

## **Burdens of Proof Under Mass. Gen. Laws. Ch. 278A**

### **Initial Stage – “Filing Threshold”**

#### **G.L. c. 278A, § 2 – Standing Requirements**

- (1) Convicted in state court;
- (2) In prison, on parole/probation, or otherwise has liberty restrained due to conviction; and
- (3) Asserts in an affidavit factual innocence

#### **G.L. c. 278A, § 3(b) – Filing Requirements**

- (1) Name and description of the forensic or scientific analysis the Deft. is requesting;
  - (2) Information that the requested analysis is admissible as evidence;
  - (3) A description of the evidence of biological material that the Deft. seeks to have analyzed or tested, including its chain-of-custody if known;
  - (4) Information demonstrating that the requested analysis has the potential to result in evidence material to the moving party’s identification as the perpetrator of the crime; and
  - (5) Information demonstrating that the evidence or biological material has not been subjected to the requested analysis because of at least one of the following five reasons:
    - (i) The requested analysis had not yet been developed at the time of the conviction;
    - (ii) The results of the requested analysis were not admissible at time of underlying case or conviction;
    - (iii) The Deft. and his attorney were not aware of and did not have reason to be aware of the existence of the evidence or biological material at the time of the conviction;
    - (iv) The Deft.’s attorney in the underlying case was aware at the time of the conviction of the existence of the evidence or biological material, the results of the requested analysis were admissible, a reasonably effective attorney would have sought the analysis and either the moving party’s attorney failed to seek the analysis or the judge denied the report; or
    - (v) The evidence or biological material was otherwise unavailable at the time of the conviction.
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### **Hearing Stage – “Evidentiary Threshold”**

#### **G.L. c. 278A, § 7(b) – By a Preponderance of the Evidence**

- (1) The evidence or biological material exists;
- (2) Evidence or biological material has been subject to a chain of custody that is sufficient to establish that it has not deteriorated, been substituted, tampered with, replaced, handled or altered such that the results of the requested analysis would lack any probative value;
- (3) Item has not been subjected to the requested analysis for any of the reasons in section 3(b)(5)(i)-(v);
- (4) The requested analysis has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime;
- (5) Purpose of the motion is not the obstruction of justice or delay; and
- (6) The results of the requested analysis have been found to be admissible.

#### **Case-law**

Commonwealth v. Wade, 467 Mass. 496 (2014)  
Commonwealth v. Donald, 468 Mass. 37 (2014)  
Commonwealth v. Clark, 472 Mass. 120 (2015)  
and . . . coming soon, Wade, SJC-11913 (Wade II, expected 2016)