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Arizona Revised Statutes Annotated [Currentness](#)

Title 13. Criminal Code ([Refs & Annos](#))

▢ [Chapter 38. Miscellaneous](#)

▢ [Article 29. Post-Conviction Relief \(Refs & Annos\)](#)

→ **§ 13-4240. Postconviction deoxyribonucleic acid testing**

**A.** At any time, a person who was convicted of and sentenced for a felony offense and who meets the requirements of this section may request the forensic deoxyribonucleic acid testing of any evidence that is in the possession or control of the court or the state, that is related to the investigation or prosecution that resulted in the judgment of conviction, and that may contain biological evidence.

**B.** After notice to the prosecutor and an opportunity to respond, the court shall order deoxyribonucleic acid testing if the court finds that all of the following apply:

1. A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through deoxyribonucleic acid testing.
2. The evidence is still in existence and is in a condition that allows deoxyribonucleic acid testing to be conducted.
3. The evidence was not previously subjected to deoxyribonucleic acid testing or was not subjected to the testing that is now requested and that may resolve an issue not previously resolved by the previous testing.

**C.** After notice to the prosecutor and an opportunity to respond, the court may order deoxyribonucleic acid testing if the court finds that all of the following apply:

1. A reasonable probability exists that either:

(a) The petitioner's verdict or sentence would have been more favorable if the results of deoxyribonucleic acid testing had been available at the trial leading to the judgment of conviction.

(b) Deoxyribonucleic acid testing will produce exculpatory evidence.

2. The evidence is still in existence and is in a condition that allows deoxyribonucleic acid testing to be conducted.

3. The evidence was not previously subjected to deoxyribonucleic acid testing or was not subjected to the testing that is now requested and that may resolve an issue not previously resolved by the previous testing.

**D.** If the court orders testing pursuant to subsection B, the court shall order the method and responsibility for payment, if necessary. If the court orders testing pursuant to subsection C, the court may require the petitioner to pay the costs of testing.

**E.** The court may appoint counsel for an indigent petitioner at any time during any proceedings under this section.

**F.** If the court orders testing pursuant to this section, the court shall select a laboratory that meets the standards of the deoxyribonucleic acid advisory board to conduct the testing.

**G.** If the prosecutor or defense counsel has previously subjected evidence to deoxyribonucleic acid testing, the court may order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing, including underlying data and laboratory notes. If the court orders deoxyribonucleic acid testing pursuant to this section, the court shall order the production of any laboratory reports that are prepared in connection with the testing and may order the production of any underlying data and laboratory notes.

**H.** If a petition is filed pursuant to this section, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to deoxyribonucleic acid testing. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation.

**I.** The court may make any other orders that the court deems appropriate, including designating any of the following:

1. The type of deoxyribonucleic acid analysis to be used.
2. The procedures to be followed during the testing.
3. The preservation of some of the sample for replicating the testing.
4. Elimination samples from third parties.

**J.** If the results of the postconviction deoxyribonucleic acid testing are not favorable to the petitioner, the court shall dismiss the petition. The court may make further orders as it deems appropriate, including any of the fol-

lowing:

1. Notifying the board of executive clemency or a probation department.
2. Requesting that the petitioner's sample be added to the federal combined dna index system offender database.
3. Providing notification to the victim or family of the victim.

**K.** Notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the post-conviction deoxyribonucleic acid testing are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to this article or the Arizona Rules of Criminal Procedure.

#### CREDIT(S)

Added by [Laws 2000, Ch. 373, § 1.](#)

#### HISTORICAL AND STATUTORY NOTES

Former § 13-4240, added by Laws 1984, Ch. 303, § 1, which related to grounds for post-conviction relief and waiver, was repealed by Laws 1994, Ch. 77, § 2.

#### Reviser's Notes:

**2000 Note.** Pursuant to authority of § 41-1304.02, in the section heading the spelling of “Postconviction” was corrected and in subsections J and K the spelling of “postconviction” was corrected.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Criminal DNA databank [statutes and medical research](#). Davina Dana Bressler, 43 *Jurimetrics J.* 51 (2002).

Will the truth set them free? No, but the lab might: statutory responses to advancements in DNA technology. 44 *Ariz.L.Rev.* 457 (2002).

#### LIBRARY REFERENCES

[Criminal Law](#)  1590.  
Westlaw Topic No. 110.

#### RESEARCH REFERENCES

Encyclopedias

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

Treatises and Practice Aids

[Criminal Procedure, Second Edition § 24.11\(D\)](#), Newly Discovered Evidence.

UNITED STATES CODE ANNOTATED

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

A. R. S. § 13-4240, AZ ST § 13-4240

Current through the end of the Forty-Eighth Legislature, Second Regular Session (2008), and also includes election results from the November 4, 2008 general election

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