

SUPREME COURT OF ARIZONA

In the Matter of) Arizona Supreme Court
) No. R-14-0007
RULE 32.12, RULES OF)
CRIMINAL PROCEDURE)
) **FILED 09/02/2014**
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_____)

**ORDER
AMENDING RULE 32.12, ARIZONA RULES OF CRIMINAL PROCEDURE**

A petition having been filed proposing to amend Rule 32.12, Arizona Rules of Criminal Procedure, and comments having been received, upon consideration,

IT IS ORDERED that Rule 32.12, Arizona Rules of Criminal Procedure, be amended in accordance with the attachment hereto, effective January 1, 2015.

DATED this 2nd day of September, 2014.

SCOTT BALES
Chief Justice

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TO:
Rule 28 Distribution
Mark C Faull
John A Furlong
Sheila Sullivan Polk
Elizabeth B Ortiz
Alexander W Samuels

ATTACHMENT*

Rule 32.12 Post-conviction deoxyribonucleic acid testing

a. Any person who has been convicted and sentenced for a felony offense may petition the court at any time for the forensic deoxyribonucleic acid (DNA) testing of any evidence that is in the possession or control of the court or the state, that is related to the investigation or prosecution that resulted in the judgment of conviction, and that may contain biological evidence.

b. The petition shall be filed under the same criminal cause number as the felony conviction. Service of petitions filed under this rule shall be governed by Rule 32.4. The state shall have 45 days from date of service to respond to any petition. The court may appoint counsel for an indigent petitioner at any time during any proceedings under this rule.

c. Upon consideration of the petition and the state's response, the court shall order DNA testing if the court finds that all of the following apply:

1. A reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing.
2. The evidence is still in existence and is in a condition that allows DNA testing to be conducted.
3. The evidence was not previously subjected to DNA testing or was not subjected to the DNA testing that is now requested and that may resolve an issue not resolved by the previous DNA testing.

If the court orders testing pursuant to this section, the court shall select a laboratory that meets the standards of the DNA advisory board to conduct the testing and shall order the method and responsibility for payment as necessary.

d. Upon consideration of the petition and the state's response, the court may order DNA testing if the court finds that all of the following apply:

1. A reasonable probability exists that either:
 - i. The petitioner's verdict or sentence would have been more favorable if the results of DNA testing had been available at the trial leading to the judgment of conviction, or
 - ii. DNA testing will produce exculpatory evidence.
2. The evidence is still in existence and is in a condition that allows DNA testing to be conducted.
3. The evidence was not previously subjected to DNA testing or was not subjected to the DNA testing that is now requested and that may resolve an issue not resolved by the previous DNA testing.

*Additions to text are indicated by underscoring.

If the court orders testing pursuant to this section, the court shall select a laboratory that meets the standards of the DNA advisory board to conduct the testing and the court may require the petitioner to pay the costs of testing.

e. If the prosecutor or defense counsel has previously subjected evidence to DNA testing, the court may order the prosecutor or defense counsel to provide all the parties and the court with access to the laboratory reports that were prepared in connection with the testing, including underlying data and laboratory notes. If the court orders DNA testing pursuant to this rule, the court shall order the production of any laboratory reports that are prepared in connection with the testing and may order the production of any underlying data and laboratory notes.

f. If a petition is filed pursuant to this rule, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing. The state shall prepare an inventory of the evidence and shall submit a copy of the inventory to the defense and the court. If evidence is destroyed after the court orders its preservation, the court may impose appropriate sanctions, including criminal contempt, for a knowing violation.

g. The court may make any other orders that the court deems appropriate, including designating any of the following:

1. The type of DNA analysis to be used.
2. The procedures to be followed during the testing.
3. The preservation of some of the sample for replicating the testing.
4. Elimination samples from third parties.

h. If the results of the post-conviction DNA testing are not favorable to the petitioner, the court shall dismiss any DNA-related claims under Rule 32.1 without any hearing. The court may make further orders as it deems appropriate, including any of the following:

1. Notifying the board of executive clemency or a probation department.
2. Requesting that the petitioner's sample be added to the federal combined DNA index system offender database.
3. Providing notification to the victim or family of the victim.

i. Notwithstanding any other provision of law that would bar a hearing as untimely, if the results of the post-conviction DNA testing are favorable to the petitioner, the court shall order a hearing and make any further orders that are required pursuant to statute or the Arizona rules of criminal procedure. If there are no material issues of fact, the hearing required under this subsection need not be an evidentiary hearing, but it must give the parties the opportunity to argue why the petitioner should or should not be entitled to relief under Rule 32.1 as a matter of law.