

# CHAPTER 64

# MOTIONS AND

# HEARINGS

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ROBERT O. DAWSON CONFERENCE ON CRIMINAL APPEALS

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## OVERVIEW

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- What should be in your motion.
- What the court and State should do in response.
- What the court must find before testing is ordered.
- What the court must do after the results are returned.
- What some of your options are on appeal.
- Hypotheticals

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## ARTICLE 64.01

### MOTION FOR FORENSIC DNA TESTING OF EVIDENCE

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- Your motion should include:
  - A sworn allegation that evidence exists
  - is in the possession of the State, and
  - there's a reasonable likelihood that the evidence contains "biological material."
- You should also include an affidavit from the convicted person, swearing to what is basically in the motion itself.

## ARTICLE 64.01

### MOTION FOR FORENSIC DNA TESTING OF EVIDENCE

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- This evidence can be something that was
  - not previously tested,
  - something that was previously tested but there are newer testing techniques available, or
  - something tested at a lab that has now been found to be engaged in faulty testing practices at the time of the original testing.

## ARTICLE 64.01

### "BIOLOGICAL MATERIAL"

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- An item that is in possession of the State and that contains:
  - Blood, semen, hair, saliva, skin tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing.
  - This includes the contents of a sexual assault evidence collection kit.
- Items within this definition are now defined as biological material *per se*.
- The movant must still show reasonable likelihood of biological material in the case of other items not specifically listed, like clothing.

## ARTICLE 64.02

### NOTICE TO THE STATE

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- Article 64.02 requires that the convicting court shall, on receipt of the motion, provide a copy to the attorney representing the State.
- The attorney for the State must then take one of the following actions in response no later than the 60th day after the date the motion is served:
  - 1) deliver the evidence to the court, along with a description of the condition of the evidence;  
or
  - 2) explain in writing to the court why the State cannot deliver the evidence to the court.

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