

**81.10 DNA profiling after conviction.**

1. A defendant who has been convicted of a felony and who has not been required to submit a DNA sample for DNA profiling may make a motion to the court for an order to require that DNA analysis be performed on evidence collected in the case for which the person stands convicted.

2. The motion shall state the following:

- a. The specific crimes for which the defendant stands convicted in this case.
- b. The facts of the underlying case, as proven at trial or admitted to during a guilty plea proceeding.
- c. Whether any of the charges include sexual abuse or involve sexual assault, and if so, whether a sexual assault examination was conducted and evidence preserved, if known.
- d. Whether identity was at issue or contested by the defendant.
- e. Whether the defendant offered an alibi, and if so, testimony corroborating the alibi and, from whom.
- f. Whether eyewitness testimony was offered, and if so from whom.
- g. Whether any issues of police or prosecutor misconduct have been raised in the past or are being raised by the motion.
- h. The type of inculpatory evidence admitted into evidence at trial or admitted to during a guilty plea proceeding.
- i. Whether blood testing or other biological evidence testing was conducted previously in connection with the case and, if so, by whom and the result, if known.
- j. What biological evidence exists and, if known, the agency or laboratory storing the evidence that the defendant seeks to have tested.
- k. Why the requested analysis of DNA evidence is material to the issue in the case and not merely cumulative or impeaching.
- l. Why the DNA evidence would have changed the outcome of the trial or invalidated a guilty plea if DNA profiling had been conducted prior to the conviction.

3. A motion filed under this section shall be filed in the county where the defendant was convicted, and notice of the motion shall be served by certified mail upon the county attorney and, if known, upon the state, local agency, or laboratory holding evidence described in subsection 2, paragraph "k". The county attorney shall have sixty days to file an answer to the motion.

4. Any DNA profiling of the defendant or other biological evidence testing conducted by the state or by the defendant shall be disclosed and the results of such profiling or testing described in the motion or answer.

5. If the evidence requested to be tested was previously subjected to DNA or other biological analysis by either party, the court may order the disclosure of the results of such testing, including laboratory reports, notes, and underlying data, to the court and the parties.

6. The court may order a hearing on the motion to determine if evidence should be subjected to DNA analysis.

7. The court shall grant the motion if all of the following apply:

- a. The evidence subject to DNA testing is available and in a condition that will permit analysis.
- b. A sufficient chain of custody has been established for the evidence.
- c. The identity of the person who committed the crime for which the defendant was convicted was a significant issue in the crime for which the defendant was convicted.
- d. The evidence subject to DNA analysis is material to, and not merely cumulative or impeaching of, evidence included in the trial record or admitted to at a guilty plea proceeding.
- e. DNA analysis of the evidence would raise a reasonable probability that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction.

8. Upon the court granting a motion filed pursuant to this section, DNA analysis of evidence shall be conducted within the guidelines generally accepted by the scientific community. The defendant shall provide DNA samples for testing if requested by the state.

9. Results of DNA analysis conducted pursuant to this section shall be reported to the parties and to the court and may be provided to the board of parole, department of corrections,

and criminal and juvenile justice agencies, as defined in section 692.1, for use in the course of investigations and prosecutions, and for consideration in connection with requests for parole, pardon, reprieve, and commutation. DNA samples obtained pursuant to this section may be included in the DNA data bank, and DNA profiles and DNA records developed pursuant to this section may be included in the DNA database.

10. A criminal or juvenile justice agency, as defined in section 692.1, shall maintain DNA samples and evidence that could be tested for DNA for a period of three years beyond the limitations for the commencement of criminal actions as set forth in chapter 802. This section does not create a cause of action for damages or a presumption of spoliation in the event evidence is no longer available for testing.

11. If the court determines a defendant who files a motion under this section is indigent, the defendant shall be entitled to appointment of counsel as provided in chapter 815.

12. If the court determines after DNA analysis ordered pursuant to this section that the results indicate conclusively that the DNA profile of the defendant matches the profile from the analyzed evidence used against the defendant, the court may order the defendant to pay the costs of these proceedings, including costs of all testing, court costs, and costs of court-appointed counsel, if any.

2005 Acts, ch 158, §10, 19

[SP] For future amendment to subsection 1, effective July 1, 2014, see 2013 Acts, ch 107, §3, 5

[T] Section not amended; footnote added