

[CAPTION]

**MOTION FOR FORENSIC TESTING, AND IN THE ALTERNATIVE,  
DISCOVERY OF COMPLETED FORENSIC TESTING**

The Defendant, by counsel, respectfully requests this Court to order the State to complete necessary forensic testing, or if the requested testing has been completed, disclose the results of the completed, requested forensic testing. In support of the Motion, the Defendant states the following:

1. Completing forensic testing of all biological material and evidence left at the scene of the crime is in the interest of justice, and thus, is beneficial to both the Defendant and the State.

2. It is in the interest of financial economy to have the Indiana State Lab do the testing rather than the Defense hire a private firm. However, the Defendant is willing to hire a private lab to perform any requested testing that the State refuses to conduct. The Defendant has a right to independently test the evidence collected by the State. Mahrtdt v. State, 629 N.E.2d 244 (Ind. Ct. App. 1994); Sewell v. State, 592 N.E.2d 705, 708 (Ind. Ct. App. 1992).

3. The State, through Prosecutor, has offered repeatedly, including in open court, to have the Indiana State Lab conduct any additional testing that the Defendant found necessary.

I. After reviewing the discovery provided thus far from the State, undersigned counsel reasonably believes that the following testing has not been completed and is necessary to ensure a fair trial and the search for the truth:

[LIST OF EVIDENTIARY ITEMS THAT NEED TO BE TESTED AND WHAT SPECIFIC  
TESTS THE DEFENDANT REQUESTS TO BE COMPLETED]

5. Once testing is complete, the Defendant requests specific and immediate disclosure of all test results and conclusions and notes, documents, graphs, charts, figures, etc. associated with the testing and the conclusions drawn from the results.

6. If the State is unable to or refuses to perform the requested testing, the Defendant requests the State promptly notify the Defendant with the refusal and the reasoning for the refusal. This

notification is necessary for the continued and timely preparation of the Defendant's defense through testing and the hiring of experts.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to order the State to file a Response to the Motion for Testing setting forth the requested testing that the State agrees to conduct, the requested testing that the State refuses to conduct, the reasoning behind the State's refusal to conduct the testing, and any test results from completed requested testing, and order the State to complete any requested testing to which the State agrees, and for all other relief just and proper in the premises.

(Signature)

## **CASE LAW**

Mahrtdt v. State, 629 N.E.2d 244 (Ind.Ct.App. 1994) (State violated discovery order where court ordered department of toxicology inspector to “monitor” Defendant’s inspection of blood alcohol measurement device, but inspector did not provide access code and key so that tests could be conducted; exclusion of evidence may be appropriate for flagrant and deliberate noncompliance with discovery).

Sewell v. State, 592 N.E.2d 705 (Ind.Ct.App. 1992) (convicted rapist seeking postconviction relief was entitled to discover “rape kit” and lab records in State’s possession in order to obtain DNA comparisons to support his claim of misidentification).