

## CHAPTER 11

### USING POST-CONVICTION DNA TESTING TO ATTACK YOUR CONVICTION OR SENTENCE\*

#### A. Introduction

As of early 2017, nearly 350 individuals have been exonerated<sup>1</sup> in the United States through post-conviction DNA testing.<sup>2</sup> This is because DNA is uniquely capable of proving innocence in crimes where biological material was left by the perpetrator.<sup>3</sup> Many people in prison were convicted before DNA testing was possible or before it was considered reliable, and they were not able to present DNA evidence at their trial that might have helped prove their innocence. There are many organizations throughout the country that help prisoners recover DNA evidence and secure DNA testing. Because of the complexity of applying for DNA testing, we strongly recommend that you contact one of these organizations rather than proceed pro se (on your own).

If you do decide to go forward on your own, this Chapter can help you understand some of the legal issues involved in the process. This Chapter explains how you may be able to use DNA testing of physical evidence to challenge your conviction or sentence. It can also help you understand how DNA testing is currently being used within the criminal justice system. Part B of this Chapter discusses how to reopen your case based on DNA testing. Part C explains how to seek assistance from a legal organization. Appendix A lists some legal organizations that might be able to help you obtain DNA testing.

#### B. Common Procedures Used to Obtain DNA Testing

In the past, methods of testing evidence found at crime scenes were unreliable, and identifications based on crime scene evidence were often inaccurate. DNA testing is much more accurate than older methods of testing evidence. If you believe there might have been biological evidence (like blood, semen, hair, or sweat) collected at the scene of the crime for which you were convicted, and if you think DNA tests of the biological evidence would exonerate you, you can file several types of motions in court to try to get the evidence tested and have the results admitted in court.

Finding evidence is one of the biggest obstacles to getting DNA testing. You must first understand the difference between biological evidence that was introduced at your trial (for instance, a bloody shirt that was found at the crime scene by police investigators and introduced to the court as evidence during trial) and biological evidence that was collected during the investigation but was not introduced at your trial (for instance, a pair of pants that were found and collected by police investigators but not introduced as evidence during trial). You do not need to actually locate the evidence you want tested yourself. You only need to prove that it was either collected during the course of the investigation or introduced into evidence at your trial (or both). When filing a motion to get certain evidence tested, you must be specific about what evidence you want to test, why that evidence is important, and the last known location of the evidence. It is very important to identify the last known location of the evidence, which may be in the possession of the police where you were prosecuted.

##### 1. Motion to Secure DNA Testing

Before filing a motion for a new trial based on newly discovered evidence (discussed in Part B(2)), you need to file a motion to secure DNA testing. How you must file your motion will depend on the post-conviction DNA

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\* This Chapter was revised by Susan Maples, based on previous versions by Kristin Jamberdino, Oluwashola Ajewole, and Sara Manaugh.

1. The word, “exonerated,” means to clear someone of accusations and declare that person not guilty of criminal charges.

2. See The Innocence Project, *available at* <http://www.innocenceproject.org/free-innocent/improve-the-law/factsheets/dna-exonerations-nationwide> (last visited Jan. 1, 2017).

3. DNA (which stands for “deoxyribonucleic acid”) is a substance contained in every human cell. Each strand of DNA is encoded with unique information about an individual’s specific physical characteristics. A perpetrator is a person who commits an illegal act.

testing statute that is applicable to your case. All fifty states have some sort of post-conviction DNA testing statute.<sup>4</sup> If you are a state prisoner in one of these states, read Subsection (a) below on how to make your motion. If you are a federal prisoner, you should file your motion under the Justice for All Act.<sup>5</sup> Subsection (c) below explains how that statute works.

#### (a) State Prisoners in States with a Post-Conviction DNA Testing Statute

As of October 2015, all fifty U.S. states have laws allowing post-conviction DNA testing.<sup>6</sup> State laws vary greatly with regard to who may request DNA testing and when they may do so. For example, some states only allow prisoners who were convicted of certain felonies to petition for DNA testing.<sup>7</sup> Other states impose “due diligence” requirements<sup>8</sup> or only grant DNA testing if an individual’s identity was an issue at trial or in the case.<sup>9</sup> You should carefully read the requirements and conditions for petitioning for post-conviction DNA testing under your state’s law. Footnote 19 (on the next page) lists each state’s relevant statute to help you do this research.

New York was the first state to allow post-conviction DNA testing, and its provisions are some of the most flexible.<sup>10</sup> According to the provisions of New York’s law, which are incorporated into Article 440 of the New York Criminal Procedure Law,<sup>11</sup> there is no express due diligence requirement (though some courts have imposed an implicit due diligence requirement),<sup>12</sup> identity does not need to have been an issue at trial, and there is no time limit for filing a petition. In New York, the court will order testing if it determines that you have met the following requirements:

- (1) Your Article 440 motion requests that a forensic test be performed on *specific* evidence that you have clearly identified;

4. See The Innocence Project, *available at* <http://www.innocenceproject.org/free-innocent/improve-the-law/factsheets/access-to-post-conviction-dna-testing> (last visited Oct. 3, 2015).

5. Innocence Protection Act of 2004, 18 U.S.C. § 3600A (2012).

6. See The Innocence Project, *available at* <http://www.innocenceproject.org/free-innocent/improve-the-law/factsheets/access-to-post-conviction-dna-testing> (last visited Oct. 3, 2015). Oklahoma became the fiftieth state to pass a post-conviction DNA testing statute on May 24, 2013.

7. See, e.g., Ind. Code Ann. §§ 35-38-7-1, 35-38-7-3, 35-38-7-5 (LexisNexis 2012) (indicating that only those convicted of murder or a class A, B, or C felony may petition).

8. The “due diligence” requirement means a court will not order DNA testing if the evidence was discoverable and you did not originally request the DNA evidence at the trial or plea stage. See, e.g., Ark. Code Ann. § 16-112-201(a)(2) (West 2015); see Wyo. Stat. Ann. § 7-12-303(d) (West 2008).

9. The phrase, “Identity at issue at trial,” means that you or your attorney claimed that you were mistakenly identified as the perpetrator of the crime for which you were on trial. See, e.g., 725 Ill. Comp. Stat. Ann. 5/116-3(b)(1) (2014) (requiring that identity must have been an issue at trial); Mich. Comp. Laws Ann. § 770.16(4)(b)(iii) (2011) (requiring that identity must have been an issue at trial); Mo. Ann. Stat. § 547.035(2)(4) (West 2015) (requiring that identity must have been an issue at trial); Tex. Code Crim. Proc. Ann. art. 64.03(a)(1)(C) (2015) (requiring that identity was or is an issue in the case).

10. The text of the New York provision reads as follows:

“Where the defendant’s motion requests the performance of a forensic DNA test on specified evidence, and upon the court’s determination that any evidence containing deoxyribonucleic acid (“DNA”) was secured in connection with the trial resulting in the judgment, the court shall grant the application for forensic DNA testing of such evidence upon its determination that if a DNA test had been conducted on such evidence, and if the results had been admitted in the trial resulting in the judgment, there exists a reasonable probability that the verdict would have been more favorable to the defendant.”

N.Y. Crim. Proc. Law § 440.30(1-a)(a)(1) (McKinney 2015); see also Deborah F. Buckman, Annotation, *Validity, Construction, and Application of State Statutes and Rules Governing Requests for Postconviction DNA Testing*, 72 A.L.R.6th 227 (2012) (explaining that New York’s statutes are more flexible in allowing DNA testing than those of other states).

11. For more information on Article 440, see *JLM*, Chapter 20, “Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence.”

12. See *People v. Kellar*, 218 A.D.2d 406, 410, 640 N.Y.S.2d 908, 910 (3d Dept. 1996) (finding that there is an implied due diligence requirement for DNA testing because there should not be a second chance for those who failed to take advantage of DNA testing before trial); *People v. Sterling*, 6 Misc. 3d 712, 719, 787 N.Y.S.2d 846, 851 (Sup. Ct. Monroe County 2004) (noting that CPL 440.10(1)(g) contains a due diligence requirement for introducing newly discovered evidence, and that this requirement must apply to post-conviction DNA testing as well).

- (2) The evidence you are requesting to have tested was obtained in connection with the trial that resulted in your conviction; and
- (3) There is a “reasonable probability” that, if the results of a DNA test had been admitted at your trial, the verdict would have been more favorable to you.<sup>13</sup>

The “reasonable probability” requirement is very important. The court will not order a DNA test if it believes there is not a “*reasonable probability*” that the verdict at your trial would have been different, even if you are right about whatever you are trying to prove with the DNA test.<sup>14</sup> This requirement does not mean that the court must be certain that the evidence will prove you are innocent, but it does place a significant burden on you. A court can legally deny your request for testing if it believes that your conviction was justifiable, regardless of what a new DNA test might show.<sup>15</sup>

The New York law is unusual in that it allows you to request DNA testing as part of your Article 440 motion to vacate judgment (request a new trial).<sup>16</sup> Not all states allow you to combine the request for DNA testing and the request for a new trial in the same motion. You may find that the law in your state is more complex. For instance, some states have different deadlines, called “statutes of limitations,” for filing a motion for a new trial and for requesting post-conviction DNA testing.<sup>17</sup> The deadline to request a new trial may have passed even though your opportunity to request DNA testing is still available. Yet, many states have not codified a statute of limitations.<sup>18</sup> Also, some states have stricter requirements for granting a request for DNA testing than for granting a motion for a new trial (or vice versa).

Because there is such variation among state laws, you must look carefully at your state’s post-conviction DNA testing statute. When deciding whether to request post-conviction DNA testing, consult both the statute governing motions for a new trial and the case law, if any, governing post-conviction DNA testing in your state.<sup>19</sup>

13. N.Y. Crim. Proc. Law § 440.30(1-a)(a) (Consol. 2015).

14. N.Y. Crim. Proc. Law § 440.30(1-a)(a) (Consol. 2015); *see also* *People v. Tookes*, 167 Misc. 2d 601, 604–06, 639 N.Y.S.2d 913, 915–16 (N.Y.S. 1996) (finding that there was not a reasonable probability that the verdict would have been different even with DNA evidence because (1) there was no case for mistaken identity, (2) there was clear evidence of rape, and (3) available biological specimens were unlikely to have helped defendant’s case, given the unclear results of blood and saliva tests, the defendant’s earlier failure to pursue an enzyme analysis, and the unknown age of the recovered sperm).

15. *See, e.g., People v. Smith*, 245 A.D.2d 79, 79, 665 N.Y.S.2d 648, 649 (N.Y. App. Div. 1997) (finding that, for first degree rape and related crimes, post-conviction DNA tests would not have shown with reasonable probability that the defendant was innocent where (1) fact that defendant was not the source of semen was consistent with victim’s testimony that she had intercourse with her boyfriend shortly before rape and that she did not know whether defendant ejaculated; (2) evidence of guilt was overwhelming; and (3) there was no claim of mistaken identity); *People v. De Oliveira*, 223 A.D.2d 766, 767–68, 636 N.Y.S.2d 441, 443 (N.Y. App. Div. 1996) (finding defendant not entitled to DNA testing because it was unlikely that results of DNA testing would change his second degree murder conviction where (1) it was undisputed that victim was sexually active about the time of her murder, (2) there was no evidence that the killing was part of a sexual encounter, and (3) there was no critical testimony that could be seriously called into question by test results).

16. For more information on Article 440, see *JLM*, Chapter 20, “Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence.”

17. *See, Ariz. Rev. Stat. Ann.* 13-4240 (2015) (allowing the motion to occur at any time), A.C.A. § 16-112-202 (2015) (requiring that the petitioner file the motion for the performance of fingerprinting in a “timely fashion.” There is a rebuttable presumption of timeliness if the motion is made within thirty-six 36 months of the conviction date).

18. *See, Cal. Penal Code* § 1405 (Deering 2015); *Iowa Code* § 81.10 (2015); *Tex. Code Crim. Proc. Ann.* art. 64.01–.05 (LexisNexis, 2015).

19. The following lists all the state laws governing post-conviction DNA testing, in alphabetical order of the states: Alabama: Ala. Code § 15-18-200 (LexisNexis 2015); Alaska: Alaska Stat. §§ 12.73.010–.090 (2015); Arizona: Ariz. Rev. Stat. Ann. § 13-4240 (LexisNexis 2015); Arkansas: Ark. Code Ann. §§ 16-112-201 to -208 (2015) (LexisNexis); California: Cal. Penal Code § 1405 (Deering 2015); Colorado: Colo. Rev. Stat. Ann. §§ 18-1-411–416 (2015) (West 2013); Connecticut: Conn. Gen. Stat. § 54-102kk (2015); Delaware: Del. Code Ann. tit. 11, § 4504 (2015); District of Columbia: D.C. Code Ann. § 22-4133 (LexisNexis 2015); Florida: Fla. Stat. Ann. § 925.11 (LexisNexis 2015); Fla. R. Crim. P. 3.853 (2009); Georgia: Ga. Code Ann. § 5-5-41 (2015); Hawaii: Haw. Rev. Stat. Ann. §§ 844D-121–133 (LexisNexis 2015); Idaho: Idaho Code Ann. § 19-4902 (2015); Illinois: 725 Ill. Comp. Stat. Ann. 5/116-3 (LexisNexis 2015); Indiana: Ind. Code Ann. §§ 35-38-7-1–19 (LexisNexis 2015); Iowa: Iowa Code § 81.10 (2015); Kansas: Kan. Stat. Ann. § 21-2512 (20015); Kentucky: Ky. Rev. Stat. Ann. §§ 422.285, 422.287 (LexisNexis 2015); Louisiana: La. Code Crim. Proc. Ann. art. 926.1 (2015); Maine: Me. Rev. Stat. Ann. tit. 15, §§ 2136–2138 (2015); Maryland: Md. Code Ann., Crim. Proc. § 8-201 (LexisNexis 2015); Massachusetts: Mass. Ann. Laws. ch. 278A, § 3 (LexisNexis 2015); Michigan: Mich. Comp. Laws Serv. § 770.16 (LexisNexis 2015); Minnesota: Minn. Stat. Ann. §§ 590.01–.06 (LexisNexis 2015); Mississippi: Miss. Code Ann. § 99-39-9 (2015); Missouri: Mo. Ann. Stat.

When filing your motion, it is important that you know which pieces of evidence you want tested, show that you understand your state's post-conviction DNA testing statute, and explain why you believe you meet every requirement set out by that statute. You should write out your state's entire post-conviction DNA testing statute in your motion, then go through each requirement of the statute separately and show how the facts of your case meet each requirement. If you clearly identify the pieces of evidence you want tested, explain why you are seeking post-conviction DNA testing, and explain how you meet all the requirements of your state's DNA testing statute, your motion will have a better chance of succeeding.

### (b) Possible Constitutional Rights

Until recently, it was unclear whether there was a right to DNA testing under the U.S. Constitution. However, in a case called *District Attorney's Office for Third Judicial District v. Osborne*, the Supreme Court held that state and federal prisoners do *not* have a constitutional right to post-conviction DNA testing.<sup>20</sup> According to the Court, the decision whether to allow prisoners access to DNA testing services is best left up to state legislatures.<sup>21</sup> However, a prisoner who has been denied DNA testing under a state's post-conviction DNA testing statute may still bring a § 1983 lawsuit to challenge the constitutional adequacy of the state's DNA testing statute.<sup>22</sup>

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§ 547.035 (LexisNexis 2015); Montana: Mont. Code Ann. § 46-21-110 (2015); Nebraska: Neb. Rev. Stat. Ann. §§ 29-2101, 29-4120 to -4126 (LexisNexis 2015); Nevada: Nev. Rev. Stat. Ann. §§ 176.0917-.0919 (LexisNexis 2015); New Hampshire: N.H. Rev. Stat. Ann. §§ 651-D:1-D:4 (LexisNexis 2015); New Jersey: N.J. Stat. Ann. § 2A:84A-32a (LexisNexis 2015); New Mexico: N.M. Stat. Ann. § 31-1A-2 (LexisNexis 2015); New York: N.Y. Crim. Proc. Law § 440.30 (Consol. 2015); North Carolina: N.C. Gen. Stat. § 15A-269 (2015); North Dakota: N.D. Cent. Code § 29-32.1-15 (2015); Ohio: Ohio Rev. Code Ann. §§ 2953.71-2953.75 (LexisNexis 2015); Oklahoma: Okla. Stat. Ann. tit. 22, §§ 1360, 1371.1, 1371.2 (LexisNexis 2015); Oregon: Or. Rev. Stat. Ann. § 138.690 (LexisNexis 2015); Pennsylvania: 42 Pa. Cons. Stat. Ann. § 9543.1 (LexisNexis 2015); Rhode Island: R.I. Gen. Laws §§ 10-9.1-10-10-9.1-12 (2015); South Carolina: S.C. Code Ann. § 17-28-90 (2014); South Dakota: S.D. Codified Laws Ann. §§ 23-5B-1-23-5B-17 (LexisNexis 2015); Tennessee: Tenn. Code Ann. §§ 40-30-110, -301-313 (2015); Texas: Tex. Code Crim. Proc. Ann. art. 64.01-.05 (LexisNexis, 2015); Utah: Utah Code Ann. § 78B-9-301 to -304 (LexisNexis 2015); Vermont: Vt. Stat. Ann. tit. 13, §§ 5561-5570 (2015); Virginia: Va. Code Ann. § 19.2-327.1 (2015); Washington: Wash. Rev. Code Ann. § 10.73.170 (LexisNexis 2015); West Virginia: W. Va. Code Ann. § 15-2B-14 (LexisNexis 2015); Wisconsin: Wis. Stat. Ann. §§ 974.02, .06, .07 (LexisNexis 2015); Wyoming: Wyo. Stat. Ann. §§ 7-12-303-305 (2015). For information about the difference between statutes and cases, see Chapter 2 of the *JLM*.

20. *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 73-74; 129 S. Ct. 2308, 2323; 174 L. Ed. 2d 38, 55 (2009).

21. *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 62; 129 S. Ct. 2308, 2316; 174 L. Ed. 2d 38, 48 (2009) (stating that figuring out how to use DNA testing is a task that "belongs primarily to the legislature.")

22. A state prisoner *may* pursue post-conviction DNA testing in a § 1983 action if he can prove that the applicable state DNA testing statute violates the prisoner's procedural due process rights and is therefore unconstitutional. *Skinner v. Switzer*, 131 S. Ct. 1289, 1297-1300; 179 L. Ed. 2d 233, 242-46 (2011) (finding that the state prisoner properly used § 1983 to challenge the constitutionality of the Texas DNA statute). Though the Supreme Court did not establish any explicit requirements for state DNA testing statutes, federal courts have used the Alaska statute relating to proceedings for post-conviction relief (Alaska Stat. § 12.72.010 (2015)) as a reference point. If a state's statute is as or less strict than the Alaska statute, then it appears the court will find the testing procedure constitutional. *See, e.g.*, In re Smith, 349 Fed. Appx. 12, 15-16 (6th Cir. 2009) (finding a prisoner's due process claim "untenable because Michigan's [DNA testing] scheme is more comprehensive than the state procedures sanctioned by the *Osborne* Court."); *see also* *Tevlin v. Spencer*, 621 F.3d 59, 71 (1st Cir. 2010) (upholding the constitutionality of Massachusetts's post-conviction procedure because it is no more restrictive than the Alaska statute upheld by the Supreme Court in *Osborne*); *Thompson v. Rundle*, 393 Fed. Appx. 675, 679-80 (11th Cir. 2010) (upholding the constitutionality of Florida's post-conviction DNA testing procedure because it contains similar requirements and limitations imposed by other DNA-testing statutes including the Alaska statute upheld by the Supreme Court in *Osborne*); *McKithen v. Brown*, 626 F.3d 143, 153-54 (2nd Cir. 2010) (finding New York's provision for post-conviction DNA testing constitutional because it is less stringent than the Alaska statute considered in *Osborne*).

(c) Federal Prisoners and the Federal Post-Conviction DNA Testing Statute: The Justice for All Act of 2004

On October 30, 2004, the Justice for All Act<sup>23</sup> was signed into law. This law gives prisoners the right to request post-conviction DNA testing, but it applies only to federal prisoners.<sup>24</sup> If you are a state prisoner, you must use your state's post-conviction DNA testing statute listed in Footnote 19 (see Part B(1)(a) of this Chapter).

The Justice for All Act works exactly like a state post-conviction DNA statute, but it only applies if you are serving time for a federal crime. It states the rules and procedures for federal prisoners who are serving a prison or death sentence and applying for DNA testing.<sup>25</sup> To qualify for DNA testing, the Act requires that:

- (1) The applicant assert, under penalty of perjury, that they are “actually innocent” of the federal offense for which they are imprisoned or on death row, or, in death penalty cases, that they are “actually innocent” of another offense, if being exonerated of this offense would give them the right to a reduced sentence or a new sentencing hearing (where the other offense is a state offense, the applicant must show that there is no adequate remedy under the applicable state law for DNA testing, or that the applicant has exhausted the remedies available under state law); and
- (2) The specific evidence that is to be tested must not have been previously tested, unless a newer and more reliable method of testing is being requested; and
- (3) The proposed DNA testing may produce new evidence raising a reasonable probability that the applicant did not commit the offense; and
- (4) The applicant provides a current DNA sample for comparison with existing evidence.<sup>26</sup>

You should file for DNA testing within three years of your conviction. If you do not, your motion requesting DNA testing will be considered late, and you will have to show that you had a specific reason (“good cause”) for filing late.<sup>27</sup>

The government is not allowed to destroy DNA evidence from a federal criminal case while the defendant remains in prison, unless: (1) a court has denied a motion for DNA testing, (2) the defendant knowingly and voluntarily waived their right to DNA testing, (3) the defendant was notified after their conviction became final that the evidence might be destroyed and did not file a motion for DNA testing within 180 days of notification, or (4) the evidence has already been tested and the results determined that the defendant was the source of the DNA evidence. Also, if the evidence is large or bulky, the government may preserve only a representative sample.<sup>28</sup>

One important word of caution: *If you assert your innocence and the DNA evidence does not show you to be innocent, the court can hold you in contempt. If you are convicted of making false assertions, your term of imprisonment will be extended by at least three years.*<sup>29</sup> However, if the evidence excludes you as the source of the DNA evidence, then you can petition for a new trial. The new trial will be granted if the DNA test results, considered with all other evidence in the case (whether introduced at trial or not), establish by compelling evidence that a new trial would result in your acquittal.<sup>30</sup> Also, if you are a federal prisoner, you may file a motion for a new sentencing hearing if evidence of an offense was admitted during a federal death

23. See Justice for All Act, available at <http://www.ovc.gov/publications/factshts/justforall/fs000311.pdf>; <http://www.justice.gov/usao-nh/programs/victim-witness-assistance-program/justice-all-act-2004> (last visited Oct. 3, 2015).

24. 18 U.S.C. § 3600(a) (2012).

25. 18 U.S.C. § 3600 (2012).

26. 18 U.S.C. §§ 3600(a)(1)(A)–(B), 3600(a)(3)(A)–(B), 3600(a)(8)–(9) (2012).

27. Innocence Protection Act of 2004, 18 U.S.C. §§ 3600(a)(10)(A)–(B) (2012) (If you do not file within three years of your conviction, there is a presumption that your motion is late. That presumption can be rebutted (proven wrong) by showing (1) that you did not file earlier due to incompetence (incompetence in this situation means that there is reasonable cause to believe you suffered from a mental disease or defect that made you unable to understand the legal charges against you or to assist properly in your defense); (2) that the DNA evidence to be tested is newly discovered; or (3) the appeal is not only based on your claim of your innocence and that denying the appeal would be a obvious injustice; or (4) that you had “good cause” for the delay). See also The Death Penalty Information Center, *Summary: The Innocence Protection Act of 2004*, <http://www.deathpenaltyinfo.org/article.php?scid=40&did=1234#subA> (last visited Oct. 3, 2015).

28. Innocence Protection Act of 2004, 18 U.S.C. §§ 3600A(a), 3600A(c)(1)–(5) (2012).

29. Innocence Protection Act of 2004, 18 U.S.C. §§ 3600(f)(2)(B)(i), 3600(f)(3) (2012).

30. Innocence Protection Act of 2004, 18 U.S.C. § 3600(g)(2) (2012).

sentencing hearing and exoneration of that offense would entitle you to a reduced sentence or to a new sentencing proceeding.<sup>31</sup>

## 2. Motion for a New Trial Based on Newly Discovered Evidence

Once you have succeeded in your motion to secure DNA evidence, received the DNA testing you asked for, and obtained results that point to your innocence, it is time to file a motion for a new trial. Each state, and the federal government, allows you to file a motion for a new trial based on newly discovered evidence. Because DNA technology is so new, the results of DNA analysis may be considered “newly discovered evidence,” even if the substance being analyzed is not itself newly discovered.

Every jurisdiction has a test that its courts apply in deciding whether to grant a motion for a new trial based on newly discovered evidence. In the federal system, courts traditionally ask five questions to determine whether to grant a defendant’s motion for a new trial based on newly discovered evidence:<sup>32</sup>

- (1) Was the evidence available before the trial?
- (2) Could it have been discovered before the trial through the exercise of due diligence?<sup>33</sup>
- (3) Is the evidence “material” (relevant) to the issue you raise in your motion?
- (4) Is the evidence merely “cumulative” (does it only support other similar evidence already admitted at trial) or “impeaching” (does it contradict other evidence admitted at trial)?
- (5) Would the evidence probably change the trial’s result if a new trial were granted?<sup>34</sup>

State courts, including New York courts,<sup>35</sup> use similar tests to decide whether to grant a motion for a new trial based on newly discovered evidence. While courts are bound by their test, they generally have some discretion to decide whether to grant a new trial. Motions for new trials are extraordinary, so courts do not grant them freely, and appellate courts rarely reverse a lower court’s decision to deny a new trial.

Most states, as well as the federal government, limit the period of time after your conviction during which you can file a motion for a new trial.<sup>36</sup> These time limits, called “statutes of limitations,” are based on the idea that evidence becomes less reliable over time. If time has expired for you to file your motion for a new trial, you will have to pursue other post-conviction remedies (such as seeking a writ of habeas corpus, discussed in Section 3 below), which may not have time limits.

To file your motion on time, you need to establish that you have newly discovered evidence. Depending on your jurisdiction, you may be able to establish this if biological evidence from the crime for which you were convicted still exists, and:

- (1) DNA testing was never performed on it;

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31. Innocence Protection Act of 2004, 18 U.S.C. § 3600(g)(2)(B) (2012).

32. In federal courts, Rule 33 of the Federal Rules of Criminal Procedure authorizes a request for a new trial. Rule 33 allows the court to grant a new trial on defendant’s motion if “the interest of justice so requires.” Fed. R. Crim. P. 33(a).

33. In this context, “due diligence” means that you and/or your attorney should have been able to find the evidence had you looked for it. There should be a reason why you were not able to find the evidence before trial, and you should make this reason known to the court.

34. See John A. Glenn, Annotation, *What Constitutes “Newly Discovered Evidence” Within Meaning of Rule 33 of Federal Rules of Criminal Procedure Relating to Motions for New Trial*, 44 A.L.R. Fed. 13 (1979); see also *United States v. Carlone*, 603 F.2d 63, 66–67 (8th Cir. 1979) (using this standard to deny a new trial when a newly discovered defense witness claimed that F.B.I. agents asked him to plant weapons and drugs in the defendant’s home); *Pitts v. United States*, 263 F.2d 808, 810–11 (9th Cir. 1959) (going through all five questions to show that evidence submitted by the defense would not meet any of the standards, even if it had been newly discovered); *United States v. Bertone*, 249 F.2d 156, 160 (3rd Cir. 1957) (rejecting motion for a new trial based on testimony from newly available witnesses because the witnesses were available and known by the defendant during trial); *United States v. Marachowsky*, 213 F.2d 235, 238–39 (7th Cir. 1954) (applying a similar test to the five-question test to reject three witnesses newly brought by the defense to secure a new trial).

35. See *People v. Priori*, 164 N.Y. 459, 472, 58 N.E. 668, 672 (N.Y. 1900) (using a six-step test to deny the defendant’s motion for a new trial, and splitting question four of the federal test into two separate questions about cumulative and impeaching evidence).

36. See *Herrera v. Collins*, 506 U.S. 390, 410–11, 113 S. Ct. 853, 865–66, 122 L. Ed. 2d 203, 223 (1993) (finding that while some states required filing a motion within weeks of conviction, some provide a time limit of one, two, or three years, and a few states have no time limit). Since *Herrera*, the federal statute of limitations for filing a motion based on new evidence was extended from two to three years. See Fed. R. Crim. P. 33(b)(1) for time required to file ‘newly discovered evidence’.

- (2) DNA analysis was performed, but the results were not admitted in court (because, for example, DNA testing was not regarded as reliable at the time of your trial); or
- (3) DNA analysis was performed, but the methods then used to analyze the evidence are now known to be unreliable (for example, microscopic hair comparison).

Your motion for a new trial based on newly discovered evidence (and/or your request for DNA testing) may be denied if you pleaded guilty at your trial. New York law does not explicitly bar people who pleaded guilty from requesting DNA testing, but New York courts have held that those who have admitted their factual guilt when they pleaded guilty have waived their right to a new trial based on newly discovered evidence.<sup>37</sup> You should consult both your state's statutes and case law to determine whether a guilty plea prevents you from seeking a new trial based on DNA evidence.

Remember that you can request DNA testing even if your state has not passed a statute explicitly providing for post-conviction DNA testing. Courts might treat such a request as a matter of discretion and will probably determine whether to grant it based on a combination of factors similar to the ones listed in the various state statutes that have been passed.

### 3. Habeas Corpus Relief

It might be possible for you to get post-conviction relief by petitioning for a writ of habeas corpus, but it is unlikely.<sup>38</sup> A habeas corpus writ is a court's written order demanding that a prisoner be brought before the court to see whether his imprisonment or detention is illegal. Unlike most post-conviction DNA cases in which motions are made to find evidence, it is assumed you already have the evidence to prove yourself innocent in habeas cases.<sup>39</sup> So, this remedy is not available unless DNA testing has already been done on the biological evidence from the crime scene.

You can bring a federal habeas petition by claiming "actual innocence."<sup>40</sup> This idea is based on *Herrera v. Collins*, in which the Supreme Court left open the possibility that "a truly persuasive [post-trial] demonstration of 'actual innocence'" in a capital case might lead to relief if the state did not provide any way to present such a claim.<sup>41</sup> It is very hard to demonstrate "actual innocence,"<sup>42</sup> but if you are able to meet this high standard, you can bring the habeas claim even if state or federal law would have normally not allowed the filing. In *House v. Bell*, the Supreme Court decided that in some cases where new evidence would have been likely to create a reasonable doubt about a state prisoner's conviction, that state prisoner may file for a federal habeas corpus writ, even if the laws of the state where he was convicted would have normally not allowed a federal habeas filing.<sup>43</sup>

37. See *People v. Jackson*, 163 Misc. 2d 224, 226, 620 N.Y.S.2d 240, 241 (Sup. Ct. Broome Cnty. 1994) (finding that because the defendant had already admitted his guilt and also waived his right to confront those that accused him, his subsequent application to defend himself against those accusers based on newly discovered evidence was denied).

38. See Chapter 13 of the *JLM*, "Federal Habeas Corpus," for more information on habeas corpus petitions.

39. If you are already bringing a petition for habeas corpus on other grounds, then you can also request DNA testing. However, because a petition for habeas corpus is a difficult route to take to seek testing, it is only recommended if you are already filing a habeas petition on other grounds. See *Cherrix v. Braxton*, 131 F. Supp. 2d 756, 767, 775–76 (E.D. Va. 2001) (defending decision to order DNA testing on previously tested material due to technological advances and the principle that newly-discovered DNA evidence would "illuminate" federal habeas claim that a conviction is potentially unconstitutional). See also *Thomas v. Goldsmith*, 979 F.2d 746, 749–50 (9th Cir. 1992) (requiring the state to turn over DNA evidence that is favorable to the prisoner in order to allow the prisoner to try and prove his innocence and overcome any state court procedures that block his habeas claim).

40. In *re Davis*, 557 U.S. 952, 953–54, 130 S. Ct. 1, 1–3, 174 L. Ed. 2d 614, 614–15 (2009) (Stevens, J., concurring) (suggesting ways habeas relief could be granted for claims of actual innocence).

41. *Herrera v. Collins*, 506 U.S. 390, 417, 113 S. Ct. 853, 869, 122 L. Ed. 2d 203, 227 (1993).

42. You have to show that it is "more likely than not that no reasonable juror would have found [you] guilty beyond a reasonable doubt." *House v. Bell*, 547 U.S. 518, 536–37, 126 S. Ct. 2064, 2067–77, 165 L. Ed. 2d 1, 21 (2006) (quoting *Schlup v. Delo*, 513 U.S. 298, 327, 115 S. Ct. 851, 867, 130 L. Ed. 2d 808, 836).

43. *House v. Bell*, 547 U.S. 518, 535–37, 126 S. Ct. 2064, 2076–77, 165 L. Ed. 2d 1, 21 (2006) (holding that prisoners can bring habeas petitions if their "actual innocence" claim is very compelling, even if state or federal law would otherwise not have allowed it). See also *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1928, 185 L. Ed. 2d 1019, 1027 (2013) (holding the same).

In connection with habeas review, you may find success by using the “*Brady* obligation” (also known as the “*Brady* material doctrine”).<sup>44</sup> Under this rule, the prosecution in a criminal case must reveal any strong evidence that may help prove your innocence. Thus, you may have a claim for habeas corpus relief if: (1) evidence was subjected to DNA testing; (2) the prosecution withheld the results of that test from you; and (3) the results may have helped to prove your innocence at trial.

The prosecution is required to give you DNA evidence, but only if it exists. The Supreme Court had ruled that states do not have a constitutional duty to perform DNA tests on evidence or to preserve evidence so that it can be tested.<sup>45</sup> In 2004 Congress passed the Justice for All Act of 2004.<sup>46</sup> The Justice for All Act imposes uniform rules for the preservation of evidence for DNA testing in federal crimes.<sup>47</sup> However, the Act specifically states that it cannot be used as a basis for a federal habeas corpus claim.<sup>48</sup>

### C. Legal Assistance for Those Seeking Post-Conviction DNA Testing

If you do not have a lawyer and want to seek post-conviction DNA testing, there are many not-for-profit organizations—usually called “innocence projects”—that might be able to help you. These organizations are often forced to choose some cases over others that may be just as worthy because they receive huge numbers of requests. You may want to consider contacting multiple organizations for help.

Appendix A (below) lists organizations that may help you use DNA evidence to prove your innocence. To have one of these organizations consider your case, you should mail a brief summary of the facts of your case and a list of the evidence used against you. Your case must involve biological evidence (semen, blood, saliva, skin, sweat, or hair). If possible, you should indicate what evidence you want to test, why it would be important to your case, and the last known location of that evidence (if you include this information, it may help the attorneys get back to you faster). Include your full name, mailing address, and prison identification number.

### D. Conclusion

If you believe DNA can prove your innocence, you should pursue the legal options summarized in the sections above. The legal options differ depending on whether you are in a state or federal prison. Appendix A provides a list of organizations with a lot of experience in helping prisoners seek post-conviction DNA testing. These organizations may be able to help you.

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44. *See* *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–97, 10 L. Ed. 2d 215, 218 (1963) (holding that the prosecution, if asked, cannot hold back evidence that is relevant to guilt or punishment); *United States v. Agurs*, 427 U.S. 97, 110, 96 S. Ct. 2392, 2401, 49 L. Ed. 2d 342, 353–54 (1976) (holding that, when evidence is obviously very valuable to the defense, the prosecution must share that evidence even if not asked). The *Agurs* standards used to determine when evidence must be disclosed are no longer good law, but the idea behind them is. *See, e.g.*, *Smith v. Cain*, 132 S. Ct. 627, 630, 181 L. Ed. 2d 571, 574 (2012) (explaining that under *Brady*, the prosecution must share evidence that is favorable to the defense if it is relevant to the defendant’s guilt or punishment). *See* Chapter 13 of the *JLM*, “Federal Habeas Corpus,” for information on the *Brady* duty.

45. *See* *Arizona v. Youngblood*, 488 U.S. 51, 57–58, 109 S. Ct. 333, 337, 102 L. Ed. 2d 281, 289 (1988) (holding that, unless a defendant can show bad faith, a state’s failure to preserve evidence so that it can be tested does not violate the Due Process clause of the Fourteenth Amendment). *See also* *Illinois v. Fisher*, 540 U.S. 544, 545, 124 S. Ct. 1200, 1200, 157 L. Ed. 2d 1060, 1064 (2004) (citing *Youngblood* to overturn a dismissal of criminal charges because evidence was destroyed following normal police procedures).

46. Justice for All Act of 2004, 18 U.S.C. § 3600A (2012).

47. Justice for All Act of 2004, 18 U.S.C. § 3600A (2012).

48. Justice for All Act of 2004, 18 U.S.C. § 3600A(g) (2012).

## APPENDIX A

### PROJECTS THAT MAY OFFER ASSISTANCE IN OBTAINING DNA TESTING—BY STATE

**Alaska**Alaska Innocence Project

P.O. Box 201656  
Anchorage, AK 99520  
Phone: 907-279-0454  
E-mail: [info@alaskainnocence.org](mailto:info@alaskainnocence.org)  
<http://www.alaskainnocence.org/>

**Alabama**Georgia Innocence Project

2645 North Decatur Road  
Decatur, GA 30033  
Phone: 404-373-4433  
<http://www.georgiainnocenceproject.org/>

**Arizona**Arizona Justice Project

c/o Arizona State University  
Mail Code 4420  
411 North Central Avenue, Suite 600  
Phoenix, AZ 85004-2139  
Phone: (602) 496-0286  
E-mail: [info@azjusticeproject.org](mailto:info@azjusticeproject.org)  
<http://azjusticeproject.org/>

Northern Arizona Justice Project

Department of Criminal Justice  
Northern Arizona University  
P.O. Box 15005  
Flagstaff, AZ 86011  
Phone: 928-523-7028  
<http://nau.edu/arizona-innocence-project/>

**Arkansas**Midwest Innocence Project

605 West 47th Street, Suite 222  
Kansas City, MO 64112  
Phone: 816-221-2166  
Email: [office@TheMIP.org](mailto:office@TheMIP.org)  
<http://themip.org/>

**California (Northern)**Northern California Innocence Project

Santa Clara University School of Law  
900 Lafayette Street, Suite 105  
Santa Clara, CA 95050  
Phone: 408-554-4790  
Fax: 408-554-5440  
E-mail: [ncip@scu.edu](mailto:ncip@scu.edu)

<http://law.scu.edu/ncip/>

**California (Southern)**California Innocence Project

California Western School of Law Institute for  
Criminal Defense Advocacy  
225 Cedar Street  
San Diego, CA 92101  
Phone: 619-525-1485  
Fax: 619-615-1443  
<http://californiainnocenceproject.org/>

Loyola Law School Project for the Innocent

Loyola Law School  
919 Albany Street  
Los Angeles, California 90015  
Phone: 213-736-8141

**Colorado**Colorado Innocence Project

Colorado Law School  
Wolf Law Building, 404 UCB  
Boulder, Colorado 80309-0404  
Phone: 303-492-2640  
Fax: 303.492.4587  
E-mail:  
[ColoradoInnocenceProject@colorado.edu](mailto:ColoradoInnocenceProject@colorado.edu)  
<http://www.colorado.edu/law/academics/clinics/korey-wise-innocence-project>

**Connecticut**Connecticut Innocence Project

2275 Silas Deane Highway  
Rocky Hill, Connecticut 06067  
Phone: 860-258-4940  
E-mail: [info@innocenceproject.org](mailto:info@innocenceproject.org)  
<http://www.ct.gov/ocpd/site/default.asp>

New England Innocence Project

160 Boylston Street, #2  
Boston, MA 02116  
Phone: 617-830-7685  
E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

**Delaware**Office of the Public Defender

Carvel State Building  
820 North French Street, 3rd floor  
Wilmington, DE 19801

Phone: 302-577-5160

### **District of Columbia**

#### Mid-Atlantic Innocence Project

George Washington School of Law  
2000 H Street NW  
Washington, DC 20052  
Phone: 202-994-4586  
Email: cfiscella@exonerate.org  
<http://www.exonerate.org/>

### **Florida**

#### Innocence Project of Florida, Inc.

1100 East Park Avenue  
Tallahassee, FL 32301  
Phone: 850-561-6767  
Fax: 850-561-5077  
<http://www.floridainnocence.org/>

#### University of Miami Law Innocence Clinic

3000 Biscayne Blvd, Suite 100  
Miami, FL 33137  
Phone: 305-284-8115  
E-mail: [umwrongfulconvictions@gmail.com](mailto:umwrongfulconvictions@gmail.com)

### **Georgia**

#### Georgia Innocence Project

2645 North Decatur Road  
Decatur, GA 30033  
Phone: 404-373-4433  
<http://www.georgiainnocenceproject.org/>

### **Hawaii**

#### Hawai'i Innocence Project

University of Hawai'i School of Law  
2515 Dole Street  
Honolulu, HI 96822  
Phone: 1-808-956-6547  
Fax: 1-808-443-0554  
E-mail: [innocenceprojecthawaii@gmail.com](mailto:innocenceprojecthawaii@gmail.com)  
<http://www.innocenceprojecthawaii.org/>

### **Idaho**

#### Idaho Innocence Project

Boise State University  
c/o Biology Department  
1910 University Drive  
Boise, ID 83725-1515  
Phone: 208-426-4219  
Fax: 208-426-1040  
<https://innocenceproject.boisestate.edu/>

### **Illinois**

#### Center on Wrongful Convictions

Northwestern University School of Law  
375 East Chicago Avenue  
Chicago, IL 60611  
Phone: 312-503-2391  
Fax: 312-503-8977  
<http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/>

#### Illinois Innocence Project

Institute for Legal and Policy Studies  
University of Illinois at Springfield  
One University Plaza  
MS Public Affairs Center 451  
Springfield, IL 62703-5407  
Phone: 217-206-6569  
E-mail: [innocenceproj@uis.edu](mailto:innocenceproj@uis.edu)  
<http://www.uis.edu/illinoisinnocenceproject/>

### **Indiana**

#### Wrongful Conviction Clinic at Indiana University

Indiana University School of Law  
Wrongful Conviction Clinic – Suite 111  
530 West New York Street  
Indianapolis, IN 46202-3225

### **Iowa**

#### Innocence Project of Iowa

19 South 7th Street  
Estherville, Iowa 51334  
<http://www.iowainnocence.org/>

#### Midwest Innocence Project

605 West 47th Street, Suite 222  
Kansas City, MO 64112  
Phone: 816-221-2166  
Email: [office@TheMIP.org](mailto:office@TheMIP.org)  
<http://themip.org/>

### **Kansas**

#### Midwest Innocence Project

605 West 47th Street, Suite 222  
Kansas City, MO 64112  
Phone: 816-221-2166  
Email: [office@TheMIP.org](mailto:office@TheMIP.org)  
<http://themip.org/>

**Kentucky**Kentucky Innocence Project

Linda A. Smith, Directing Attorney  
 Department of Public Advocacy  
 100 Fair Oaks Lane, Suite 301  
 Frankfort, KY 40601  
 Phone: 502-564-8006  
 Fax: 502-564-7890  
<http://dpa.ky.gov/kip/>

**Louisiana**Innocence Project New Orleans

Case Review Manager  
 Innocence Project New Orleans  
 4051 Ulloa Street  
 New Orleans, LA 70119  
 Fax: 504-943-1905  
 E-mail: [info@ip-no.org](mailto:info@ip-no.org)  
<http://www.ip-no.org/>

**Maine**New England Innocence Project

160 Boylston Street, #2  
 Boston, MA 02116  
 Phone: 617-830-7685  
 E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

**Maryland**Mid-Atlantic Innocence Project

George Washington University Law School  
 2000 H Street, NW  
 Washington, DC 20052  
 Phone: 202-994-4856  
 E-mail: [cfiscella@exonerate.org](mailto:cfiscella@exonerate.org)

University of Baltimore Innocence Project Clinic

1420 North Charles Street  
 Baltimore, MD 21201  
 Phone: 410-837-6543  
 Fax: 410-837-4776

**Massachusetts**New England Innocence Project

160 Boylston Street, #2  
 Boston, MA 02116  
 Phone: 617-830-7685  
 E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

Committee for Public Counsel Services Innocence Program

21 McGrath Highway, 2nd floor  
 Somerville, MA 02143  
 Phone: 617-623-0591  
<https://www.publiccounsel.net/pc/innocence-program/>

**Michigan**Cooley Innocence Project

WMU-Cooley Law School  
 300 S. Capitol Avenue  
 P.O. Box 13038  
 Lansing, MI 48933  
 Phone: 517-334-5764  
 E-mail: [babelca@cooley.edu](mailto:babelca@cooley.edu)  
[http://www.cooley.edu/clinics/innocence\\_project.html](http://www.cooley.edu/clinics/innocence_project.html)

Michigan Innocence Clinic

University of Michigan Law School  
 625 South State Street  
 Ann Arbor, MI 48109-1215  
 Phone: 734-763-9353  
 Fax: 734-764-8242  
<http://www.law.umich.edu/clinical/innocenceclinic/>

Michigan State Appellate Defender Office – Wrongful Conviction Unit

Suite 3300 Penobscot Building  
 645 Griswold Street  
 Detroit, MI 48226  
 Phone: 313-256-9883  
 Fax: 313-965-0372

**Minnesota**Minnesota Innocence Project

1536 Hewitt Avenue, MS-D2204  
 St. Paul, MN 55104  
 Phone: 651-523-3152  
 Fax: 651-523-3042  
<http://www.ipmn.org/>

**Mississippi**Innocence Project New Orleans\*

Case Review Manager  
 Innocence Project New Orleans  
 4051 Ulloa Street New Orleans, LA 70119  
 Fax: 504-943-1905  
 E-mail: [info@ip-no.org](mailto:info@ip-no.org)  
<http://www.ip-no.org/>

\* South Mississippi Counties only

**The George C. Cochran Innocence Project\***

P.O. Box 1848  
University, MS 38677-1848  
Phone: 662-915-5207  
<http://innocenceproject.olemiss.edu/>  
\*North Mississippi Counties only

**Missouri****Midwest Innocence Project**

605 West 47th Street, Suite 222  
Kansas City, MO 64112  
Phone: 816-221-2166  
Email: [office@TheMIP.org](mailto:office@TheMIP.org)  
<http://themip.org/>

**Montana****Montana Innocence Project**

P.O. Box 7607  
Missoula, MT 59807  
Phone: 406-544-6698  
<http://www.mtinnoceproject.org/>

**Nebraska****Nebraska Innocence Project**

P.O. Box 24183  
Omaha, NE 68124-0183  
E-mail: [neinnocenceproject@gmail.com](mailto:neinnocenceproject@gmail.com)  
<http://www.nebraskainnocenceproject.org/>

**Midwest Innocence Project**

605 West 47th Street, Suite 222  
Kansas City, MO 64113  
Phone: 816-221-2166  
Email: [office@TheMIP.org](mailto:office@TheMIP.org)  
<http://themip.org/>

**Nevada****Rocky Mountain Innocence Center**

358 South 700 East, Box B235  
Salt Lake City, UT 84102  
Phone: 801-355-1888  
E-mail: [contact@rminnocence.org](mailto:contact@rminnocence.org)  
<http://rminnocence.org/>

**New Hampshire****New England Innocence Project**

160 Boylston Street, #2  
Boston, MA 02116  
Phone: 617-830-7685  
E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

**New Jersey****Centurion Ministries**

1000 Herrontown Road  
Princeton, NJ 08540  
Phone: 609-921-0334  
Fax: 609-921-6919  
<http://www.centurionministries.org/>

**New Mexico****New Mexico Innocence and Justice Project**

University of New Mexico School of Law  
1117 Stanford Avenue  
Albuquerque, NM 87131-0001  
Phone: 505-277-2146  
<http://lawschool.unm.edu/ijp/index.php>

**New York****Innocence Project**

40 Worth St., Suite 701  
New York, NY 10013  
Phone: 212-364-5340  
Fax: 212-364-5340  
E-mail: [info@innocenceproject.org](mailto:info@innocenceproject.org)  
<http://www.innocenceproject.org/>

**New York Law School Post-Conviction****Innocence Clinic**

New York Law School  
Legal Services  
185 West Broadway  
New York, NY 10013  
Phone: 212-431-2813

**The Exoneration Initiative**

233 Broadway, Suite 2370  
New York, NY 10279  
Phone: 212-965-9335  
Fax: 212-965-9375  
E-mail: [info@exi.org](mailto:info@exi.org)  
<http://exi.org/>

**North Carolina****North Carolina Center on Actual Innocence**

PO Box 52446, Shannon Plaza Station  
Durham, NC 27717-2446  
Phone: 919-489-3268  
Fax: 919-489-3285  
E-mail: [admin@nccai.org](mailto:admin@nccai.org)  
<http://www.nccai.org/>

**Wrongful Convictions Clinic**

Duke University Law School  
Box 90362  
Durham, NC 27708  
Phone: 919-613-7241

Fax: 919-613-7262  
<https://law.duke.edu/wrongfulconvictions/>

**North Carolina Innocence Inquiry Commission**

Administrative Office of the Courts  
NC Innocence Inquiry Commission  
P.O. Box 2448  
Raleigh, NC 27602  
Phone: 919-890-1580  
Fax: 919-890-1937  
Email: [nciic@nccourts.org](mailto:nciic@nccourts.org)  
<http://www.innocencecommission-nc.gov/>

**North Dakota**

**Minnesota Innocence Project**  
1536 Hewitt Avenue, MS-D2204  
St. Paul, MN 55104  
Phone: 651-523-3152  
Fax: 651-523-3042  
<http://www.ipmn.org/>

**Ohio**

**Lois and Richard Rosenthal Institute for Justice: Ohio Innocence Project**  
University of Cincinnati College of Law  
P.O. Box 210040  
Cincinnati, OH 45221  
Phone: 513-861-2946  
Fax: 513-556-1236  
<http://www.law.uc.edu/oip>

**Wrongful Conviction Project**

Office of the Ohio Public Defender  
Attn: Project Director, Joe Bodenhamer  
250 East Broad Street, Suite 1400  
Columbus, Ohio 43215  
Phone: 614-466-5394  
Fax: 800-686-1573  
E-mail: [wrongfulconviction@opd.ohio.gov](mailto:wrongfulconviction@opd.ohio.gov)  
<http://opd.ohio.gov/Trial-Services/Wrongful-Conviction-Project/>

**Oklahoma**

**Oklahoma Innocence Project**  
800 N. Harvey Avenue  
Oklahoma City, OK 73102  
Phone: 405-208-6161  
E-mail: [innocence@okcu.edu](mailto:innocence@okcu.edu)  
<http://innocence.okcu.edu/>

**Oklahoma Indigent Defense System**

DNA Forensic Testing Program  
P.O. Box 926  
Norman, OK 73070

Phone: 405-801-2601

**Oregon**

**Oregon Innocence Project**  
P.O. Box 5248  
Portland, Oregon 97208  
Phone: 503-944-2270  
E-mail: [info@oregoninnocence.org](mailto:info@oregoninnocence.org)  
<http://www.oregoninnocence.org/>

**Pennsylvania**

**Pennsylvania Innocence Project**  
Temple University  
Beasley School of Law  
1515 Market Street, Suite 300  
Philadelphia, PA 19102  
Phone: 215-204-4255  
E-mail: [innocenceprojectpa@temple.edu](mailto:innocenceprojectpa@temple.edu)  
<http://innocenceprojectpa.org/>

**Puerto Rico**

**Puerto Rico Innocence Project**  
Universidad Interamericana de Puerto Rico  
Facultad de Derecho  
PO Box 70351  
San Juan, PR 00936-70351  
Phone: 787 751-1912 ext. 2000

**Rhode Island**

**New England Innocence Project**  
160 Boylston Street, #2  
Boston, MA 02116  
Phone: 617-830-7685  
E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

**South Carolina**

**Innocence Project**  
40 Worth St., Suite 701  
New York, NY 10013  
Phone: 212-364-5340  
Fax: 212-364-5341  
<http://www.innocenceproject.org/>

**South Dakota**

**Minnesota Innocence Project**  
1536 Hewitt Avenue, MS-D2204  
St. Paul, MN 55104  
Phone: 651-523-3152  
Fax: 651-523-3042  
<http://www.ipmn.org/>

**Tennessee**Innocence/Wrongful Convictions Clinic

University of Tennessee College of Law  
Suite 83  
1505 W. Cumberland Ave.  
Knoxville, Tennessee 37996-1810  
Phone: 865-974-2331  
Fax: 865-974-6782  
<http://law.utk.edu/clinics/innocence/>

**Texas**Innocence Project of Texas

1511 Texas Ave  
Lubbock, Texas 79401  
Phone: 806-744-6525  
Fax: 806-744-6480  
Email: [info@ipoftexas.org](mailto:info@ipoftexas.org)  
<http://www.ipoftexas.org/>

Texas Innocence Network

100 Law Center  
Houston, TX 77204-6060  
Email: [CJI@uh.edu](mailto:CJI@uh.edu)  
<http://texasinnocencenetwork.com/>

Texas Center for Actual Innocence

University of Texas School of Law  
727 East Dean Keeton Street  
Austin, TX 78705  
<https://law.utexas.edu/tcai/>

Thurgood Marshall School of Law Innocence Project

3100 Cleburne Street  
Houston, TX 77004  
Phone: 713-313-1139  
[http://www.tsulaw.edu/centers/eci/featured/innocence\\_project.html/](http://www.tsulaw.edu/centers/eci/featured/innocence_project.html/)

**Utah**Rocky Mountain Innocence Center

358 South 700 East, Box B235  
Salt Lake City, UT 84102  
Phone: 801-355-1888  
E-mail: [contact@rminnocence.org](mailto:contact@rminnocence.org)  
<http://rminnocence.org/>

**Vermont**New England Innocence Project

160 Boylston Street, #2  
Boston, MA 02116  
Phone: 617-830-7685  
E-mail: [intake@newenglandinnocence.org](mailto:intake@newenglandinnocence.org)  
<http://www.newenglandinnocence.org/>

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William H. Gates Hall, P.O. Box 85110  
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**West Virginia**Innocence Project

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**Wisconsin**Wisconsin Innocence Project

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**Wyoming**Rocky Mountain Innocence Center

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