

West's Wisconsin Statutes Annotated
Criminal Procedure (Ch. 967 to 980)
Chapter 974. Criminal Procedure--Appeals, New Trials and Writs of Error (Refs & Annos)

W.S.A. 974.07

974.07. Motion for postconviction deoxyribonucleic acid testing of certain evidence

Effective: August 3, 2011

[Currentness](#)

(1) In this section:

(a) "Government agency" means any department, agency, or court of the federal government, of this state, or of a city, village, town, or county in this state.

(b) "Movant" means a person who makes a motion under sub. (2).

(2) At any time after being convicted of a crime, adjudicated delinquent, or found not guilty by reason of mental disease or defect, a person may make a motion in the court in which he or she was convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for an order requiring forensic deoxyribonucleic acid testing of evidence to which all of the following apply:

(a) The evidence is relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect.

(b) The evidence is in the actual or constructive possession of a government agency.

(c) The evidence has not previously been subjected to forensic deoxyribonucleic acid testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

(3) A movant or, if applicable, his or her attorney shall serve a copy of the motion made under sub. (2) on the district

attorney's office that prosecuted the case that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect. The court in which the motion is made shall also notify the appropriate district attorney's office that a motion has been made under sub. (2) and shall give the district attorney an opportunity to respond to the motion. Failure by a movant to serve a copy of the motion on the appropriate district attorney's office does not deprive the court of jurisdiction and is not grounds for dismissal of the motion.

(4)(a) The clerk of the circuit court in which a motion under sub. (2) is made shall send a copy of the motion and, if a hearing on the motion is scheduled, a notice of the hearing to the victim of the crime or delinquent act committed by the movant, if the clerk is able to determine an address for the victim. The clerk of the circuit court shall make a reasonable attempt to send the copy of the motion to the address of the victim within 7 days of the date on which the motion is filed and shall make a reasonable attempt to send a notice of hearing, if a hearing is scheduled, to the address of the victim, postmarked at least 10 days before the date of the hearing.

(b) Notwithstanding the limitation on the disclosure of mailing addresses from completed information cards submitted by victims under ss. 51.37(10)(dx), 301.046(4)(d), 301.048(4m)(d), 301.38(4), 302.105(4), 304.06(1)(f), 304.063(4), 938.51(2), 971.17(6m)(d), and 980.11(4), the department of corrections, the parole commission, and the department of health services shall, upon request, assist clerks of court in obtaining information regarding the mailing address of victims for the purpose of sending copies of motions and notices of hearings under par. (a).

(5) Upon receiving under sub. (3) a copy of a motion made under sub. (2) or notice from a court that a motion has been made, whichever occurs first, the district attorney shall take all actions necessary to ensure that all biological material that was collected in connection with the investigation or prosecution of the case and that remains in the actual or constructive custody of a government agency is preserved pending completion of the proceedings under this section.

(6)(a) Upon demand the district attorney shall disclose to the movant or his or her attorney whether biological material has been tested and shall make available to the movant or his or her attorney the following material:

1. Findings based on testing of biological materials.

2. Physical evidence that is in the actual or constructive possession of a government agency and that contains biological material or on which there is biological material.

(b) Upon demand the movant or his or her attorney shall disclose to the district attorney whether biological material has been tested and shall make available to the district attorney the following material:

1. Findings based on testing of biological materials.

2. The movant's biological specimen.

(c) Upon motion of the district attorney or the movant, the court may impose reasonable conditions on availability of material requested under pars. (a)2. and (b)2. in order to protect the integrity of the evidence.

(d) This subsection does not apply unless the information being disclosed or the material being made available is relevant to the movant's claim at issue in the motion made under sub. (2).

(7)(a) A court in which a motion under sub. (2) is filed shall order forensic deoxyribonucleic acid testing if all of the following apply:

1. The movant claims that he or she is innocent of the offense at issue in the motion under sub. (2).

2. It is reasonably probable that the movant would not have been prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense at issue in the motion under sub. (2), if exculpatory deoxyribonucleic acid testing results had been available before the prosecution, conviction, finding of not guilty, or adjudication for the offense.

3. The evidence to be tested meets the conditions under sub. (2)(a) to (c).

4. The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced, or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself can establish the integrity of the evidence.

(b) A court in which a motion under sub. (2) is filed may order forensic deoxyribonucleic acid testing if all of the following apply:

1. It is reasonably probable that the outcome of the proceedings that resulted in the conviction, the finding of not guilty by reason of mental disease or defect, or the delinquency adjudication for the offense at issue in the motion under sub. (2), or the terms of the sentence, the commitment under [s. 971.17](#), or the disposition under ch. 938, would have been more favorable to

the movant if the results of deoxyribonucleic acid testing had been available before he or she was prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense.

2. The evidence to be tested meets the conditions under sub. (2)(a) to (c).

3. The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced, or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the testing itself can establish the integrity of the evidence.

(8) The court may impose reasonable conditions on any testing ordered under this section in order to protect the integrity of the evidence and the testing process. If appropriate, the court may order the state crime laboratories to perform the testing as provided under [s. 165.77\(2m\)](#) or, after consulting with the movant and the district attorney, may order that the material be sent to a facility other than the state crime laboratories for testing. If ordered to perform testing under this section, the crime laboratories may, subject to the approval of the movant and the district attorney, arrange for another facility to perform the testing.

(9) If a court in which a motion under sub. (2) is filed does not order forensic deoxyribonucleic acid testing, or if the results of forensic deoxyribonucleic acid testing ordered under this section are not supportive of the movant's claim, the court shall determine the disposition of the evidence specified in the motion subject to the following:

(a) If a person other than the movant is in custody, as defined in [s. 968.205\(1\)\(a\)](#), the evidence is relevant to the criminal, delinquency, or commitment proceeding that resulted in the person being in custody, the person has not been denied deoxyribonucleic acid testing or postconviction relief under this section, and the person has not waived his or her right to preserve the evidence under [s. 165.81\(3\)](#), [757.54\(2\)](#), [968.205](#), or [978.08](#), the court shall order the evidence preserved until all persons entitled to have the evidence preserved are released from custody, and the court shall designate who shall preserve the evidence.

(b) If the conditions in par. (a) are not present, the court shall determine the disposition of the evidence, and, if the evidence is to be preserved, by whom and for how long. The court shall issue appropriate orders concerning the disposition of the evidence based on its determinations.

(10)(a) If the results of forensic deoxyribonucleic acid testing ordered under this section support the movant's claim, the court shall schedule a hearing to determine the appropriate relief to be granted to the movant. After the hearing, and based on the results of the testing and any evidence or other matter presented at the hearing, the court shall enter any order that serves the interests of justice, including any of the following:

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1. An order setting aside or vacating the movant's judgment of conviction, judgment of not guilty by reason of mental disease or defect, or adjudication of delinquency.
2. An order granting the movant a new trial or fact-finding hearing.
3. An order granting the movant a new sentencing hearing, commitment hearing, or dispositional hearing.
4. An order discharging the movant from custody, as defined in [s. 968.205\(1\)\(a\)](#), if the movant is in custody.
5. An order specifying the disposition of any evidence that remains after the completion of the testing, subject to sub. (9)(a) and (b).

(b) A court may order a new trial under par. (a) without making the findings specified in [s. 805.15\(3\)\(a\) and \(b\)](#).

(11) A court considering a motion made under sub. (2) by a movant who is not represented by counsel shall, if the movant claims or appears to be indigent, refer the movant to the state public defender for determination of indigency and appointment of counsel under [s. 977.05\(4\)\(j\)](#).

(12)(a) The court may order a movant to pay the costs of any testing ordered by the court under this section if the court determines that the movant is not indigent.

(b) A movant is indigent for purposes of par. (a) if any of the following apply:

1. The movant was referred to the state public defender under sub. (11) for a determination of indigency and was found to be indigent.
2. The movant was referred to the state public defender under sub. (11) for a determination of indigency but was found not to be indigent, and the court determines that the movant does not possess the financial resources to pay the costs of testing.
3. The movant was not referred to the state public defender under sub. (11) for a determination of indigency and the court

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determines that the movant does not possess the financial resources to pay the costs of testing.

(c) The state crime laboratories shall pay for testing ordered under this section and performed by a facility other than the state crime laboratories if the court does not order the movant to pay for the testing.

(13) An appeal may be taken from an order entered under this section as from a final judgment.

Credits

<<For credits, see Historical Note field.>>

[Notes of Decisions \(2\)](#)

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