

Burdens of Proof Under Mass. Gen. Laws. Ch. 278A**Initial Stage – “Filing Threshold”****G.L. c. 278A, § 2 – Standing Requirements**

- (1) Convicted in state court;
- (2) In prison, on parole/probation, or otherwise has liberty restrained due to conviction¹; and
- (3) Asserts in an affidavit factual innocence

G.L. c. 278A, § 3(b) – Filing Requirements

- (1) Name and description of the forensic or scientific analysis the Deft. is requesting;
- (2) Information that the requested analysis is admissible as evidence;
- (3) A description of the evidence of biological material that the Deft. seeks to have analyzed or tested, including its chain-of-custody if known²;
- (4) Information demonstrating that the requested analysis has the potential to result in evidence material to the moving party’s identification as the perpetrator of the crime³; and
- (5) Information demonstrating that the evidence or biological material has not been subjected to the requested analysis because of at least one of the following five reasons:
 - (i) The requested analysis had not yet been developed at the time of the conviction⁴;
 - (ii) The results of the requested analysis were not admissible at time of underlying case or conviction;
 - (iii) The Deft. and his attorney were not aware of and did not have reason to be aware of the existence of the evidence or biological material at the time of the conviction;
 - (iv) The Deft.’s attorney in the underlying case was aware at the time of the conviction of the existence of the evidence or biological material, the results of the requested analysis were admissible, a reasonably effective attorney would have sought the analysis and either the moving party’s attorney failed to seek the analysis or the judge denied the report;⁵ or

¹ Consider whether the defendant’s liberty is restrained in some other way, “as the result of” the conviction at issue. See Commonwealth v. Johnson, 482 Mass. 830 (2019) (where defendant was incarcerated for failure to register as a sex offender, and the duty to register was imposed as the result of the underlying conviction, his liberty was restrained “as the result of” the conviction).

² If after making a diligent effort to locate evidence and establish chain of custody, you cannot do so without additional discovery, consider filing a motion for discovery with the motion for testing pursuant to G.L. c. 278A, s. 3(c).

³ “Materiality” does not require the testing sought to be the “silver bullet,” but the moving party does have to provide a credible connection to the identity of the perpetrator. The moving party is not required to establish that the testing is likely to obtain forensic results or that the test results will raise doubt about the conviction. Commonwealth v. Steadman, 489 Mass. 372, 389 (2022) (“The word ‘potential’ is key. To meet this requirement, the moving party need only show that the requested analysis ‘could be material to the question of ...identity,’ and not whether it ‘would have had any effect on the underlying conviction.’”), quoting Commonwealth v. Wade, 467 Mass. 496, 508 (2014). See Commonwealth v. Clark, 474 Mass. 120 (2015).

⁴ Consider whether any testing was done at the time of conviction; whether any prior testing was conducted and if so what kind; and whether there are any newer, more sensitive test kits available that present a material improvement over previously performed testing. See Commonwealth v. Linton, 483 Mass. 227 (2019); Commonwealth v. Donald, 468 Mass. 37 (2014). The attached *278A Working Group Forensic Test Kit Timeline* may assist litigants in establishing when a particular DNA test kit became commercially available.

⁵ The reasonably effective attorney prong does not import the Saferian ineffective assistance of counsel standard. It is an objective analysis and does not contemplate trial counsel’s subjective intent. The inquiry is whether a reasonably effective attorney would have sought the analysis, not whether every attorney would have sought the analysis.

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- (v) The evidence or biological material was otherwise unavailable at the time of the conviction.
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Hearing Stage – “Evidentiary Threshold”

G.L. c. 278A, § 7(b) – By a Preponderance of the Evidence

- (1) The evidence or biological material exists;
- (2) Evidence or biological material has been subject to a chain of custody that is sufficient to establish that it has not deteriorated, been substituted, tampered with, replaced, handled or altered such that the results of the requested analysis would lack any probative value;
- (3) Item has not been subjected to the requested analysis for any of the reasons in section 3(b)(5)(i)-(v);
- (4) The requested analysis has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime⁶;
- (5) Purpose of the motion is not the obstruction of justice or delay; and
- (6) The results of the requested analysis have been found to be admissible.

Case-law

Commonwealth v. Wade (II), 467 Mass. 496 (2014)
Commonwealth v. Donald, 468 Mass. 37 (2014)
Commonwealth v. Clark, 472 Mass. 120 (2015)
Commonwealth v. Coutu, 88 Mass. App. Ct. 686 (2015)
Commonwealth v. Lyons, 89 Mass. App. Ct. 485 (2016)
Commonwealth v. Wade (III), 475 Mass. 54 (2016)
Commonwealth v. Moffat, 478 Mass. 292 (2017)
Commonwealth v. Williams, 481 Mass. 799 (2019)
Commonwealth v. Putnam, 481 Mass. 1045 (2019)
Commonwealth v. Johnson, 482 Mass. 830 (2019)
Commonwealth v. Linton, 483 Mass. 227 (2019)
Commonwealth v. Claudio, 96 Mass. App. Ct. 787 (2020)
Commonwealth v. Jenks, 487 Mass. 1032 (2021)
Randolph v. Commonwealth, 488 Mass. 1 (2021)
Commonwealth v. Steadman, 489 Mass. 372 (2022)
Commonwealth v. Ramos, 490 Mass. 818 (2022)
Commonwealth v. Camuti, 493 Mass. 500 (2024)

Commonwealth v. Wade (II), 475 Mass. 54 (2016); Commonwealth v. Wade (III), 467 Mass. 496 (2014).

⁶ For additional examples of how the SJC has interpreted “materiality”, see Commonwealth v. Ramos, 490 Mass. 818 (2022) (materiality established); Randolph v. Commonwealth, 488 Mass. 1 (2021) (materiality established); Commonwealth v. Moffat, 478 Mass. 292 (2017) (materiality not established).