

Post-Conviction Forensic Testing Request Policy

1. Premises

- a. Pursuant to the District Attorney's constitutional and statutory duty to see that justice is done, which includes remediating convictions of innocent individuals, the District Attorney has an independent interest in identifying dispositive and objective evidence of a convicted individual's innocence, including exonerating DNA evidence. This includes facilitating requests from counsel for forensic testing in lieu of requiring formal judicial proceedings and a court order when the request is meritorious.
- b. It is neither a just nor efficient use of the District Attorney's limited prosecutorial and investigative resources to expedite informal requests for the testing of evidence that will not yield additional information that would either tend to negate the guilt of the convicted individual or tend to reduce the punishment imposed on the convicted individual. Denying such informal requests does not prohibit the convicted individual from filing a Chapter 64 Motion for Forensic DNA Testing with the court.

2. Division of Labor

- a. **Matters Handled by Conviction Integrity Unit.** The Conviction Integrity Unit (CIU) manages innocence investigations (including Chapter 64 motions) when an application for a writ of habeas corpus is not currently pending, except in death penalty cases.
- b. **Matters Handled by the Post-Conviction Writs Division.** The Post-Conviction Writs Division (PCW) manages discovery in filed habeas cases (including Chapter 64 motions related to the subject matter of the pending habeas case) and all death penalty cases.

3. Testing Costs Presumptively Assigned to Convicted Individual

Due to the limited resources of this office and the criminal justice system generally, the State will not informally agree to assume the expenses of forensic retesting of evidence if conducted by an independent defense expert. However, if the State has agreed to informal testing, the State will agree to assume the cost of testing if the testing will be conducted by the laboratory associated with the arresting agency or if there is a statutory or court mandate dictating that the expenses associated with retesting in the particular matter must be incurred by the State.

4. Policy

- a. When counsel for a convicted individual makes an informal request for forensic testing of evidence and establishes to the satisfaction of the assigned prosecutor that the testing may either provide additional information that would tend to negate the guilt of the convicted individual or would tend to reduce the punishment imposed on the convicted individual, this office will not require a Chapter 64 Motion for DNA Testing to be filed with the court. No further consultation or explanation is required after this decision has been made.
- b. When counsel for a convicted individual makes an informal request for forensic testing of evidence and does not establish to the satisfaction of the assigned prosecutor that the testing may either provide additional information that would tend to negate the guilt of the convicted individual or would tend to reduce the punishment imposed on the convicted individual:
 1. The CIU chief and PCW chief will consult with one another about the issue.

2. If the CIU and PCW chiefs agree that the requested testing will not provide additional information that would tend to negate the guilt of the convicted individual or would tend to reduce the punishment for the offense charged, the assigned prosecutor will send the requestor a letter explaining the office's position and stating that this is the consensus view of CIU and PCW.
 3. If the CIU and PCW chiefs disagree, the matter will be referred to the Chief of the Appellate-Writs Bureau, who may consult with the District Attorney and First Assistant to resolve the difference of opinion. If the Chief of the Appellate-Writs Bureau determines that the requested testing will provide additional information that would tend to negate the guilt of the convicted individual or would tend to reduce the punishment imposed on the convicted individual, the assigned prosecutor shall facilitate the request for forensic testing. If the Chief of the Appellate-Writs Bureau determines that the requested testing will not provide additional information that would tend to negate the guilt of the convicted individual or would tend to reduce the punishment imposed on the convicted individual, the assigned prosecutor will draft a letter for the Chief of the Appellate-Writs Bureau's signature explaining the office's position and send the letter to the requestor. The letter should apprise the requestor of his or her right to file a Chapter 64 Motion for Forensic DNA Testing with the court.
- c. When a *pro se* convicted individual makes an informal request for forensic testing of evidence, that request shall be referred to the convicting district court for Chapter 64 review and appointment of counsel, if necessary. If the convicted individual exercises his or her right to self-representation, the Chapter 64 procedures will be used in lieu of informal agreements to avoid any miscommunications or misunderstandings by the *pro se* convicted individual.