

## CHAPTER 590

## POSTCONVICTION REMEDY

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**590.01 AVAILABILITY, CONDITIONS.**

Subdivision 1. **Petition.** Except at a time when direct appellate relief is available, a person convicted of a crime, who claims that:

(1) the conviction obtained or the sentence or other disposition made violated the person's rights under the Constitution or laws of the United States or of the state; or

(2) scientific evidence not available at trial, obtained pursuant to a motion granted under subdivision 1a, establishes the petitioner's actual innocence;

may commence a proceeding to secure relief by filing a petition in the district court in the county in which the conviction was had to vacate and set aside the judgment and to discharge the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or make other disposition as may be appropriate. A petition for postconviction relief after a direct appeal has been completed may not be based on grounds that could have been raised on direct appeal of the conviction or sentence. Nothing contained herein shall prevent the Supreme Court or the Court of Appeals, upon application by a party, from granting a stay of a case on appeal for the purpose of allowing an appellant to apply to the district court for an evidentiary hearing under the provisions of this chapter. The proceeding shall conform with sections 590.01 to 590.06.

Subd. 1a. **Motion for fingerprint or forensic testing not available at trial.** (a) A person convicted of a crime may make a motion for the performance of fingerprint or forensic DNA testing to demonstrate the person's actual innocence if:

(1) the testing is to be performed on evidence secured in relation to the trial which resulted in the conviction; and

(2) the evidence was not subject to the testing because either the technology for the testing was not available at the time of the trial or the testing was not available as evidence at the time of the trial.

The motion shall be filed before the district court that entered the judgment of conviction. Reasonable notice of the motion shall be served on the prosecuting attorney who represented the state at trial.

(b) A person who makes a motion under paragraph (a) must present a prima facie case that:

(1) identity was an issue in the trial; and

(2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect.

(c) The court shall order that the testing be performed if:

(1) a prima facie case has been established under paragraph (b);

(2) the testing has the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence; and

(3) the testing requested employs a scientific method generally accepted within the relevant scientific community. The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

Subd. 2. **Remedy.** This remedy takes the place of any other common law, statutory or other remedies which may have been available for challenging the validity of a conviction, sentence, or other disposition and must be used exclusively in place of them unless it is inadequate or ineffective to test the legality of the conviction, sentence or other disposition.

Subd. 3. **Application for relief.** A person who has been convicted and sentenced for a crime committed before May 1, 1980, may institute a proceeding applying for relief under this chapter upon the ground that a significant change in substantive or procedural law has occurred which, in the interest of justice, should be applied retrospectively, including resentencing under subsequently enacted law.

No petition seeking resentencing shall be granted unless the court makes specific findings of fact that release of the petitioner prior to the time the petitioner would be released under the sentence currently being served does not present a danger to the public and is not incompatible with the welfare of society.

Subd. 4. **Time limit.** (a) No petition for postconviction relief may be filed more than two years after the later of:

- (1) the entry of judgment of conviction or sentence if no direct appeal is filed; or
- (2) an appellate court's disposition of petitioner's direct appeal.

(b) Notwithstanding paragraph (a), a court may hear a petition for postconviction relief if:

(1) the petitioner establishes that a physical disability or mental disease precluded a timely assertion of the claim;

(2) the petitioner alleges the existence of newly discovered evidence, including scientific evidence, that could not have been ascertained by the exercise of due diligence by the petitioner or petitioner's attorney within the two-year time period for filing a postconviction petition, and the evidence is not cumulative to evidence presented at trial, is not for impeachment purposes, and establishes by a clear and convincing standard that the petitioner is innocent of the offense or offenses for which the petitioner was convicted;

(3) the petitioner asserts a new interpretation of federal or state constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case;

(4) the petition is brought pursuant to subdivision 3; or

(5) the petitioner establishes to the satisfaction of the court that the petition is not frivolous and is in the interests of justice.

(c) Any petition invoking an exception provided in paragraph (b) must be filed within two years of the date the claim arises.

**History:** 1967 c 336 s 1; 1969 c 491 s 1; 1981 c 366 s 1; 1983 c 247 s 201; 1986 c 444; 1Sp1986 c 3 art 1 s 65; 1999 c 216 art 3 s 2,3; 2005 c 136 art 14 s 12,13

### 590.02 PETITION; FILING; SERVICE; COSTS.

Subdivision 1. **Petition.** The petition filed in the district court pursuant to section 590.01 shall be entitled in the name of the petitioner versus the state of Minnesota and shall contain:

(1) a statement of the facts and the grounds upon which the petition is based and the relief desired. All grounds for relief must be stated in the petition or any amendment thereof unless they could not reasonably have been set forth therein. It shall not contain argument or citation of authorities;

(2) an identification of the proceedings in which the petitioner was convicted including the date of the entry of judgment and sentence or other disposition complained of;

(3) an identification of any previous proceeding, together with the grounds therein asserted taken on behalf of the petitioner to secure relief from the conviction and sentence or other disposition;

(4) the name and address of any attorney representing the petitioner. In the event the petitioner is without counsel, the court administrator shall forthwith transmit a copy of the petition to the state public defender and shall advise the petitioner of such referral.

Subd. 2. **Costs.** The filing of the petition and any document subsequent thereto and all proceedings thereon shall be without costs or any fees charged to the petitioner.

Subd. 3. **Filing.** When a petition is filed pursuant to section 590.01 it shall be filed with an original and three copies, each verified by the petitioner or signed by the petitioner's attorney. It shall be addressed to the district court of the judicial district in the county where the conviction took place.

In those cases in which the petitioner is represented by counsel or in which the petitioner has filed a written waiver of right to counsel, the court administrator of the district court shall deliver a copy of the petition to the county attorney and to the attorney general and shall immediately direct attention of the filing thereof to the chief judge or judge acting in the chief judge's behalf who shall promptly assign the matter to a judge in said district.

**History:** 1967 c 336 s 2; 1986 c 444; 1Sp1986 c 3 art 1 s 82

### 590.03 PLEADINGS AND PRACTICE AFTER FILING A POSTCONVICTION PETITION.

Within 20 days after the filing of the petition pursuant to section 590.01 or within such time as the judge to whom the matter has been assigned may fix, the county attorney, or the attorney general, on behalf of the state, shall respond to the petition by answer or motion which shall be filed with the court administrator of district court and served on the petitioner if unrepresented or on the petitioner's attorney. No further pleadings are necessary except as the court may order. The court may at any time prior to its decision on the merits permit a withdrawal of the petition, may permit amendments thereto, and to the answer. The court shall liberally construe the petition and any amendments thereto and shall look to the substance thereof and waive any irregularities or defects in form.

**History:** 1967 c 336 s 3; 1Sp1986 c 3 art 1 s 82

### 590.04 HEARINGS ON PETITION; EVIDENCE; ORDER.

Subdivision 1. **Early hearing.** Unless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief, the court shall promptly set an early hearing on the petition and response thereto, and promptly determine the issues, make findings of fact and conclusions of law with respect thereto, and either deny the petition or enter an order granting appropriate relief.

Subd. 2. **Open court hearing.** Hearings on a petition filed pursuant to section 590.01 shall be in open court in the judicial district in which the conviction took place or in the Second, Fourth, Seventh, or Tenth Judicial Districts in the discretion of the judge to whom the proceeding has been assigned.

Subd. 3. **Hearing.** The court may order the petitioner to be present at the hearing. If the petitioner is represented by an attorney, the attorney shall be present at any hearing.

A verbatim record of any hearing shall be made and kept.

Unless otherwise ordered by the court, the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish the facts by a fair preponderance of the evidence.

In the discretion of the court, it may receive evidence in the form of affidavit, deposition, or oral testimony. The court may inquire into and decide any grounds for relief, even though not raised by the petitioner.

The court may summarily deny a second or successive petition for similar relief on behalf of the same petitioner and may summarily deny a petition when the issues raised in it have previously been decided by the Court of Appeals or the Supreme Court in the same case.

**History:** 1967 c 336 s 4; 1969 c 491 s 2; 1977 c 190 s 1; 1983 c 247 s 202

### 590.05 INDIGENT PETITIONERS.

A person financially unable to obtain counsel who desires to pursue the remedy provided in section 590.01 may apply for representation by the state public defender. The state public defender shall represent such person under the applicable provisions of sections

611.14 to 611.27, if the person has not already had a direct appeal of the conviction. If, however, the person pled guilty and received a presumptive sentence or a downward departure in sentence, and the state public defender reviewed the person's case and determined that there was no basis for an appeal of the conviction or of the sentence, then the state public defender may decline to represent the person in a postconviction remedy case. The state public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to obtain counsel.

**History:** 1967 c 336 s 5; 1991 c 345 art 3 s 1; 1993 c 13 art 2 s 1; 1Sp2003 c 2 art 3 s 2

#### 590.06 APPEALS.

An appeal may be taken to the Court of Appeals or, in a case involving a conviction for first degree murder, to the Supreme Court from the order granting relief or denying the petition within 60 days after the entry of the order.

The appealing party shall, within the 60 days, serve a notice of appeal from the final order upon the court administrator of district court and the opposing party. If the appeal is by the petitioner, the service shall be on the county attorney and the attorney general. If the appeal is by the state, the service shall be on the petitioner or the petitioner's attorney. No fees or bond for costs shall be required for the appeal.

**History:** 1967 c 336 s 6; 1983 c 247 s 203; 1986 c 444; 1Sp1986 c 3 art 1 s 82

#### 590.10 PRESERVATION OF EVIDENCE.

Subdivision 1. **Preservation.** Notwithstanding any other provision of law, all appropriate governmental entities shall retain any biological evidence relating to the identification of a defendant used to secure a conviction in a criminal case until expiration of sentence unless earlier disposition is authorized by court order after notice to the defendant and defense counsel. No order for earlier disposition of this evidence shall be issued if the defendant or defense counsel objects.

The governmental entity need retain only the portion of such evidence as was used to obtain an accurate biological sample used to obtain a conviction. If the size of the biological sample requires that it be consumed in analysis, the Minnesota Rules of Criminal Procedure shall apply. If evidence is intentionally destroyed after the filing of a petition under section 590.01, subdivision 1a, the court may impose appropriate sanctions on the responsible party or parties.

Subd. 2. **Definition.** For purposes of this section, "biological evidence" means:

- (1) the samples obtained in a sexual assault examination kit; or
- (2) any item that contains blood, semen, hair, saliva, skin, tissue, or other identifiable biological material present on physical evidence or preserved on a slide or swab if such evidence relates to the identification of the defendant.

**History:** 2005 c 136 art 12 s 8