

# CHAPTER 64 MOTIONS

## Legal & Ethical Considerations

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## OVERVIEW

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- **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**

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# CCP 64.03 REQUIREMENTS; TESTING

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EVIDENCE EXISTS &  
TESTING IS POSSIBLE

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# 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?

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## 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
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