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West'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.

CREDIT(S)

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

Current through 77 Laws 2010, chs. 1 286. Revisions by the Delaware Code Revisors were unavailable at the time of publication.

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