

# CHAPTER 278A LITIGATION

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## Practical Tips

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Image Credit: Rchmond J. Law & Tech, 2015

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# Overview of Mass. Gen. Laws ch. 278A

**Commonwealth v. Wade, 467 Mass. 496, 504-505 (2014)**

[A] motion . . . under G.L. c. 278A is conceived as *separate* from the trial process *and any postconviction proceedings challenging the underlying conviction*. The act was intended to ‘create[] the process that allows the testing,’ the results of which subsequently might support a motion for a new trial.

[T]o be granted a new trial, a defendant must demonstrate that he is in possession of ‘evidence that is worthy of a trial. *But in the case of DNA evidence, it is about getting to that evidence first to be able to present.*’

**Commonwealth v. Donald, 468 Mass. 37 (2014)**

**Commonwealth v. Clark, 472 Mass. 120 (2015)**

**Commonwealth v. Wade, Docket SJC-11913 (*expected* 2016)**

# Does My Client Have a Viable Chapter 278A Motion?

## *First Questions to Ask Yourself*

### I. Is there a DNA test that can be done?

- Pre- 1990 cases
- 1990 - 2000 cases
- 2000 - Present cases

### II. Is there evidence that can be tested?

- Sources of suitable biological material
- Types of evidence that may contain biological material

# Does My Client Have a Viable Chapter 278A Motion?

## *Tracking Down the Evidence*

### III. Where do I look for proof of evidence (and chain-of-custody)?

- Reviewing the record?
- Getting more of the record and other documents
  - Trial Attorney
  - Client
  - Prior appellate counsel
  - Co-defendant's attorneys
  - Client's family
  - Clerk's Office
  - Public Records Request / FOIA Request

# Does My Client Have a Viable Chapter 278A Motion?

*Hitting dead ends?*

## IV. Time to contact the prosecution and evidence custodians

- Make the call
- Document everything
- Ask for in-person searches, if necessary
- Request documentation

# Does My Client Have a Viable Chapter 278A Motion?

*Found the Evidence?*

## V. Viewing Exhibits and Evidence

- Take precautions – ask for gloves and wear gloves (even when evidence is packaged)
- Ask others to wear gloves, if handling evidence
- Change gloves when handling different, unpackaged items
- Document and photograph

# Does My Client Have a Viable Chapter 278A Motion?

*Still Hitting Dead Ends, But No Proof of Destruction?*

## VI. Filing a G.L. c. 278A, § 3(c) Discovery Motion

- Can otherwise file a motion for testing
- Can show steps taken to find evidence



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