

CHAPTER 11

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

A. Introduction

As of March 2024, approximately 596 people have been exonerated (declared not guilty of criminal charges after a conviction) in the United States through post-conviction DNA testing.¹ This is because DNA is uniquely capable of proving innocence in crimes where biological material was left by the person who committed the alleged crime. DNA, which stands for “deoxyribonucleic acid,” is a substance contained in every human cell that contains unique information about an individual’s specific physical characteristics. Many people in prison were convicted before DNA testing was possible or before it was considered reliable and, therefore, were not able to present accurate, reliable DNA evidence at their trial that might have helped prove their innocence.² So, DNA testing can help people who either pled guilty or were found guilty.

If you want to pursue post-conviction DNA testing, this Chapter can help you understand some of the legal issues involved in the process. This Chapter is divided into three parts. **Part B** discusses how to request DNA testing. **Part C** explains the steps you can take after you receive DNA test results that may prove your innocence. **Part D** explains how to seek assistance from a legal organization. **Appendix A** at the end of this Chapter lists all fifty states’ (and the District of Columbia’s) post-conviction DNA testing statutes, organized by what you must prove to the court before it orders DNA testing.

There are many organizations throughout the country that help incarcerated people get DNA evidence relevant to their original trial and get DNA testing. **Appendix B** at the end of this Chapter includes organizations in each state that provide this type of legal help. Because of how difficult it usually is to apply for DNA testing, we strongly recommend that you contact one of these organizations rather than proceed *pro se* (on your own).

B. Common Procedures Used to Obtain DNA Testing

In the past, old methods of testing evidence found at crime scenes were usually unreliable. Trying to identify the person who had allegedly committed the crime by using this unreliable evidence was 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, saliva, 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 either completely prove or at least suggest that you are not guilty of the crime you were accused of committing, 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 hardest steps in getting DNA testing done. There are two types of biological evidence that might be relevant to your case. The first type is evidence that was introduced at your trial (for example, a bloody shirt that was found at the crime scene and introduced to the court as evidence during trial). The second type is evidence that was collected during the police investigation but was *not* introduced at your trial (for example, a bloody pair of pants that was found at the crime scene but *not* introduced as evidence during trial).

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¹ See *Detailed View*, NAT’L REGISTRY OF EXONERATIONS, available at <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last visited Mar. 7, 2024) (results achieved by filtering for all cases in which post-conviction DNA testing was conducted and contributed to the exoneration).

² See Randy James, *A Brief History of DNA Testing*, TIME, available at <http://content.time.com/time/nation/article/0,8599,1905706,00.html> (last visited Mar. 7, 2024).

If you know your case involved one or both types of evidence, you can file a motion in court to get that evidence DNA tested. You do not need to actually find the evidence yourself (that is, you do not need to tell the court where the evidence currently is). You only need to show that the evidence was either collected during the case's investigation or introduced into evidence at your trial (or both). When filing a motion to get this evidence tested, you have to specifically tell the court the following:

- (1) The evidence you want to test,
- (2) Why that evidence is important to show that you did not commit the alleged crime, and
- (3) The last known location of the evidence.

It is very important to specifically note the last known location of the evidence. It is possible that the police department of the area where you were prosecuted would have had that evidence last (for example, if you went to court in New York City, the New York Police Department might have the evidence you are trying to get tested). Filing these legal motions can be complicated. It may be easier to contact one of the legal organizations listed in Appendix B in order to get assistance with filing these motions in court.

1. Motion to Secure DNA Testing

Before filing a motion for a new trial based on newly discovered evidence (discussed below in Section B(2)), you need to file a motion to get DNA testing done. The way you file your motion will depend on the post-conviction DNA testing statute that is applicable to your case. All states have post-conviction DNA testing statutes.³ If you are in a state prison, read Subsection B(1)(a) below on how to make your motion. If you are in a federal prison, you should file your motion under the Justice for All Act of 2004.⁴ Subsection B(1)(c) below explains how that statute works. Subsection B(1)(b) discusses some constitutional arguments that may be relevant when trying to convince the court to allow you to DNA test relevant evidence.

(a) Incarcerated People in State Prisons

As of March 2024, all fifty states and the District of Columbia have laws allowing post-conviction DNA testing.⁵ State laws vary greatly with regard to who may request DNA testing and when they may do so. For example, some states only allow incarcerated people who were convicted of certain felonies to petition for DNA testing.⁶ Other states impose "due diligence" requirements⁷ or only grant DNA testing if an individual's identity was an issue at trial or in the case.⁸ You should carefully read

³ See *Passing Reforms*, THE INNOCENCE PROJECT, available at <https://innocenceproject.org/transforming-systems/> (last visited Mar. 7, 2024). In the *Passing Reforms* section of the website, select your state for applicable statutes on post-conviction DNA testing. See also, e.g., N.Y. CRIM. PROC. LAW § 440.30 (McKinney 2023) (the post-conviction DNA testing statute for New York State).

⁴ Justice for All Act of 2004 § 411, 18 U.S.C. § 3600A.

⁵ See *Passing Reforms*, THE INNOCENCE PROJECT, available at <https://innocenceproject.org/transforming-systems/> (last visited Mar. 7, 2024). On May 24, 2013, Oklahoma became the 50th state to pass a post-conviction DNA testing statute. *Oklahoma*, THE INNOCENCE PROJECT, available at <https://innocenceproject.org/oklahoma/> (last visited Mar. 7, 2024).

⁶ See, e.g., IND. CODE ANN. § 35-38-7-1 (West 2012) (indicating that only those convicted of murder, a class A, B, or C felony, or a Level 1, 2, 3, 4, or 5 felony may petition).

⁷ The "due diligence" requirement means a court will not order DNA testing if the DNA evidence was available at the time of your original trial and you did not request the evidence at the trial or plea stage. See, e.g., ARK. CODE ANN. § 16-112-201(a)(2) (West 2013 & Supp. 2024) (requiring an incarcerated person to claim under penalty of perjury that "the scientific predicate basis for the claim could not have been previously discovered through the exercise of due diligence" in order for a DNA test to be ordered); WYO. STAT. ANN. § 7-12-303(d) (West 2007 & Supp. 2023) (prohibiting the court from ordering DNA testing if "the person did not request DNA testing or present DNA evidence for strategic or tactical reasons or as a result of a lack of due diligence").

⁸ The phrase "identity at issue at trial" means that you or your attorney claimed that you were mistakenly identified as the person who committed the crime for which you were on trial. See, e.g., 725 ILL. COMP. STAT. ANN. 5/116-3(b)(1) (West 2008 & Supp. 2023) (requiring that identity must have been an issue at trial); MICH. COMP. LAWS ANN. § 770.16(4)(b)(iii) (West 2023) (requiring that identity must have been an issue at trial); MO. ANN. STAT. § 547.035(2)(4) (West 2002) (requiring that identity must have been an issue at trial); TEX. CODE CRIM. PROC. ANN. art. 64.03(a)(1)(C) (West 2018) (requiring that identity was or is an issue in the case).

the requirements and conditions for asking for post-conviction DNA testing under your state's law. Appendix A of this Chapter lists each state's relevant statute (and the District of Columbia's) to help you do this research. The statutes are organized by what you must prove to the court before it orders DNA testing; continue reading for more information about this "burden of proof" requirement.

New York was the first state to allow post-conviction DNA testing, and its relevant statute is one of the most flexible.⁹ According to this statute, which is included in Article 440 of the New York Criminal Procedure Law,¹⁰ there is no explicit due diligence requirement (though some courts have decided that there should be one anyway),¹¹ 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 DNA 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;
- (2) The evidence you are requesting to have tested is connected in some way to 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 better for you.¹²

The third "reasonable probability" requirement is very important. The court will not order a DNA test if it does not believe there is 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.¹³ This requirement does not mean that the court must be certain that the evidence will prove you are innocent, but it is still a high bar for you to clear. A court can legally deny your request for testing if it believes that your first trial court was right to convict you, regardless of what a new DNA test might

⁹ The text of the New York State 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 2023); *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 State's statute is more flexible in allowing DNA testing than those in other states).

¹⁰ For more information on Article 440, see Chapter 20 of the *JLM*, "Using Article 440 of the New York Criminal Procedure Law to Attack Your Unfair Conviction or Illegal Sentence."

¹¹ *See* *People v. Jones*, 24 N.Y.3d 623, 635, 26 N.E.3d 754, 761, N.Y.S.3d 815, 822 (2014) (suggesting that a failure to exercise "due diligence" could bar relief pursuant to an Article 440 motion based on new DNA evidence); *People v. Pugh*, 288 A.D.2d 634, 635, 732 N.Y.S.2d 673, 675 (3d Dept. 2001) (noting that since the defendant was aware of the existence of physical evidence and the possibility of DNA testing during his original trial, he "is not entitled to a second opportunity to obtain DNA testing"); *People v. Kellar*, 218 A.D.2d 406, 410, 640 N.Y.S.2d 908, 910 (3d Dept. 1996) (finding 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), *appeal dismissed and remanded*, 89 N.Y.2d 948, 678 N.E.2d 464 (1997).

¹² N.Y. CRIM. PROC. LAW § 440.30(1-a)(a)(1) (McKinney 2023).

¹³ N.Y. CRIM. PROC. LAW § 440.30(1-a)(a)(1) (McKinney 2023); *see also* *People v. Brown*, 36 A.D.3d 961, 962, 827 N.Y.S.2d 742, 743 (3d Dept. 2007) (finding that there was not a reasonable probability that the verdict would have been different even with testing DNA evidence on the outside of the defendant's sweater because defendant was not convicted on the basis of the hair on the outside of his sweater but on testimony of his codefendant, victim, and residents who testified about the sexual attack); *People v. Baugh*, 188 A.D.3d 903, 904, 132 N.Y.S.3d 308, 308–309 (2d Dept. 2020) (holding that defendant failed to satisfy the reasonable probability standard needed to order DNA testing), *leave to appeal denied*, 36 N.Y.3d 1049, 164 N.E.3d 952, 140 N.Y.S.3d 865 (2021); *People v. Dorcinvil*, 175 A.D.3d 1421, 1422, 109 N.Y.S.3d 457, 458 (2d Dept. 2019) (holding that N.Y. Crim. Proc. Law § 440.30(1-a)(a)(1) does not provide for retesting of DNA that has already been tested), *leave to appeal denied*, by 34 N.Y.3d 1077, 139 N.E.3d 804, 116 N.Y.S.3d 146 (2019).

show.¹⁴ Therefore, your “burden of proof” in New York is to show that there is a reasonable probability that the verdict in your original trial would have been better for you if you had been able to use DNA evidence. Not all states use the “reasonable probability” burden of proof. Check Appendix A to see which burden of proof your state uses to decide whether they will give you permission to DNA test the evidence you want tested.

The New York law is unusual because it allows you to request DNA testing as part of your Article 440 motion to vacate judgment (that is, request a new trial).¹⁵ 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.¹⁶ 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 explicitly stated a statute of limitations.¹⁷ 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, look at both the statute governing motions for a new trial and the case law, if any, overseeing post-conviction DNA testing in your state. Appendix A of this Chapter lists the post-conviction DNA testing statutes of all 50 states and the District of Columbia.

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. Your motion will have a better chance of succeeding 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.

(b) Possible Constitutional Rights

In 2009, a Supreme Court case called *District Attorney’s Office for Third Judicial District v. Osborne* held that incarcerated people do *not* have a constitutional right to post-conviction DNA testing.¹⁸ According to the Court, state legislatures may decide whether to allow incarcerated people

¹⁴ See, e.g., *People v. Smith*, 245 A.D.2d 79, 79, 665 N.Y.S.2d 648, 649 (1st Dept. 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, 767–768, 636 N.Y.S.2d 441, 443 (3d Dept. 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).

¹⁵ 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.”

¹⁶ Compare ARIZ. REV. STAT. ANN. 13-4240(a) (West 2024) (allowing the motion to occur at any time), with A.C.A. ARK. CODE ANN. § 16-112-202 (West 2013 & Supp. 2024) (requiring that the petitioner file the motion for the performance of fingerprinting in a “timely fashion”; the court assumes your motion is timely if it is made within 36 months of the conviction date, but the state can argue that the motion is still not valid).

¹⁷ See CAL. PENAL CODE § 1405 (West 2023); IOWA CODE § 81.10 (West 2020); TEX. CODE CRIM. PROC. ANN. art. 64.01 (West 2018).

¹⁸ *Dist. Attorney’s Off. for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 73–74, 129 S. Ct. 2308, 2323, 174 L. Ed. 2d 38, 55 (2009); see also *Nolan v. Wolfson*, No. 3:18-cv-00338-RCJ-WGC, 2018 U.S. Dist. LEXIS 132319, at *7–13 (D. Nev. Aug. 7, 2018) (*unpublished*) (finding that *Osborne’s* standard for judging whether state post-conviction DNA testing statutes were constitutional could be applied to Nevada’s post-conviction DNA testing statute, and

access to DNA testing.¹⁹ However, if your state has a post-conviction DNA testing statute, this allows you to (1) try to DNA test the evidence you want tested under that statute, and (2) bring a Section 1983 lawsuit if the State doesn't allow you to test the evidence you want tested. A Section 1983 lawsuit would allow you to challenge the constitutionality of your state's DNA testing statute.²⁰

If you are in a state prison, you can get post-conviction DNA testing done in a Section 1983 action if you can prove that your state's DNA testing statute violates your procedural due process rights, which are guaranteed under the Fourteenth Amendment to the Constitution.²¹ Though the Supreme Court did not establish any explicit requirements for deciding when state DNA testing statutes violate due process, federal courts have used the Alaska statute as a reference point when deciding whether a state's DNA testing statute is or is not constitutional.²² The Alaska statute allows post-conviction DNA testing if "...there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of the conviction or sentence in the interest of justice." If a state's statute is as strict or less strict than the Alaska statute, then it appears the court will find the testing procedure constitutional.²³

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

On October 30, 2004, the federal Justice for All Act was signed into law.²⁴ This law gives incarcerated people the right to request post-conviction DNA testing, but it only applies to people who are convicted of federal crimes.²⁵ If you are at a state facility, you must use your state's post-conviction DNA testing statute (see Part B(1)(a) of this Chapter, above).

The Justice for All Act works exactly like a state post-conviction DNA statute, but it only applies if you are incarcerated for a federal crime. It explains the rules and procedures for applying for DNA testing in federal prisons.²⁶ To qualify for DNA testing, the Act requires that:

stating that the Nevada statute was, in fact, constitutional); *Reid v. State*, 984 N.E.2d 1264, 1268 (Ind. Ct. App. 2013) (holding that post-conviction loss or destruction of DNA evidence does not violate a defendant's due process rights because of *Osborne*); *Est. of Alley v. State*, 648 S.W.3d 201, 226 (Tenn. Crim. App. 2021) (holding that, because the defendant had no right to post-conviction DNA testing under *Osborne* before his execution, his estate had no such right either); *Gosciminski v. State*, 262 So. 3d 47, 58–59, 44 Fla. L. Weekly S27 (Fla. 2018) (holding that a defendant who was sentenced to death did not have right to post-conviction DNA testing under *Osborne*).

¹⁹ 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 the task of figuring out how to use DNA testing is a task that "belongs primarily to the legislature").

²⁰ For more information on § 1983 lawsuits, see Chapter 16 of the *JLM*, "Using 42 U.S.C. § 1983 to Obtain Relief from Violations of Federal Law."

²¹ *Skinner v. Switzer*, 562 U.S. 521, 531–536, 131 S. Ct. 1289, 1297–1300, 179 L. Ed. 2d 233, 242–246 (2011) (finding that the person incarcerated in state prison correctly used § 1983 to challenge the constitutionality of the Texas DNA statute); see also *Wilson v. Marshall*, No. 2:14-cv-01106-MHT-SRW, 2018 U.S. Dist. LEXIS 158715, at *2 n.2 (M.D. Ala. Sept. 14, 2018) (*unpublished*) (finding that, under *Skinner*, it was proper for plaintiff to challenge the constitutionality of Alabama's post-conviction DNA statute through a § 1983 lawsuit), *report and recommendation adopted*, No. 2:14cv1106-MHT (WO), 2018 U.S. Dist. LEXIS 178084 (M.D. Ala. Oct. 17, 2018) (*unpublished*).

²² ALASKA STAT. ANN. § 12.72.010 (West 2007).

²³ See *Tevlin v. Spencer*, 621 F.3d 59, 71 (1st Cir. 2010) (upholding the constitutionality of Massachusetts's post-conviction procedure because it is not more restrictive than the Alaska statute upheld by the Supreme Court in *Osborne*); see also *Thompson v. Rundle*, 393 F. App'x 675, 679–680 (11th Cir. 2010) (*unpublished*) (upholding the constitutionality of Florida's post-conviction DNA testing procedure because it contains similar requirements and limitations as other DNA-testing statutes including the Alaska statute upheld by the Supreme Court in *Osborne*); *McKithen v. Brown*, 626 F.3d 143, 153–154 (2d Cir. 2010) (finding New York State's provision for post-conviction DNA testing constitutional because it is less stringent than the Alaska statute considered in *Osborne*).

²⁴ See U.S. DEPT. OF JUST., OFF. OF JUST. PROGRAMS, OVC FACT SHEET: THE JUSTICE FOR ALL ACT (2006), available at <http://www.ovc.gov/publications/factshts/justforall/fs000311.pdf> (last visited Mar. 7, 2024).

²⁵ 18 U.S.C. § 3600(a).

²⁶ 18 U.S.C. § 3600.

- (1) You swear, under penalty of perjury, that you are actually innocent of the federal crime for which you have been imprisoned or sentenced to death;²⁷ and
- (2) The evidence you want to be tested was obtained while the government was investigating or prosecuting your case; and
- (3) The specific evidence you are asking to get DNA tested was not tested before, unless you are requesting a newer and more reliable method of testing be used this time; and
- (4) The evidence you want to be tested is currently held by the Government and hasn't been changed in a way that would affect the DNA test; and
- (5) The DNA testing you are asking for uses scientific methods that are accepted as good forensic practices; and
- (6) Your theory of defense (a reason why you shouldn't be found guilty) doesn't contradict any affirmative defense (other reason you shouldn't be found guilty) that you may have presented at trial; and
- (7) The DNA testing you are asking for could be new evidence that could make it reasonably possible that you did not commit the crime you were imprisoned or sentenced to death for; and
- (8) You provide a current DNA sample to compare with the evidence you want to get DNA tested.²⁸

You should file for DNA testing within three years of your conviction. If you do not, your request for DNA testing will be considered late, and you will have to show that you had a specific reason ("good cause") for filing late (more exceptions listed in footnote).²⁹

The Justice for All Act also says that the government is not allowed to destroy DNA evidence from your federal criminal case while you are in prison, unless: (1) you were notified after your conviction became final that the evidence might be destroyed and you did not file a motion for DNA testing within 180 days of notification; (2) the evidence is someone else's property or so big it would be hard to store (in which case the government is allowed to preserve only a representative sample); or (3) the evidence has already been tested and the results determined you were the source of the DNA evidence.³⁰

One important word of caution: *If you say you are innocent and the DNA testing results are "inculpatory," (meaning the DNA test results show a match between your DNA and the DNA evidence), the court can hold you in contempt for making a false assertion (that is, saying you are innocent when the test results say you are not). If you are convicted of making false assertions, your term of imprisonment will be extended by at least three years.* Additionally, you may be denied good conduct credit or release on parole that you were otherwise entitled to.³¹

However, if the DNA test shows your DNA does *not* match the DNA found on the evidence, you can ask for a new trial. You will get a new trial if the DNA test results, considered with all other evidence in the case (whether introduced at trial or not), serve as compelling evidence that a new trial would result in finding you not guilty.³² Also, if you are in federal prison, you may file a motion for a

²⁷ You can also swear, under penalty of perjury, that you are innocent of another crime you were accused of committing, if being found innocent of that crime would either reduce your sentence or give you a new resentencing hearing. If the other crime in question is a *state* crime, you would also have to prove that your state's DNA testing statute cannot remedy (fix) your situation, or that you have already tried all ways to remedy your situation under state law and failed to remedy your situation.

²⁸ 18 U.S.C. § 3600(a)(1)–(6), (8)–(9).

²⁹ 18 U.S.C. § 3600(a)(10)(A)–(B). If you do not file within three years of your conviction, there is a presumption (assumption) 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; (3) the appeal is not only based on your claim of your innocence and that denying the appeal would be an obvious injustice; or (4) that you had "good cause" for the delay.

³⁰ 18 U.S.C. § 3600A(a), (c)(1)–(3).

³¹ 18 U.S.C. § 3600(f)(2)(B)(i), (2)(B)(iii), (3).

³² 18 U.S.C. § 3600(g)(2).

new sentencing hearing if evidence of an offense was admitted (allowed into court) during a federal sentencing hearing and you would be given a reduced sentence or a new sentencing proceeding if you were found innocent.³³

C. Steps to Take After Receiving DNA Testing Results That May Prove Your Innocence

Once you have succeeded in your motion to secure DNA evidence, received the DNA testing you asked for, and gotten results that point to your innocence, it is time to file a motion for a new trial. All state governments and the federal government allow you to file a motion for a new trial based on newly discovered evidence. Because DNA technology is so new and is always improving, the results of DNA analysis may be considered “newly discovered evidence,” even if the item being analyzed is not itself newly discovered. For example, if you ask for and get DNA testing done on a shirt that was presented at your trial, and that shirt had never been DNA tested before, the results of this DNA test may be considered “newly discovered evidence,” meaning you may get a new trial. This would be true even though the shirt you DNA tested was originally found and used in your original trial.

Every state, and the federal government, has a test (set of standards used to review a claim) 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 decide whether to grant your motion for a new trial based on “newly discovered evidence” (that is, based on your DNA testing results):³⁴

- (1) Was the evidence available before your original trial?
- (2) Could the evidence have been discovered before the trial through due diligence?³⁵
- (3) Is the evidence relevant to the issue you raise in your motion?
- (4) Is the evidence merely “cumulative” (that is, does it only support other similar evidence already admitted at trial), or is it “impeaching” (that is, does it contradict other evidence admitted at trial)?
- (5) Would the evidence probably change your original trial’s result if a new trial were granted?³⁶

State courts, including New York courts,³⁷ use similar tests to decide whether to grant a motion for a new trial based on newly discovered evidence. While courts must use these tests, they also have some room to decide for themselves whether a new trial should be granted. Motions for new trials are very rare, so courts do not grant them very often, and appellate courts rarely reverse a lower court’s decision to deny a new trial.

³³ 18 U.S.C. § 3600(g)(2)(B).

³⁴ Federal courts look to Rule 33 of the Federal Rules of Criminal Procedure to decide whether to hold a new trial. Rule 33 allows the court to hold a new trial on defendant’s motion if “the interest of justice so requires.” FED. R. CRIM. P. 33(a).

³⁵ “Due diligence” is the level of care one would usually expect from a person trying to satisfy a legal obligation or complete a requirement. *Due Diligence*, BLACK’S LAW DICTIONARY (11th ed. 2019); *see also Due Diligence*, BOUVIER LAW DICTIONARY (Desk ed. 2012). In this context, it means that you and/or your attorney should have taken reasonable steps to find the evidence before your trial. Likely, there will be a reason why you were not able to find the evidence before trial, and you should make this reason known to the court. For example, if your case was decided before DNA testing was available, you would not have been able to obtain and use DNA testing results during your original trial.

³⁶ *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); United States v. Herbst, 666 F.3d 504, 512 (8th Cir. 2012) (using this standard to deny a new trial when the additional evidence would have been “unlikely to produce an acquittal at a new trial”).

³⁷ *See* People v. Hargrove, 162 A.D.3d 25, 59–60, 75 N.Y.S.3d 551, 576 (2d Dept. 2018) (noting that the relevant statute outlines three criteria to consider when deciding whether to grant a new trial, and that three additional criteria from common law can also be considered when deciding whether the new evidence in question would make a favorable verdict more likely).

Most states, as well as the federal government, say you can only file a motion for a new trial based on newly discovered evidence within a certain time limit.³⁸ 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 (and you don’t meet one of the exceptions for your state’s time limit such as “good cause” or the other exceptions described in footnote 30 of this Chapter), you will have to pursue other post-conviction remedies (such as seeking a writ of habeas corpus, discussed in Section 1 below), which may not have time limits.

To file your motion on time, you need to show that you have newly discovered evidence. Depending on which state you are in (or if you are in federal prison), you may be able to show you have newly discovered evidence if biological evidence from the crime for which you were convicted still exists, and:

- (1) 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);³⁹ or
- (2) DNA testing was never performed on it;⁴⁰ or
- (3) DNA analysis was performed, but improved methods of DNA testing are now available.⁴¹

Your motion for a new trial based on newly discovered evidence (and/or your request for DNA testing) may be denied if you plead guilty at your trial. For example, New York statutes do not explicitly prohibit people who plead guilty from requesting DNA testing. However, New York courts have previously decided that those who have admitted their factual guilt (that is, at least admitted to guilt on record) when they plead guilty no longer have a right to a new trial based on newly discovered evidence.⁴² 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. The organizations listed in Appendix B of this Chapter may also be able to assist you with this issue.

1. Federal 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 rare.⁴³ A habeas corpus writ is a court’s written order demanding that an incarcerated person be brought before the court to see whether their imprisonment or detention is illegal. Unlike most post-conviction DNA cases, where motions are made to find evidence, habeas corpus cases assume you already have the evidence to prove yourself innocent.⁴⁴ So, this remedy is not available unless DNA testing has already been done on the biological evidence from the crime scene.

³⁸ See *Herrera v. Collins*, 506 U.S. 390, 410–411, 113 S. Ct. 853, 865–866, 122 L. Ed. 2d 203, 223 (1993) (finding that while some states require 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 information on time required to file newly discovered evidence.

³⁹ See *State v. Riofta*, 209 P.3d 467, 470, 166 Wash. 2d 358, 364 (Wash. 2009) (holding that, under a Washington State statute, post-conviction DNA testing is admissible as “significant new evidence” if the DNA testing was not admitted in the lower court due to its failure to meet scientific standards at the time).

⁴⁰ 18 U.S.C. § 3600(a)(3)(A).

⁴¹ 18 U.S.C. § 3600(a)(3)(B).

⁴² See *People v. Jackson*, 163 Misc. 2d 224, 226, 620 N.Y.S.2d 240, 241 (Sup. Ct. Broome County 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).

⁴³ See Chapter 13 of the *JLM*, “Federal Habeas Corpus,” for more information on habeas corpus petitions.

⁴⁴ If you are already bringing a petition for habeas corpus on other grounds (for other reasons), then you can also request DNA testing in your petition. 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 *Thomas v. Goldsmith*, 979 F.2d. 746, 749–750 (9th Cir. 1992) (requiring the state to turn over DNA evidence that is favorable to the incarcerated person in order to allow the person to try and prove his innocence and overcome any state court procedures that block his habeas claim).

You can bring a federal habeas petition by claiming “actual innocence.”⁴⁵ This idea is based on *Herrera v. Collins*, where the Supreme Court left open the possibility that “a truly persuasive [post-trial] demonstration of ‘actual innocence’” in a death penalty case might lead a court to grant a remedy (solution) if the prosecution did not provide any way to present an “actual innocence” claim.⁴⁶ It is very hard to demonstrate “actual innocence,”⁴⁷ 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.⁴⁸

You may also find success by using the “*Brady* rule” (also known as the “*Brady* material doctrine”).⁴⁹ Under this rule, the prosecution in a criminal case must tell your defense lawyer about any strong evidence they have that may help prove your innocence. You may therefore have a claim for habeas corpus relief if: (1) evidence was subjected to DNA testing; (2) the prosecution did not give you/your attorney the results of that test; and (3) the results may have helped to prove your innocence at trial.

While the prosecution is required to give you DNA evidence that may help your case, they are not required to run DNA tests on all evidence. In *Arizona v. Youngblood*, the Supreme Court ruled that states do not have a constitutional duty to perform DNA tests on evidence or to save evidence so that it can be tested.⁵⁰ In 2004, Congress passed the Justice for All Act of 2004.⁵¹ The Justice for All Act requires the federal government to follow uniform rules for the preservation of evidence for DNA testing in federal crimes.⁵² However, the Act specifically states that it cannot be used as a basis for a federal habeas corpus claim.⁵³

The process for getting habeas corpus relief if you are in a state prison may differ from the federal process discussed above. For example, some state courts have held that the test that must be used when deciding whether evidence should have been saved instead of destroyed is different than the federal test set out in *Youngblood*.⁵⁴ You should consult both your state’s statutes and case law to

⁴⁵ See *In re Davis*, 557 U.S. 952, 953–954, 130 S. Ct. 1–3, 174 L. Ed. 2d 614–615 (2009) (Stevens, J., concurring) (suggesting ways habeas relief could be granted for claims of actual innocence).

⁴⁶ *Herrera v. Collins*, 506 U.S. 390, 417, 113 S. Ct. 853, 869, 122 L. Ed. 2d 203, 227 (1993) (explaining the potential power of a demonstration of actual innocence that might alter the outcome of a case).

⁴⁷ 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, 536–537, 126 S. Ct. 2064, 2067–2077, 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).

⁴⁸ See *House v. Bell*, 547 U.S. 518, 535–537, 126 S. Ct. 2064, 2076–2077, 165 L. Ed. 2d 1, 21 (2006) (holding that incarcerated people can bring habeas petitions if their “actual innocence” claim is very compelling and if new evidence likely creates a reasonable doubt about their conviction, even if state or federal law would otherwise not have allowed it); see also *McQuiggin v. Perkins*, 569 U.S. 383, 386, 133 S. Ct. 1924, 1928, 185 L. Ed. 2d 1019, 1027 (2013) (holding the same).

⁴⁹ See *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196–1197, 10 L. Ed. 2d 215, 218 (1963) (holding that the prosecution, if asked, cannot withhold evidence that is relevant to guilt or punishment); see also *Smith v. Cain*, 565 U.S. 73, 75, 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). For information on the *Brady* rule, see Chapter 13 of the *JLM*, “Federal Habeas Corpus.”

⁵⁰ *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 (wrongdoing by a state actor), a state’s failure to preserve evidence so that it can be tested does not violate the Due Process Clause of the 14th Amendment); see also *Illinois v. Fisher*, 540 U.S. 544, 545, 124 S. Ct. 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).

⁵¹ 18 U.S.C. § 3600A.

⁵² 18 U.S.C. § 3600A.

⁵³ 18 U.S.C. § 3600A(g).

⁵⁴ See *Baynum v. State*, 133 A.3d 963, 967 (Del. 2016) (holding that, in Delaware, if the State has failed to collect or preserve evidence that would be “material to the defense,” the jury should “assume that the missing evidence would have tended to prove the defendant not guilty”); *Smith v. State*, 447 P.3d 769, 781 (Alaska 2019) (holding that an Alaskan lower court judge correctly granted plaintiffs’ motions for “spoliation jury instructions,” which instructed the jury to consider any lost or destroyed evidence as favorable to plaintiffs); *State v. Rimer*, 623

determine the proper steps. The organizations listed in Appendix B of this Chapter may also be able to assist you with this issue.

D. 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. Keep in mind that these organizations are often forced to choose some cases over others that may be just as worthy because they receive a very large number of requests for help. You may want to consider contacting multiple organizations for assistance.

Appendix B of this Chapter lists organizations that may help you use DNA evidence to prove your innocence. To have one of these organizations consider your case, you should first call them, if possible, to figure out what materials they need from you. Most organizations will not offer assistance over the phone, but they might be able to tell you how to formally request assistance (for example, where to fill out an intake form). Usually, you will need information such as 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). They may ask you questions such as 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). If contacting an organization by mail, include your full name, mailing address, and prison identification number. Many organizations require you to fill out an intake form as part of the application process. You can check their website, if possible, to access a copy of their intake form.

E. Conclusion

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

S.W.3d 235, 257 (Tenn. 2021) (holding that a Tennessee court must first consider whether the State had a duty to preserve the evidence in question and that if the court decides that the State did have a duty to preserve evidence, it must apply a three-prong test to determine whether the destruction of the evidence violated the defendant's due process rights); *State v. Fox*, 217 A.3d 41, 56, 192 Conn. App. 221, 241 (Conn. App. Ct. 2019) (holding that when considering the “degree of prejudice to an accused caused by the unavailability of the evidence,” Connecticut courts must go through a four-part test to determine if due process rights were violated (quoting *State v. Joyce*, 705 A.2d 181, 191, 243 Conn. 282, 303 (Conn. 1997))).

Appendix A

STATE STATUTES GOVERNING POST-CONVICTION DNA TESTING, BY BURDEN OF PROOF

All fifty states and the District of Columbia have post-conviction DNA testing statutes. Each statute has a “burden of proof” your motion needs to successfully prove before the court grants your motion for post-conviction DNA testing. The table below shows the post-conviction DNA testing statute for each state along with its burden of proof.

Most states fall under one of three burdens of proof: (1) Material, (2) Reasonable Probability, or (3) Clear & Convincing. These three main burdens of proof are explained in more detail below the table. If your state does not use one of the three main burdens of proof, the particular burden for your state will be explained directly in the table.

State	Statute	Burden of Proof
Alabama	ALA. CODE § 15-18-200	Clear & Convincing
Alaska	ALASKA STAT. §§ 12.73.010–12.73.090	Reasonable Probability
Arizona	ARIZ. REV. STAT. ANN. § 13-4240	Reasonable Probability
Arkansas	ARK. CODE ANN. §§ 16-112-201–16-112-208	Clear & Convincing
California	CAL. PENAL CODE § 1405	Reasonable Probability
Colorado	COLO. REV. STAT. ANN. §§ 18-1-411–18-1-416	Clear & Convincing
Connecticut	CONN. GEN. STAT. § 54-102kk	Reasonable Probability
Delaware	DEL. CODE ANN. tit. 11, § 4504	Material
District of Columbia	D.C. CODE ANN. § 22-4133	Reasonable Probability
Florida	FLA. STAT. ANN. § 925.11 FLA. R. CRIM. P. 3.853	Reasonable Probability
Georgia	GA. CODE ANN. § 5-5-41(c)	Reasonable Probability
Hawaii	HAW. REV. STAT. ANN. §§ 844D-121–844D-133	The evidence to be DNA tested must be <i>related to</i> the investigation or the prosecution of the case. This is a light (easy to prove) burden.
Idaho	IDAHO CODE ANN. § 19-4902	The evidence to be DNA tested must be <i>likely to show that it is more likely than not that you are innocent</i> of the crime you were convicted of.

State	Statute	Burden of Proof
Illinois	725 ILL. COMP. STAT. ANN. 5/116-3	Found Guilty → Material Plead Guilty → Reasonable Probability <i>Note:</i> Which burden of proof you must meet depends on whether you plead guilty or were found guilty at trial.
Indiana	IND. CODE ANN. §§ 35-38-7-1–35-38-7-19	Reasonable Probability
Iowa	IOWA CODE § 81.10–81.13	Material
Kansas	KAN. STAT. ANN. § 21-2512	DNA testing is only available for people convicted of first-degree murder or rape. The evidence can be DNA tested if it is <i>related to</i> the investigation or prosecution that resulted in the conviction. This is a light (easy to prove) burden. The evidence also must be in possession of the state.
Kentucky	KY. REV. STAT. ANN. §§ 422.285, 422.287	Reasonable Probability
Louisiana	LA. CODE CRIM. PROC. ANN. art. 926.1	The evidence can be DNA tested if there is an “ <i>articulable</i> ” <i>doubt</i> about your guilt and if the <i>DNA test would solve that doubt</i> by establishing your innocence.
Maine	ME. REV. STAT. ANN. tit. 15, §§ 2136–2138	Material
Maryland	MD. CODE ANN., CRIM. PROC. § 8-201	Reasonable Probability
Massachusetts	MASS. ANN. LAWS 278A §§ 3–18	Material
Michigan	MICH. COMP. LAWS ANN. § 770.16	Material
Minnesota	MINN. STAT. ANN. §§ 590.01–590.06	Material
Mississippi	MISS. CODE ANN. §§ 99-39-5, 99-39-9, 99-39-11	Reasonable Probability
Missouri	MO. ANN. STAT. § 547.035	Reasonable Probability
Montana	MONT. CODE ANN. § 46-21-110	Clear & Convincing

State	Statute	Burden of Proof
Nebraska	NEB. REV. STAT. ANN. §§ 29-2101, 29-4120–29-4126	The evidence can be DNA tested if it is <i>relevant</i> to your claim that you were wrongfully convicted or sentenced. This is a light (easy to prove) burden.
Nevada	NEV. REV. STAT. ANN. § 176.0918	Reasonable Probability
New Hampshire	N.H. REV. STAT. ANN. §§ 651-D:1–D:4	Clear & Convincing
New Jersey	N.J. STAT. ANN. § 2A:84A-32a	Material
New Mexico	N.M. STAT. ANN. § 31-1A-2	Reasonable Probability
New York	N.Y. CRIM. PROC. LAW § 440.30	Reasonable Probability
North Carolina	N.C. GEN. STAT. § 15A-269	Reasonable Probability
North Dakota	N.D. CENT. CODE § 29-32.1-15	Material
Ohio	OHIO REV. CODE ANN. §§ 2953.71–2953.84	Clear & Convincing
Oklahoma	OKLA. STAT. ANN. tit. 22, §§ 1371–1373.7	Reasonable Probability
Oregon	OR. REV. STAT. ANN. §§ 138.690–138.700	Reasonable Probability
Pennsylvania	42 PA. CONS. STAT. ANN. § 9543.1	Clear & Convincing
Rhode Island	R.I. GEN. LAWS §§ 10-9.1-10–10-9.1-12	Reasonable Probability
South Carolina	S.C. CODE ANN. § 17-28-10–17-28-120	Reasonable Probability
South Dakota	S.D. CODIFIED LAWS ANN. §§ 23-5B-1–23-5B-17	Clear & Convincing
Tennessee	TENN. CODE ANN. §§ 40-30-301–40-30-313	Reasonable Probability
Texas	TEX. CODE CRIM. PROC. ANN. art. 64.01–64.05	The evidence can be DNA tested if you prove that it is <i>more likely than not</i> that you would not have been convicted if you had gotten DNA test results in your original trial.
Utah	UTAH CODE ANN. §§ 78B-9-301–78B-9-304	Reasonable Probability
Vermont	Vt. STAT. ANN. tit. 13, §§ 5561–5570	Material

State	Statute	Burden of Proof
Virginia	VA. CODE ANN. § 19.2-327.1	Clear & Convincing
Washington	WASH. REV. CODE ANN. § 10.73.170	The evidence can be DNA tested if you prove that it is <i>more likely than not</i> that the DNA test results would prove your innocence.
West Virginia	W. VA. CODE ANN. § 15-2B-14	Reasonable Probability & Material <i>Note:</i> West Virginia makes you meet both burdens of proof.
Wisconsin	WIS. STAT. ANN. § 974.07	Reasonable Probability
Wyoming	WYO. STAT. ANN. §§ 7-12-303–305	Clear & Convincing

MAIN BURDENS OF PROOF EXPLAINED

Material

This burden of proof requires you to explain how the DNA evidence would be “material to the question of guilt.” In other words, you must explain in your motion how the DNA evidence would be relevant to the question of whether or not you are guilty of the crime you were accused of.

For example, you could explain that the DNA evidence is relevant to the question of identity, meaning whether you were properly identified as the person who committed the alleged crime. In one case from a state that uses this burden, a court found that a post-conviction DNA test should be ordered because the DNA test would help prove the identity of the person who committed the crime and might exonerate an incarcerated person.⁵⁵

Reasonable Probability

This burden of proof requires that you explain in your motion that it is reasonably likely that, if you had the DNA evidence in your original trial, you would have gotten a more favorable outcome.

Clear & Convincing

This burden of proof requires that you explain in your motion that the DNA test you want to get done will for certain prove that you are innocent of the crime you were accused of. It is not enough to say that the DNA test *might* prove you are innocent. Your motion must tell the court that the DNA test will prove your “actual innocence

⁵⁵ People v. Poole, 874 N.W.2d 407, 413 (Mich. Ct. App. 2015) (Because DNA testing of a blood sample could possibly connect another person to the crime scene or exclude defendant . . . the blood samples would necessarily be material to defendant’s identity as the perpetrator.”)

Appendix B

ORGANIZATIONS 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
Email: info@alaskainnocence.org
<http://www.alaskainnocence.org>

Alabama

Equal Justice Initiative
122 Commerce Street
Montgomery, AL 36104
Phone: (334) 269-1803
Email: intake@eji.org
<https://eji.org>

Southern Center for Human Rights

60 Walton Street NW
Atlanta, GA 30303
Phone: (404) 688-1202
Email: info@schr.org
<https://www.schr.org>

Arizona

Arizona Justice Project
4001 N. 3rd St., Suite 401
Phoenix, AZ 85012
Email: info@azjusticeproject.org
<http://azjusticeproject.org>

University of Arizona Innocence Project

c/o James E. Rogers College of Law
1145 N. Mountain Ave.
Tucson, AZ 85719
Phone: (520) 626-5232
<https://law.arizona.edu/clinics/innocence-project>

Arkansas

Midwest Innocence Project
3619 Broadway Blvd., Suite 2
Kansas City, MO 64111
Phone: (816) 221-2166
Email: office@themip.org
<http://themip.org>

California (Northern)

Northern California Innocence Project
500 El Camino Real
Santa Clara, CA 95053
Phone: (408) 554-4790
Email: ncip@scu.edu
<http://ncip.org>

California (Southern)

California Innocence Project
225 Cedar Street
San Diego, CA 92101
Phone: (619) 525-1485
<http://californiainnocenceproject.org>

Loyola Law School Project for the Innocent

919 Albany Street
Los Angeles, CA 90015
Phone: (213) 736-8141
<https://www.lls.edu/academics/experientiallearning/clinics/projectfortheinnocent>

Colorado

Korey Wise Innocence Project
University of Colorado Law School
Wolf Law Building, Room 211
401 UCB
Boulder, CO 80309
<https://www.colorado.edu/outreach/korey-wise-innocence-project>

Connecticut

Connecticut Innocence Project
55 Farmington Ave., 8th Floor
Hartford, CT 06105
Phone: (860) 258-4940
Email: info@innocenceproject.org
<https://portal.ct.gov/OCPD/Innocence-Project/Connecticut-Innocence-Project>

New England Innocence Project

c/o Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

DelawareInnocence Delaware

4601 Concord Pike
Wilmington, DE 19803
Email: info@innocencede.org

District of ColumbiaMid-Atlantic Innocence Project

1413 K St. NW, Suite 1100
Washington, DC 20005
Phone: (202) 888-1766
<http://www.exonerate.org>

FloridaInnocence Project of Florida

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

Phone: (305) 284-8115
Email: miamiinnocence@law.miami.edu

GeorgiaGeorgia Innocence Project

50 Hurt Plaza SE, Suite 350
Atlanta, GA 30303
Phone: (404) 373-4433
Fax: (404) 609-2704
Email: gip@georgiainnocence.org
<http://www.georgiainnocenceproject.org>

HawaiiHawai'i Innocence Project

William S. Richardson School of Law
Attn: Jennifer Brown
2515 Dole St., Suite 225
Honolulu, HI 96822
Phone: (808) 956-6547
Email: contacthip@hawaiiinnocenceproject.org
<http://www.innocenceprojecthawaii.org>

IdahoIdaho Innocence Project

c/o Biology Department
Boise State University
1910 University Dr.
Boise, ID 83725
Email: idahoinnocenceproject@boisestate.edu
<https://www.boisestate.edu/innocenceproject>

IllinoisCenter on Wrongful Convictions

Northwestern Pritzker School of Law
375 East Chicago Ave.
Chicago, IL 60611
<http://www.law.northwestern.edu/legalclinic/wrongfulconvictions>

Illinois Innocence Project

Center for State Policy and Leadership
University of Illinois Springfield
One University Plaza, MS PAC 409
Springfield, IL 62703
Phone: (217) 206-6569
Email: iip@uis.edu
<http://www.uis.edu/illinoisinnocenceproject>

IndianaWrongful Conviction Clinic at Indiana University

Indiana University McKinney School of Law
530 West New York St., Room 111
Indianapolis, IN 46202
Phone: (317) 274-5551
Email: fwatson@iupui.edu

IowaInnocence Project of Iowa

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

Midwest Innocence Project

3619 Broadway Blvd., Suite 2
Kansas City, MO 64111
Phone: (816) 221-2166
Email: office@themip.org
<http://themip.org>

KansasMidwest Innocence Project

3619 Broadway Blvd., Suite 2
Kansas City, MO 64111
Phone: (816) 221-2166
Email: office@themip.org
<http://themip.org>

KentuckyKentucky Innocence Project

5 Mill Creek Park
Frankfort, KY 40601
Phone: (502) 564-3948
https://dpa.ky.gov/who_we_are/KIP/Pages/KIP.aspx

LouisianaInnocence Project New Orleans

4051 Ulloa St.
New Orleans, LA 70119
Fax: (504) 943-1905
Email: info@ip-no.org
<http://www.ip-no.org>

MaineNew England Innocence Project

1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

MarylandMid-Atlantic Innocence Project

1413 K St. NW, Suite 1100
Washington, DC 20005
Phone: (202) 888-1766
<http://www.exonerate.org>

University of Baltimore Innocence Project Clinic

1420 North Charles St.
Baltimore, MD 21201
Email: lawclinic@ubalt.edu

MassachusettsNew England Innocence Project

c/o Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

Committee for Public Counsel Services Innocence Program

21 McGrath Highway
Somerville, MA 02143
Phone: (617) 209-5666
<https://www.publiccounsel.net/pc/innocence-program>

MichiganWMU-Cooley Innocence Project

300 S. Capitol Ave.
WMU-Cooley Law School
Lansing, MI 48933
Phone: (517) 371-5140
Email: innocence@cooley.edu
<https://www.cooley.edu/academics/experiential-learning/innocence-project>

Michigan Innocence Clinic

701 South State St.
Ann Arbor, Michigan 48109
Phone: (734) 763-9353
Email: jmsimmon@umich.edu
<https://michigan.law.umich.edu/academics/experiential-learning/clinics/michigan-innocence-clinic-0>

MinnesotaGreat North Innocence Project

229 19th Ave. South, Suite 285
Minneapolis, MN 55455
Phone: (612) 624-4779
Email: admin@gn-ip.org
<https://www.greatnorthinnocenceproject.org>

MississippiInnocence Project New Orleans*

c/o Case Manager
4051 Ulloa St.
New Orleans, LA 70119
Fax: (504) 943-1905
Email: 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
Phone: (662) 915-5207
<https://law.olemiss.edu/cochran-innocence-project>
*North Mississippi Counties only

MissouriMidwest Innocence Project

3619 Broadway Blvd., Suite 2
Kansas City, MO 64111
Phone: (816) 221-2166
Email: office@themip.org
<http://themip.org>

MontanaMontana Innocence Project

P.O. Box 7607
Missoula, MT 59807
Phone: (406) 243-6698
<http://www.mtinnoceproject.org>

NebraskaMidwest Innocence Project

3619 Broadway Blvd., Suite 2
Kansas City, MO 64111
Phone: (816) 221-2166
Email: office@themip.org
<http://themip.org>

NevadaRocky Mountain Innocence Center

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

New HampshireNew England Innocence Project

c/o Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

New JerseyCenturion Ministries

Attn: Case Development Manager
1000 Herrontown Rd.
Princeton, NJ 08540
Phone: (609) 921-0334
Email: info@centurion.org
<http://www.centurion.org>

New MexicoNew Mexico Innocence and Justice Project

P.O. Box 36719
Albuquerque, NM 87176
Email: info@nmijp.org
<http://www.nmijp.org>

New YorkInnocence Project

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

The Exoneration Initiative

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

North CarolinaNorth Carolina Center on Actual Innocence

P.O. Box 52446, Shannon Plaza Station
Durham, NC 27717
Phone: (919) 489-3268
Email: admin@nccai.org
<http://www.nccai.org>

Wrongful Convictions Clinic

Duke Law School
Box 90360
Durham, NC 27708
Phone: (919) 613-7169
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
<http://www.innocencecommission-nc.gov>

North DakotaGreat North Innocence Project

229 19th Ave. South, Suite 285
Minneapolis, MN 55455
Phone: (612) 624-4779
Email: admin@gn-ip.org
<https://www.greatnorthinnocenceproject.org>

Ohio

Ohio Innocence Project at Cincinnati Law
University of Cincinnati College of Law
P.O. Box 210040
Cincinnati, OH 45221
<http://www.law.uc.edu/oip>

Wrongful Conviction Project

Office of the Ohio Public Defender
250 East Broad St., Suite 1400
Columbus, Ohio 43215
Phone: (614) 466-5394
<https://opd.ohio.gov/wps/portal/gov/opd/law-library/innocence/welcome>

Oklahoma

Oklahoma Innocence Project
800 N. Harvey Ave.
Oklahoma City, OK 73102
Phone: (405) 208-6161
Email: innocence@okcu.edu
<http://okinnocence.org>

Oregon

Oregon Innocence Project
P.O. Box 5248
Portland, OR 97208
Phone: (503) 944-2270
Fax: (971) 279-4748
Email: info@oregoninnocence.info
<http://www.oregoninnocence.org>

Pennsylvania

Pennsylvania Innocence Project
1515 Market St., Suite 300
Philadelphia, PA 19102
Phone: (215) 204-4255
Email: innocenceprojectpa@temple.edu
<http://painnocenceproject.org>

Puerto Rico

El Proyecto Inocencia de Puerto Rico
Universidad Interamericana de Puerto Rico
P.O. Box 70351
San Juan, PR 00936
Phone: (787) 751-1912 ext. 2021
Fax: (787) 771-9613
Email: PROyectoInocencia@juris.inter.edu

Rhode Island

New England Innocence Project
c/o Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

South Carolina

Palmetto Innocence
P.O. Box 11623
Columbia, SC 29201
<http://www.palmettoinnocence.org>

South Dakota

Great North Innocence Project
229 19th Ave. South, Suite 285
Minneapolis, MN 55455
Phone: (612) 624-4779
Email: admin@gn-ip.org
<https://www.greatnorthinnocenceproject.org>

Tennessee

Tennessee Innocence Project
700 Craighead St., Suite 300
Nashville, TN 37204
Phone: (615) 581-7230
Email: aubrey@tninnocence.org
<https://www.tninnocence.org>

Texas

Innocence Project of Texas
300 Burnett St., Suite 160
Fort Worth, TX 76102
Email: info@innocencetexas.org
<http://www.innocencetexas.org>

Actual Innocence Clinic

University of Texas School of Law
727 East Dean Keeton St.
Austin, TX 78705
<https://law.utexas.edu/clinics/actual-innocence>

Thurgood Marshall School of Law Innocence Project

3100 Cleburne St.
Houston, TX 77004
Phone: (713) 313-4455
Fax: (713) 313-1049
http://www.tsulaw.edu/centers/ECI/TMSL_Innocence_Project.html

UtahRocky Mountain Innocence Center

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

VermontNew England Innocence Project

c/o Intake Team
1035 Cambridge St., Suite 28A
Cambridge, MA 02141
Phone: (617) 945-0762
Email: intake@newenglandinnocence.org
<http://www.newenglandinnocence.org>

VirginiaMid-Atlantic Innocence Project

1413 K St. NW, Suite 1100
Washington, DC 20005
Phone: (202) 888-1766
<http://www.exonerate.org>

Innocence Project at UVA School of Law

580 Massie Rd.
Charlottesville, VA 22903
Phone: (434) 924-3732
<http://innocenceprojectuva.org>

WashingtonWashington Innocence Project

P.O. Box 85869
Seattle, WA 98145
Phone: (206) 636-9479
<https://wainnocenceproject.org>

West VirginiaInnocence Project

West Virginia University
P.O. Box 6130
Morgantown, WV 26506
Phone: (304) 293-7249
Email: wvinnocence@gmail.com
<http://wvinnocenceproject.law.wvu.edu>

WisconsinWisconsin Innocence Project

Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706
<http://law.wisc.edu/fjr/clinical/ip>

WyomingRocky Mountain Innocence Center

358 South 700 East, B235
Salt Lake City, UT 84102
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Email: contact@rminnocence.org
<http://rminnocence.org>