

CHAPTER 64 MOTIONS

Legal & Ethical Considerations

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1

OVERVIEW

- **CCP art 64.03 Requirements; Testing**
 - Evidence Exists and Testing is Possible (First & Second Prongs)
 - Identity as an Issue (Third Prong)
 - “Would not have been convicted” (Fourth Prong)
 - Unreasonable Delay (Fifth Prong)
- **Legislative History**
 - Social and Political Landscape
 - Purpose
- **Wrongful Convictions**
- **Application / Practical Considerations**
- **Conclusion**

2

CCP 64.03 REQUIREMENTS; TESTING

3



EVIDENCE EXISTS &
TESTING IS POSSIBLE

4



EVIDENCE EXISTS

If no longer in possession of the State, a written explanation is required

Convicting court may reach decision without affidavits or evidentiary hearing

Mere assertions or general claims insufficient - FACTS

Is it the *type* of evidence that will yield DNA results?

5

BIOLOGICAL MATERIAL

- In possession of State...

Blood, semen, hair, saliva, skin tissue/cells, fingernail scrapings, bone, bodily fluids, or *other identifiable biological evidence that may be suitable for forensic DNA testing*

- Enumerated items = *per se* biological material
- Must prove it exists in “other” items

6

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