

West's Vermont Statutes Annotated [Currentness](#)

Title Thirteen. Crimes and Criminal Procedure ([Refs & Annos](#))

Part 3. Proceedings Before Trial ([Refs & Annos](#))

▢ [Chapter 182](#). Innocence Protection

→ [Subchapter 1](#). Postconviction DNA Testing

→ **§ 5561. Petition for postconviction DNA testing**

(a) A person convicted of a qualifying crime may at any time file a petition requesting forensic DNA testing of any evidence which may contain biological evidence that was obtained during the investigation or prosecution of the crime. The petition shall:

- (1) specifically identify the crime for which the petitioner asserts that he or she is innocent and the evidence which the petitioner seeks to have subjected to DNA testing;
- (2) contain the petitioner's certification, under oath, that the petitioner did not commit the crime for which he or she was convicted;
- (3) contain the petitioner's certification, under oath, that the petition is true and accurate; and
- (4) allege facts showing that DNA testing may be material to the petitioner's claim of innocence.

(b) As used in this section:

(1) "Biological evidence" means:

(A) a sexual assault forensic examination kit; or

(B) semen, blood, saliva, hair, skin tissue, or other identified biological material.

(2) "Person convicted of a qualifying crime" means a person convicted of:

(A) one of the following crimes as defined in this title:

(1) arson causing death, [§ 501](#);

(2) assault and robbery with a dangerous weapon, [§ 608\(b\)](#);

(3) assault and robbery causing bodily injury, § 608(c);

(4) aggravated assault, § 1024;

(5) murder, § 2301;

(6) manslaughter, § 2304;

(7) aggravated murder, § 2311;

(8) kidnapping, § 2405;

(9) unlawful restraint, §§ 2406 and 2407;

(10) maiming, § 2701;

(11) sexual assault, § 3252;

(12) aggravated sexual assault, § 3253;

(13) burglary into an occupied dwelling, § 1201(c); or

(14) lewd and lascivious conduct with a child; § 2602.

(B) any felony not listed in subdivision (b)(1) of this section, if the petition is filed within 30 months after the conviction becomes final, the person presents specific facts demonstrating that DNA evidence will provide substantial evidence of the person's innocence, and the court finds that the interests of justice would be served by permitting the petition.

(c)(1) The petition shall be filed in the superior court of the county where the conviction was imposed, and shall not be heard by a judge who presided over the trial, sentencing, or any motion hearing related to evidence to be admitted at the trial.

(2)(A) Unless subdivision (B) of this subdivision (2) applies, the petitioner shall provide copies of the petition to the attorney general and to the state's attorney in the district where the conviction was obtained.

(B) If the petitioner is not represented by counsel, the court shall provide copies of the petition to the attor-

ney general and to the state's attorney in the district where the conviction was obtained.

(3) Within 30 days after it receives the petition, the state shall agree to perform the requested DNA testing in a timely manner or file a response to the petition. The petitioner may file a reply to the state's response only within 30 days after the response is filed.

(4) The court shall schedule a hearing on the petition within 90 days after the state's response is filed unless the state notifies the court that it has agreed to provide the testing in a timely manner or the court dismisses the petition pursuant to subsection (d) of this section.

(5) Time limits under this subsection may be extended for good cause shown or by consent of the parties.

(d) The court shall dismiss the petition without a hearing if it determines that:

(1) the petition, response, reply if any, files, and records conclusively establish that the petitioner is entitled to no relief; or

(2) the petition was not made to demonstrate innocence or the appropriateness of a lesser sentence and will unreasonably delay the execution of sentence or administration of justice.

(e) No person shall file a petition requesting forensic DNA testing pursuant to this chapter if the person's conviction resulted from a plea agreement until after July 1, 2008.

§ 5562. Assignment of counsel

The court may appoint counsel if the petitioner is unable financially to employ counsel and may order that all necessary costs and expenses incident to the matter, including but not limited to court costs, stenographic services, printing, and reasonable compensation for legal services, be paid by the state from the appropriation to the defender general. On appeal, the supreme court may make a similar order.

§ 5563. Victim notification

(a) If the address of a victim of the crime which the petitioner claims to be innocent of in the petition is known, the state's attorney or attorney general shall give written notice of a petition under this section to the victim upon the victim's request. If the victim's current address is not known, the state's attorney or the attorney general shall consult with the department of corrections victim services division to verify the victim's last known address. The notice shall be by any reasonable means to the victim's last known address and shall indicate whether the petitioner is represented by public or private counsel. Upon the victim's request, the state's attorney or attorney general shall give the victim notice of the time and place of any hearing on the petition

and shall inform the victim of the disposition of the petition and the outcome of any hearing. If DNA testing is ordered, the state's attorney or the attorney general shall inform the victim whether the test results require further court hearings, the time and place of any hearings, and the outcome of the hearings.

(b) The rights of victims contained in this section do not entitle a victim to be a party in any proceeding, or to any procedural rights which are not specifically provided for in this section, including any right to request a delay or rescheduling of any proceeding.

§ 5564. Discovery

(a) Upon motion by the petitioner or the state, and after providing the nonmovant with reasonable opportunity to respond to the motion, the court may permit reasonable discovery and the right to depose witnesses. The court in its discretion may delay ruling on any discovery motions until after it has determined whether to dismiss the petition pursuant to subsection 5561(d) of this section.

(b) A discovery order issued pursuant to this section may include the following:

(1) The court may order the state to locate and provide the petitioner with any documents, notes, logs, or reports relating to items of physical evidence collected in connection with the case or to help the petitioner locate items of biological evidence that the state contends have been lost or destroyed. The court may further order the state to take reasonable measures to locate biological evidence that may be in its custody or to help the petitioner locate evidence that may be in the custody of a public or private hospital, public or private laboratory, or other facility.

(2) If evidence has previously been subjected to DNA testing, the court may order production of laboratory reports prepared in connection with the testing and may order production of the underlying data and the laboratory notes.

(3) If any DNA or other biological evidence testing was previously conducted by either the prosecution or the defense without knowledge of the other party, the court may order that the previous testing be disclosed.

(4) If the court orders DNA testing under this subchapter, the court shall order the production of any laboratory reports prepared in connection with the testing and may order production of the underlying data, bench notes, or other laboratory notes.

§ 5565. Reserved

§ 5566. Order; necessary findings; confidentiality

(a) The court shall grant the petition and order DNA testing if it makes all of the following findings:

(1) A reasonable probability exists that the petitioner would not have been convicted or would have received a lesser sentence for the crime which the petitioner claims to be innocent of in the petition if the results of the requested DNA testing had been available to the trier of fact at the time of the original prosecution.

(2) One or more of the items of evidence that the petitioner seeks to have tested is still in existence.

(3) The evidence to be tested was obtained in connection with the offense that is the basis of the challenged conviction and:

(A) was not previously subjected to DNA testing; or

(B) although previously subjected to DNA testing, can be subjected to additional DNA testing that provides a reasonable likelihood of significantly more probative results.

(4)(A)(i) 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

(ii) If the chain of custody does not establish the integrity of the evidence, the testing itself has the potential to establish the integrity of the evidence.

(B) For purposes of this subchapter, evidence that has been in the custody of a law enforcement agency, a governmental body, or a public or private hospital shall be presumed to satisfy the chain-of-custody requirement of this subdivision.

(b) The court may designate in its order:

(1) the type of DNA analysis to be used;

(2) the testing procedures to be followed;

(3) the preservation of some portion of the sample for replicating the testing;

(4) additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis.

(c) DNA profile information from biological samples taken from any person pursuant to a petition under this

subchapter shall be confidential except for use and dissemination consistent with this chapter and chapter 113 of Title 20, and shall be exempt from any law requiring disclosure of information to the public.

§ 5567. Appeals

An order entered on the petition may be appealed to the Vermont supreme court pursuant to the Rules of Appellate Procedure.

§ 5568. Choice of laboratory; payment

(a) If the court orders DNA testing under this subchapter, the testing shall be conducted at a facility mutually agreed upon by the petitioner and the state and approved by the court. If the parties are unable to agree, the court shall designate the testing facility and provide the parties with a reasonable opportunity to be heard on the issue.

(b) The court shall impose reasonable conditions on the testing to protect the parties' interests in the integrity of the evidence and the testing process.

(c)(1) The state shall bear the costs of testing performed at the state crime laboratory.

(2) Except as provided in subdivision (3) of this subsection, the court may require the petitioner or the state or both to pay for testing performed at a private laboratory.

(3) If the state crime laboratory does not have the ability or resources to conduct the type of DNA testing to be performed, the state shall bear the costs of testing at a private laboratory which does have such capabilities or resources.

§ 5569. Procedure after test results obtained

(a) The results of any postconviction DNA testing conducted pursuant to this subchapter shall be disclosed to the state's attorney, the attorney general, the department of corrections if the petitioner is under the department's custody or supervision, the petitioner, and the court.

(b) If the results of forensic DNA testing ordered under this subchapter support the facts alleged in the petition, the court shall schedule a hearing as soon as practicable after the results are received to determine the appropriate relief to be granted. The petitioner and the state shall be permitted to submit motions and be heard at the hearing.

(c) At or subsequent to the hearing, the court may issue an order including but not limited to the following:

- (1) setting aside or vacating the petitioner's judgment of conviction;
- (2) granting the petitioner a new trial;
- (3) granting the petitioner a new sentencing hearing;
- (4) discharging the petitioner from custody;
- (5) specifying the disposition of any evidence that remains after the completion of the testing;
- (6) granting the petitioner additional discovery on matters related to DNA test results or the conviction or sentence under attack, including documents pertaining to the original criminal investigation and the identities of other suspects; or
- (7) providing such other relief as the court deems appropriate.

(d) If, as a result of DNA evidence, the person's conviction for an offense is reversed or vacated, the information or indictment is dismissed, the person is acquitted after a second or subsequent trial, or the person is pardoned:

(1) The court shall order the removal and destruction of the person's name and any information about that conviction from the sex offender registry established under [section 5402](#) of this title, the child abuse registry established under [section 4916 of Title 33](#), the vulnerable adult registry established under [section 6911 of Title 33](#), and any other registry on which the person's name appears solely because of his or her conviction of that offense. If the person has more than one entry on a registry, only the entry related to the offense for which, as a result of DNA evidence, the person's conviction was reversed or vacated, the information or indictment was dismissed, the person was acquitted after a second or subsequent trial, or the person received a pardon shall be removed and destroyed.

(2) It shall not be a violation of Vermont law for the person to respond, when asked, that he or she has never previously been convicted of a crime, and that his or her innocence of the crime charged has been established. This subdivision shall not apply if the person has been convicted of a crime other than the one for which, as a result of DNA evidence, the person's conviction was reversed, the information or indictment was dismissed, the person was acquitted after a second or subsequent trial, or the person was pardoned.

(e) An order issued under this section may be appealed to the Vermont supreme court pursuant to the Rules of Appellate Procedure.

§ 5570. Successive petitions

(a) The court shall not be required to entertain a second or successive petition for similar relief on behalf of the same petitioner unless it appears the petition will be assisted by the availability of more advanced DNA technology.

(b) The court may entertain a second or successive petition if it determines that doing so would serve the interests of justice.

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