

## CHAPTER 590

## POSTCONVICTION REMEDY

590.01 Availability, conditions.

590.10 Preservation of evidence.

**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.*

*[For text of subs 1a to 3, see M.S.2004]*

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:** 2005 c 136 art 14 s 12,13

**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