

78B-9-303 Consequences of postconviction DNA testing when result is favorable to person -- Procedures.

- (1)
 - (a) If the result of postconviction DNA testing is favorable to the person, the person may file a motion to vacate the conviction. The court shall give the state 30 days to respond in writing, to present evidence, and to be heard in oral argument prior to issuing an order to vacate the conviction. The state may by motion request an extension of the 30 days, which the court may grant upon good cause shown.
 - (b) The state may stipulate to the conviction being vacated, or may request a hearing and attempt to demonstrate through evidence and argument that, despite the DNA test results, the state possesses sufficient evidence of the person's guilt so that the person is unable to demonstrate by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, and all the lesser included offenses related to those offenses.
- (2)
 - (a)
 - (i) If the result of postconviction DNA testing is favorable to the person and the state opposes vacating the conviction, the court shall consider all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result.
 - (ii) The court may consider:
 - (A) evidence that was suppressed or would be suppressed at a criminal trial; and
 - (B) hearsay evidence, and may consider that the evidence is hearsay in evaluating its weight and credibility.
 - (b) If the court, after considering all the evidence, determines that the DNA test result demonstrates by clear and convincing evidence that the person is factually innocent of one or more offenses of which the person was convicted, the court shall order that those convictions be vacated with prejudice and those convictions be expunged from the person's record.
 - (c) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, finds by clear and convincing evidence that the person did not commit one or more offenses of which the person was convicted, but the court does not find by clear and convincing evidence that the person did not commit any lesser included offenses relating to those offenses, the court shall modify the original conviction and sentence of the person as appropriate for the lesser included offense, whether or not the lesser included offense was originally submitted to the trier of fact.
 - (d) If the court, after considering all the evidence presented at the original trial and at the hearing under Subsection (1)(b), including the new DNA test result, does not find by clear and convincing evidence that the person is factually innocent of the offense or offenses the person is challenging and does not find that Subsection (2)(c) applies, the court shall deny the person's petition regarding the offense or offenses.
 - (e) Any party may appeal from the trial court's final ruling on the petition under this part.

Renumbered and Amended by Chapter 3, 2008 General Session