

1 [Defendant's name]  
[Address]  
2 [Address]  
[Telephone:]  
3

4 Petitioner in pro per

5 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
6 IN AND FOR THE COUNTY OF PIMA  
7

8 [Defendant's name],  
9 Petitioner,  
10  
11 v.  
12 STATE OF ARIZONA,  
13 Respondent

Case No.:  
PETITION FOR POST CONVICTION  
DEOXYRIBONUCLEIC ACID TESTING  
Hon. [Judge Name]

14  
15 COMES NOW the petitioner, [Defendant's name], in pro per,  
16 hereby petitions this honorable court to order the post  
17 conviction deoxyribonucleic acid testing of evidence presented  
18 in his [year of trial] trial pursuant to Arizona Revised Statute  
19 § 13-4240.  
20

21 By \_\_\_\_\_  
22 [Defendant's name]  
23  
24  
25

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. Summary**

4  
5 Petitioner [Defendant's name] seeks testing of biological  
6 evidence under Arizona Revised Statutes § 13-4240,  
7 Postconviction deoxyribonucleic acid testing.  
8

9 Petitioner was tried for [number of counts] counts of  
10 [charge]. At the Petitioner's trial, the primary evidence  
11 presented by the state was [summary of evidence presented at  
12 trial].Petitioner's trial ended with [result].  
13

14 **II. Statute Involved**

15 Under ARS § 13-4240 (A), the Defendant must show 1) that he  
16 was convicted and sentenced of a felony offense, 2) A reasonable  
17 probability exists that the Defendant would not have been  
18 prosecuted or convicted if exculpatory results had been obtained  
19 through DNA testing, 3) the evidence is in existence and in a  
20 condition that allows DNA testing to be conducted and 4) the  
21 evidence was not previously subjected to DNA testing. If the  
22 Defendant can show these four things, the court *shall* order DNA  
23 testing.

24 Furthermore, if the court finds that the Defendant does not  
25 meet the requirements of ARS § 13-4240 (B), listed above, but

1 finds that 1) a reasonable probability exists that Defendant's  
2 verdict or sentence would have been more favorable if the  
3 results of DNA testing had been available at trial, or 2) a  
4 reasonable probability exists that DNA testing will produce  
5 exculpatory evidence and 3) the evidence is in existence and in  
6 a condition that allows DNA testing to be conducted and 4) the  
7 evidence was not previously subjected to DNA testing, then the  
8 court *should* order DNA testing under ARS § 13-4240(C).

9  
10 **III. Issues Presented**

11  
12 **A. PETITIONER MEETS THE THRESHOLD REQUIREMENT OF ARS § 13-**  
13 **4240 (A)**

14  
15 **1. Petitioner was Convicted and Sentenced for a Felony Offense**

16  
17 Petitioner was convicted of [number of counts] counts of  
18 [charge]. Petitioner was sentenced to [sentence].

19  
20 **2. Biological Evidence Related to the Prosecution that Resulted**  
21 **in the Conviction is in Possession of the State of Arizona.**

22  
23 [List number of pieces of biological evidence that was  
24 presented at trial here] pieces of biological evidence were  
25 presented during the Petitioner's trial. This evidence

1 consisted of [describe evidence]. Petitioner's trial resulted  
2 in [number of convictions] felony convictions. The evidence  
3 presented in Petitioner's trial is in the possession of the  
4 State of Arizona, through its political subdivision, the [list  
5 agency that has the evidence]. [Include a citation to the  
6 letter confirming the location of the evidence here]

7  
8  
9 **B. THE COURT MUST ORDER DNA TESTING UNDER ARS § 13-4240(B)**

10  
11 **1. A Reasonable Probability Exists that the Petitioner would**  
12 **not have been Prosecuted or Convicted if Exculpatory Results**  
13 **had been Obtained through DNA Testing**

14 [This section deals with why the evidence was important at  
15 trial, and why it is therefore important to have it tested now.  
16 Another way of putting it would be to say "but for the evidence  
17 that was not DNA tested, the Defendant would not have been  
18 convicted." The paragraphs below are an example of how to show  
19 the importance of the evidence. They are written for a case in  
20 which there were two trials, and in which the only additional  
21 evidence presented to the jury in the second trial (the one that  
22 ended in conviction) was the biological evidence he seeks to  
23 have tested. The paragraphs are meant to be used as an example,  
24 and you should replace them with the facts of your own case.]

25 **THE FOLLOWING THREE PARAGRAPHS ARE AN EXAMPLE:**

1           Petitioner's first trial, at which only the testimony of  
2 the three alleged victims was presented, ended with a hung jury,  
3 nine jurors voting for acquittal. Petitioner's second trial, at  
4 which the only additional evidence presented by the state was  
5 the biological evidence the petitioner now seeks to be DNA  
6 tested, ended with a conviction.

7           It is logical to infer that the biological evidence was the difference  
8 between the hung jury and the conviction. If this evidence had been tested  
9 for DNA identification and the test results indicated that Petitioner was not  
10 the source of the stain on the victim's clothing, it is unlikely that the  
11 verdict in Petitioner's second trial would have been different than the hung  
12 jury result in Petitioner's first trial.

13           It is unclear if the prosecution would have gone forward  
14 with Petitioner's second trial had there been no biological  
15 evidence to sexually connect the Petitioner with the victim.  
16 Less than a month after Petitioner's first trial ended with a  
17 hung jury, the prosecution sought the biological evidence that  
18 was presented in Petitioner's second trial. If this evidence  
19 had been tested for DNA identification and the test results  
20 indicated that Petitioner was not the source of the stain on the  
21 victim's clothing, the prosecution would have had no additional  
22 significant evidence to present at petitioner's second trial.

23  
24           **2. The Evidence is in Existence and in a Condition that Allows**  
25           **DNA Testing to be Conducted**

1  
2 The [list name of agency that has the evidence] still has  
3 custody of the [describe evidence]. [The name of person who  
4 testified at trial about the condition of the evidence or other  
5 information about the evidence being "testable" should be  
6 written here. For example, Dr. Smith indicated in his testimony  
7 during the second trial that there are still testable fluids on  
8 the clothing.]

9 **3. The Evidence Was Not Previously Subjected to DNA Testing**

10  
11 The physical evidence has not been subjected to DNA  
12 testing. [List proof that the evidence was not previously DNA  
13 tested here. For example, "The second trial transcript  
14 indicates that only PGM testing was used to analyze the stains  
15 found on the victim's clothing.]

16  
17  
18 **C. IF THE COURT DOES NOT ORDER DNA TESTING UNDER ARS § 13-**  
19 **4240 (B) , THEN THE COURT SHOULD ORDER DNA TESTING UNDER ARS**  
20 **§ 13-4240 (C)**

21  
22 **1. A Reasonable Probability Exists that Petitioner's Verdict**  
23 **would have been More Favorable if the Results of DNA Testing**  
24 **had been Available at Trial**

1 [This section should be about why the verdict or sentence  
2 would have been different if the biological evidence was tested.  
3 Replace the facts with the facts of your particular case.]

4 EXAMPLE: As noted above in Part II.B.1. it is logical to  
5 infer that the biological evidence was the difference between  
6 the hung jury in Petitioner's first trial and the conviction in  
7 Petitioner's second trial. If the physical evidence had been  
8 tested for DNA identification and the test results indicated  
9 that Petitioner was not the source of the stain on the victim's  
10 clothing, it is unlikely that the verdict would have been  
11 different than the hung jury result in the first trial.

12  
13 More specifically, favorable DNA testing would have further  
14 undermined the testimony of the victim. Had DNA testing shown  
15 that the biological matter found on the victim's clothing was  
16 not contributed by the petitioner as the victim claimed, it is  
17 unlikely the jury would have found her testimony believable, and  
18 the jury would most likely have acquitted the defendant.

19  
20 **2. A Reasonable Probability Exists that Petitioner's Sentence**  
21 **would have been More Favorable if the Results of DNA Testing**  
22 **had been Available at the Trial**  
23  
24  
25

1 This section should show why the sentence or verdict would  
2 have been different if the biological evidence had been DNA  
3 tested.

4 EXAMPLE: Had DNA testing conclusively shown that Petitioner  
5 was not the donor of the biological material found the victim's  
6 clothing, it is likely that the jury would have acquitted or  
7 have hung on one or all of the counts. An acquittal or hung  
8 jury on even one of the first three counts would have reduced  
9 the Petitioner's sentence by a decade or more.

10  
11 **3. A Reasonable probability exists that DNA testing will**  
12 **produce Exculpatory Evidence**

13  
14 If the DNA testing shows that Petitioner is not the donor of  
15 the biological material found on the victim's clothing, that  
16 biological material will become exculpatory evidence. The  
17 result of the DNA testing would prove that a large portion of  
18 the testimony of the victim was untruthful.

19  
20 **4. The Evidence is in Existence and in a Condition that Allows**  
21 **DNA Testing to be Conducted**

22 The [list name of agency that has the evidence] still has  
23 custody of the [describe evidence]. [The name of person who  
24 testified at trial about the condition of the evidence or other  
25 information about the evidence being "testable" should be

1 written here. For example, Dr. Smith indicated in his testimony  
2 during the second trial that there are still testable fluids on  
3 the clothing.]

#### 5 **5. The Evidence Was Not Previously Subjected to DNA Testing**

6 The physical evidence has not been subjected to DNA  
7 testing. [List proof that the evidence was not previously DNA  
8 tested here. For example, "The second trial transcript  
9 indicates that only PGM testing was used to analyze the stains  
10 found on the victim's clothing."]

### 13 **IV. Facts**

#### 15 **A. PROCEDURAL BACKGROUND**

16 [This section should detail the facts of the case, including the  
17 investigation, details of the trial and the results. Any  
18 information in the defendant' favor should be listed here.  
19 Include dates and times, as well as citations to the transcripts  
20 about what was said during trial. It is also wise to use  
21 headings so that the petition can be easily read. Examples of  
22 headings would be "The Investigation" or "The First Trial."  
23 This will help the judge keep the facts straight. This section  
24 will probably be a few pages long. You want to give the judge  
25 all of the important information about your case so that you can

1 show that it would have made a difference if the evidence had  
2 been DNA tested.]

3  
4 **B. PETITIONER'S CONVICTION WAS BASED ON UNRELIABLE AND**  
5 **UNTRUSTWORTHY TESTIMONY**

6 [This is the section where you want to talk about all of the  
7 evidence *other than the evidence you want tested* that is in your  
8 favor. For example, if a person made inconsistent statements  
9 during the investigation or trial, or if there was other  
10 evidence that would show you are innocent, you want to list  
11 those details here.]

12  
13 **C. PETITIONER'S CONVICTION WAS BASED ON PHYSICAL EVIDENCE THAT**  
14 **WAS NOT TESTED FOR IDENTITY**

15 [It is important to show why the testing of the evidence  
16 would have made a significant difference at your trial. You  
17 should try to show that here. For example, if there was not a  
18 lot of evidence against you other than the biological evidence  
19 in question, then it is likely that the jury heavily relied on  
20 that to find a conviction. Use this section to write about why  
21 the evidence was so important to the decision of the jury, and  
22 therefore, why it is so important that it now be DNA tested.]

23  
24 **V. Conclusion**

1           Petitioner was convicted because of the biological evidence  
2 presented at his trial. This evidence was never tested for  
3 identity through DNA testing or any other process. The  
4 Petitioner meets the requirements of ARS § 13-4240. The Court  
5 should order the DNA testing of the biological evidence used to  
6 convict the Petitioner.

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