

"The time limits set forth in § 4504(a) of Title 11 as promulgated by Section 3 of this Act shall not apply to any motion filed pursuant to said subsection by any person whose judgement of conviction is final prior to September 1, 2000. Any motion filed pursuant to the provisions of § 4504(a) of Title 11 as promulgated by Section 3 of this Act by any person whose judgement of conviction is final prior to September 1, 2000 may not be filed after September 1, 2004."

LIBRARY REFERENCES

Costs 307.

Criminal Law 1590.

Westlaw Key Number Searches: 102k307; 110k1590.

RESEARCH REFERENCES

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.

Treatises and Practice Aids

[5 NO. 4 Criminal Practice Guide 4](#), Model Discovery Request for Str Test Results.

NOTES OF DECISIONS

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1. Grounds for relief

Superior Court did not abuse its discretion in refusing to grant defendant's post-conviction motion for a new trial based upon a new DNA report concerning blood found on vase near murder victim's body; although no single item of evidence, viewed in isolation, may have been sufficient to convict defendant, the physical evidence and the testimony of other witnesses, taken together, were sufficient to support a jury finding that defendant was present at the scene and was guilty of the crimes charged beyond a reasonable doubt. [Brookins v. State, 2007, 922 A.2d 389](#). Criminal Law ↪ 945(1)

Proposed DNA testing has potential to be "materially relevant" to an inmate's claim of actual innocence, for purposes of statute governing post-conviction DNA testing, if favorable test result would tend to significantly advance that claim. 11 Del.C. § 4504(a)(5). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ↪ 1457; Criminal Law ↪ 1590

When deciding, under statute governing post-conviction DNA testing, whether such evidence has potential to be materially relevant to a claim of actual innocence, the trial court must consider not only the exculpatory potential of a favorable DNA test result, but also the other evidence presented at trial; if state presented a strong case and a favorable DNA test would discredit only an ancillary fact, the testing should be refused, but if DNA test could exonerate defendant, material relevance is shown no matter how strong other evidence might have been. 11 Del.C. § 4504(a)(5). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ↪ 1457; Criminal Law ↪ 1590

It is irrelevant, for purposes of determining under governing statute whether proposed post-conviction DNA testing has potential to be materially relevant to a claim of actual innocence, whether the test is likely to be favorable or not. 11 Del.C. § 4504(a)(5). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ↪ 1457; Criminal Law ↪ 1590

Defendant who moved for post-conviction DNA testing made required prima facie showing under governing statute that identity was an issue at trial on charges arising from his alleged sexual molestation of daughter, where daughter identified defendant as perpetrator but he denied the charges, and medical evidence indicated daughter had had sexual contact with someone. 11 Del.C. § 4504(a)(3). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ↪ 1457; Criminal Law ↪ 1590

Favorable DNA test would tend to significantly advance claim of actual innocence on charges that defendant sexually molested daughter, thus satisfying "material relevance" requirement under governing statute for granting motion for post-conviction DNA testing; most significant physical evidence introduced against defendant was bedspread from daughter's bed that had semen stains, and jury never heard anything about daughter allegedly having sex with her boyfriend because trial court excluded a friend's testimony to that effect. 11 Del.C. § 4504(a)(5).

[Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 1457; Criminal Law ⌨ 1590

To satisfy statutory requirement of making prima facie showing concerning chain of custody of sample to be tested, inmate who moves for post-conviction DNA testing need only execute or otherwise produce an affidavit stating that sample was gathered by and remains in custody of a state agency, hospital, or other institution capable of identifying and securing sample; if state contests either chain of custody or condition of sample, state must provide inmate sufficient information, including access to sample, to permit inmate to develop factual record for trial court. 11 Del.C. § 4504(a)(4). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 404.45; Criminal Law ⌨ 1590

2. Proceedings, generally


Because of its remedial purpose, statute governing post-conviction DNA testing should be liberally construed to allow such testing whenever the petitioner has complied with a reasonable reading of its requirements, but liberal construction does not mean that relief should be awarded at the cost of twisting or misreading the statutory language. 11 Del.C. § 4504(a). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 1590

To establish under governing statute that technology for proposed DNA testing was not available at time of trial, inmate who moves for post-conviction DNA testing may present relevant scientific literature to trial court and ask trial court to take judicial notice of relevant facts; if there is any dispute as to those facts, however, inmate will have to present expert evidence, and a hearing may be required. 11 Del.C. § 4504(a)(2). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 1590


Trial courts are encouraged, in determining under governing statute whether requested form of post-conviction DNA testing is accepted within scientific community and admissible under rules of evidence, to rely on other judicial findings and to take judicial notice of appropriate treatises, where possible, to satisfy that requirement. 11 Del.C. § 4504(a)(6). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 1590


Since facts relating to the reliability and progress of DNA technology do not vary from case to case, they need not be decided de novo by each individual trial court when determining, under governing statute, whether proposed post-conviction DNA testing is generally accepted within scientific community and admissible under rules of evidence. 11 Del.C. § 4504(a)(6). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law ⌨ 1590

Defendant who was convicted of attempted robbery in the first degree was ineligible under governing statute to seek post-conviction DNA testing of blood samples found on his gloves, boots, and screwdriver, where reason that DNA testing was not undertaken at trial was defendant's strategic decision not to do so,

rather than unavailability of such testing. 11 Del.C. § 4504(a)(2). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law  1590

3. Remand

Because of newness of governing statute, interests of justice compelled a remand of inmate's motion for post-conviction DNA testing to allow inmate to develop a record establishing the scientific potential that samples taken from rape victims would contain evidence materially relevant to a claim of actual innocence. 11 Del.C. § 4504(a)(5). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law  1181.5(2)

Because of newness of governing statute, interests of justice compelled a remand of inmate's motion for post-conviction DNA testing to allow inmate to develop a record establishing that the mitochondrial DNA (mtDNA) testing he sought was not available at time of trial for sexual offenses. 11 Del.C. § 4504(a)(2). [Anderson v. State, 2003, 831 A.2d 858](#). Criminal Law  1181.5(2)

11 Del.C. § 4504, **DE ST TI 11 § 4504**

Current through 76 Laws 2007, ch. 181. Revisions to Acts made by the Delaware Code Revisors were unavailable at time of publication.

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