

[CAPTION]

**MOTION FOR DNA TESTING**

The Defendant, by counsel, respectfully requests the Court to allow and approve payment for DNA testing. In support of this Motion, the Defendant states the following:

1. On [insert date], the State charged the Defendant with [insert offense].
2. Through the process of discovery, it has been alleged that through medical examination that vaginal/cervical smear slides and a vaginal wash reveal the presence of spermatozoa. [Modify to fit specific facts of case].
3. Although the parties have attempted blood testing for comparison purposes, and the Indiana State Police has advised that there are inadequate samples for comparison purposes.
4. This matter is currently set for trial by jury on [insert date].
5. There is reason to believe that upon DNA testing the Defendant may be cleared of the allegation of sexual intercourse with the victim. [Modify to fit specific facts of case].
6. The Defendant has qualified for the appointment of a public defender, and has no funds with which to pay for said DNA testing.
7. DNA testing can be completed through [CHOOSE ONE: the Indiana State Police Lab or specify private lab], and the approximate costs will be [insert cost], and the Defendant requests the Court to approve this method of testing and to approve payment therefore.
8. DNA testing will facilitate the administration of justice and promote of the orderly ascertainment of the truth. Sewell v. State, 592 N.E.2d 705, 708 (Ind.Ct.App. 1992) (in conjunction with post-conviction relief proceedings, due process concerns entitled the defendant to obtain the State's rape kit for laboratory examination and potential subjection to DNA testing). Our Legislature has recognized the power and importance of DNA testing in criminal cases through its passage of I.C. 35-38-7 *et seq.* providing for post-conviction DNA testing. In the interest of judicial efficiency and fairness, a Defendant should not have to wait for post-conviction DNA testing that can be done prior to trial.

WHEREFORE, the Defendant, by counsel, respectfully requests the Court to allow DNA testing, that the County be responsible for the costs associated therewith, and for all other relief just and proper in

the premises.

(Signature)

## CASE LAW

## CASEBANK M.2.d

Sewell v. State, 592 N.E.2d 705, 708 (Ind.Ct.App. 1992) (in conjunction with post-conviction relief proceedings, due process concerns entitled the Defendant to obtain State's rape kit for laboratory examination and potential subjection to DNA testing in order to ascertain the truth; "Advances in technology may yield potential for exculpation where none previously existed; the primary goals of the court when confronted with a request for the use of a particular discovery device are the facilitation of the administration of justice and the promotion of the orderly ascertainment of the truth.")

District Attorney's Office for Third Judicial District v. Osborne, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009) (an individual whose criminal conviction has become final does not have a federal constitutional right to gain access to evidence in State's possession so that it can be subjected to DNA testing to try to prove his innocence; DNA testing provides "an unparalleled ability" to prove innocence or guilt, but its availability "cannot mean that every criminal conviction, or even every criminal conviction involving biological evidence, is suddenly in doubt"; the task of writing rules to control access to DNA evidence belongs primarily to the legislature).