

**§2138. Motion; process**

**1. Filing motion.** A person authorized in section 2137 who chooses to move for DNA analysis shall file the motion in the underlying criminal proceeding. The motion must be assigned to the trial judge or justice who imposed the sentence unless that judge or justice is unavailable, in which case the appropriate chief judge or chief justice shall assign the motion to another judge or justice. Filing and service must be made in accordance with Rule 49 of the Maine Rules of Unified Criminal Procedure. [PL 2015, c. 431, §24 (AMD).]

**2. Preservation of evidence.** If a motion is filed under this chapter, 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 DNA analysis. The State shall prepare an inventory of the evidence and 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. [PL 2001, c. 469, §1 (NEW).]

**3. Counsel.** If the court finds that the person filing a motion under section 2137 is indigent, the court may appoint counsel for the person at any time during the proceedings under this chapter. [PL 2001, c. 469, §1 (NEW).]

**4. Proof required.**

[PL 2005, c. 659, §2 (RP); PL 2005, c. 659, §6 (AFF).]

**4-A. Standard for ordering DNA analysis.** The court shall order DNA analysis if a person authorized under section 2137 presents prima facie evidence that:

A. A sample of the evidence is available for DNA analysis; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

B. 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, replaced or altered in a material way; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

C. The evidence was not previously subjected to DNA analysis or, if previously analyzed, will be subject to DNA analysis technology that was not available when the person was convicted; [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

D. The identity of the person as the perpetrator of the crime that resulted in the conviction was at issue during the person's trial; and [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

E. The evidence sought to be analyzed, or the additional information that the new technology is capable of providing regarding evidence sought to be reanalyzed, is material to the issue of whether the person is the perpetrator of, or accomplice to, the crime that resulted in the conviction. [PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

[PL 2005, c. 659, §3 (NEW); PL 2005, c. 659, §6 (AFF).]

**5. Court finding; analysis ordered.** The court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a motion to order DNA analysis. If the court grants a motion for DNA analysis under this section, the crime lab shall perform DNA analysis on the identified evidence and on a DNA sample obtained from the person. [PL 2001, c. 469, §1 (NEW).]

**6. Appeal from court decision to grant or deny motion to order DNA analysis.** An aggrieved person may not appeal as a matter of right from the denial of a motion to order DNA analysis. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule. The State may not appeal as a matter of right from a court order to grant a motion to order DNA analysis. The time, manner and specific

conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.

[PL 2011, c. 230, §1 (AMD).]

**7. Payment.** If the person authorized in section 2137 is able, the person shall pay for the cost of the DNA analysis. If the court finds that the person is indigent, the crime lab shall pay for the cost of DNA analysis ordered under this section.

[PL 2001, c. 469, §1 (NEW).]

**8. Results.** The crime lab shall provide the results of the DNA analysis under this chapter to the court, the person authorized in section 2137 and the attorney for the State. Upon motion by the person or the attorney for the State, the court may order that copies of the analysis protocols, laboratory procedures, laboratory notes and other relevant records compiled by the crime lab be provided to the court and to all parties.

A. If the results of the DNA analysis are inconclusive or show that the person is the source of the evidence, the court shall deny any motion for a new trial. If the DNA analysis results show that the person is the source of the evidence, the defendant's DNA record must be added to the state DNA data base and state DNA data bank. [PL 2001, c. 469, §1 (NEW).]

B. If the results of the DNA analysis show that the person is not the source of the evidence and the person does not have counsel, the court shall appoint counsel if the court finds that the person is indigent. The court shall then hold a hearing pursuant to subsection 10. [PL 2005, c. 659, §4 (AMD); PL 2005, c. 659, §6 (AFF).]

[PL 2005, c. 659, §4 (AMD); PL 2005, c. 659, §6 (AFF).]

**9. Request for reanalysis.** Upon motion of the attorney for the State, the court shall order reanalysis of the evidence and shall stay the person's motion for a new trial pending the results of DNA analysis.

[PL 2001, c. 469, §1 (NEW).]

**10. Standard for granting new trial; court's findings; new trial granted or denied.** If the results of the DNA testing under this section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

A. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person show that the person is actually innocent. If the court finds that the person authorized in section 2137 has met the evidentiary burden of this paragraph, the court shall grant a new trial; [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

B. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial; or [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

C. All of the prerequisites for obtaining a new trial based on newly discovered evidence are met as follows:

(1) The DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person would make it probable that a different verdict would result upon a new trial;

(2) The proffered DNA test results have been discovered by the person since the trial;

- (3) The proffered DNA test results could not have been obtained by the person prior to trial by the exercise of due diligence;
- (4) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are material to the issue as to who is responsible for the crime for which the person was convicted; and
- (5) The DNA test results and other evidence admitted at the hearing conducted under this section on behalf of the person are not merely cumulative or impeaching, unless it is clear that such impeachment would have resulted in a different verdict. [PL 2005, c. 659, §5 (NEW); PL 2005, c. 659, §6 (AFF).]

The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section. If the court finds that the person authorized in section 2137 has met the evidentiary burden of paragraph A, the court shall grant a new trial.

For purposes of this subsection, "all the other evidence in the case, old and new," means the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial pursuant to Rule 33 of the Maine Rules of Unified Criminal Procedure; evidence admitted at any collateral proceeding, state or federal; evidence admitted at the hearing conducted under this section relevant to the DNA testing and analysis conducted on the sample; and evidence relevant to the identity of the source of the DNA sample.

[PL 2015, c. 431, §25 (AMD).]

**11. Appeal from a court decision to grant or deny a motion for new trial.** The State or an aggrieved person may appeal as a matter of right from a court decision to grant or deny the person a new trial to the Supreme Judicial Court, sitting as the Law Court. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.

[PL 2011, c. 230, §2 (AMD).]

**12. Exhaustion.** A person who has taken a direct appeal from the judgment of conviction is not precluded from utilizing the remedy of this chapter while the appeal is pending. The resolution of the motion is automatically stayed pending final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law Court, on motion otherwise directs.

A person who has initiated a collateral attack upon the judgment of conviction under chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-conviction review proceeding is pending. The resolution of the motion is automatically stayed pending final disposition of the post-conviction review proceeding unless the assigned justice or judge in the post-conviction review proceeding otherwise directs.

[PL 2013, c. 266, §6 (AMD).]

**13. Victim notification.** When practicable, the attorney for the State shall make a good faith effort to give written notice of a motion under this section to the victim of the person described in subsection 1 or to the victim's family if the victim is deceased. The notice must be by first-class mail to the victim's last known address. Upon the victim's request, the attorney for the State shall give the victim notice of the time and place of any hearing on the motion and shall inform the victim of the court's grant or denial of a new trial to the person.

[PL 2001, c. 469, §1 (NEW).]

**14. Preservation of biological evidence.** Effective October 15, 2001, the investigating law enforcement agency shall preserve any biological evidence identified during the investigation of a crime or crimes for which any person may file a postjudgment of conviction motion for DNA analysis

under this section. The evidence must be preserved for the period of time that any person is incarcerated in connection with that case.

[PL 2001, c. 469, §1 (NEW).]

**15. Report.** Beginning January 2003 and annually thereafter, the Department of Public Safety shall report on post-conviction DNA analysis to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. The report must include the number of postjudgment of conviction analyses completed, costs of the analyses and the results. The report also may include recommendations to improve the postjudgment of conviction analysis process.

[PL 2001, c. 469, §1 (NEW).]

#### SECTION HISTORY

PL 2001, c. 469, §1 (NEW). PL 2005, c. 659, §§2-5 (AMD). PL 2005, c. 659, §6 (AFF). PL 2011, c. 230, §§1, 2 (AMD). PL 2011, c. 601, §13 (AMD). PL 2013, c. 266, §6 (AMD). PL 2015, c. 431, §§24, 25 (AMD).

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