

Senate Bill 244

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Deletes sunset from provisions relating to performance of certain DNA tests.

A BILL FOR AN ACT

1
2 Relating to DNA tests; amending sections 1, 2 and 4, chapter 697, Oregon Laws 2001.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** Section 1, chapter 697, Oregon Laws 2001, as amended by section 1, chapter 759,
5 Oregon Laws 2005, is amended to read:

6 **Sec. 1.** [(1)] A person may file in the circuit court in which the judgment of conviction was en-
7 tered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evi-
8 dence if the person:

9 [(a)] (1) Is incarcerated in a Department of Corrections institution as the result of a conviction
10 for aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice
11 Commission; or

12 [(b)] (2) Is not in custody but has been convicted of aggravated murder, murder or a sex crime
13 as defined in ORS 181.594.

14 [(2) A motion requesting the performance of DNA testing under this section must be filed in the
15 circuit court no later than 24 months after the effective date of this 2005 Act.]

16 **SECTION 2.** Section 2, chapter 697, Oregon Laws 2001, as amended by section 2, chapter 759,
17 Oregon Laws 2005, is amended to read:

18 **Sec. 2.** (1)(a) When a person files a motion under section 1, chapter 697, Oregon Laws 2001,
19 requesting the performance of DNA (deoxyribonucleic acid) testing on specified evidence, the motion
20 must be supported by an affidavit. The affidavit must:

21 (A)(i) For a person described in section 1 [(1)(a)] (1), chapter 697, Oregon Laws 2001, contain a
22 statement that the person is innocent of the offense for which the person was convicted or of the
23 conduct underlying any mandatory sentence enhancement; or

24 (ii) For a person described in section 1 [(1)(b)] (2), chapter 697, Oregon Laws 2001, contain a
25 statement that the person is innocent of the offense for which the person was convicted;

26 (B) Identify the specific evidence to be tested and a theory of defense that the DNA testing
27 would support. The specific evidence must have been secured in connection with the prosecution,
28 including the investigation, that resulted in the conviction of the person; and

29 (C) Include the results of any previous DNA test of the evidence if a previous DNA test was
30 conducted by either the prosecution or the defense.

31 (b) The person must present a prima facie showing that DNA testing of the specified evidence

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 would, assuming exculpatory results, establish the actual innocence of the person of:

2 (A) The offense for which the person was convicted; or

3 (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
4 duction in the person's sentence.

5 (2) The court shall order the DNA testing requested in a motion under subsection (1) of this
6 section if the court finds that:

7 (a) The requirements of subsection (1) of this section have been met;

8 (b) Unless the parties stipulate otherwise, the evidence to be tested is in the possession of a city,
9 county, state or the court and has been subject to a chain of custody sufficient to establish that the
10 evidence has not been altered in any material aspect;

11 (c) The motion is made in a timely manner and for the purpose of demonstrating the innocence
12 of the person of the offense or of the conduct and not to delay the execution of the sentence or
13 administration of justice; and

14 (d) There is a reasonable possibility that the testing will produce exculpatory evidence that
15 would establish the innocence of the person of:

16 (A) The offense for which the person was convicted; or

17 (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
18 duction in the person's sentence.

19 (3) In granting a motion under this section, the court may impose reasonable conditions designed
20 to protect the interests of the state in the integrity of the evidence and the testing process.

21 (4) Unless both parties agree otherwise, the court shall order the Department of State Police to
22 conduct the DNA testing. The court may order a second test upon a showing that the state police
23 failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy of the
24 DNA test.

25 (5) The costs of DNA tests ordered under this section must be paid by:

26 (a) The person making the motion for DNA testing if the person is not incarcerated or, if the
27 person is incarcerated, if the person is financially able to pay; or

28 (b) The state if counsel at state expense has been appointed under section 4, chapter 697,
29 Oregon Laws 2001.

30 (6) The results of a DNA test ordered under this section must be disclosed to the person filing
31 the motion and to the state.

32 (7) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction
33 relief in the underlying case is pending at the time a motion is filed under section 1, chapter 697,
34 Oregon Laws 2001, the circuit court shall consider the motion. If the court grants the motion, the
35 court shall notify the court considering the appeal or post-conviction petition of that fact. When a
36 court receives notice under this subsection, the court shall stay the appeal or post-conviction pro-
37 ceedings pending the outcome of the motion filed under section 1, chapter 697, Oregon Laws 2001,
38 and any further proceedings resulting from the motion.

39 **SECTION 3.** Section 4, chapter 697, Oregon Laws 2001, is amended to read:

40 **Sec. 4.** (1) A person described in section 1 (1), **chapter 697, Oregon Laws 2001**, [(1)(a) of this
41 2001 Act] may file a petition in the circuit court in which the judgment of conviction was entered
42 requesting the appointment of counsel at state expense to assist the person in determining whether
43 to file a motion under section 1, **chapter 697, Oregon Laws 2001** [of this 2001 Act]. The petition
44 must be accompanied by:

45 (a) A completed affidavit of eligibility for appointment of counsel at state expense; and

- 1 (b) An affidavit stating that:
 - 2 (A) The person meets the criteria in section 1 (1), **chapter 697, Oregon Laws 2001** [(1)(a) of this
 - 3 *2001 Act*];
 - 4 (B) The person is innocent of the charge for which the person was convicted or of the conduct
 - 5 that resulted in a mandatory sentence enhancement;
 - 6 (C) The identity of the perpetrator of the crime or conduct was at issue in the original prose-
 - 7 cution or, if the person was documented as having mental retardation prior to the time the crime
 - 8 was committed, should have been at issue; and
 - 9 (D) The person is without sufficient funds and assets, as shown by the affidavit required by
 - 10 paragraph (a) of this subsection, to hire an attorney to represent the person in determining whether
 - 11 to file a motion under section 1, **chapter 697, Oregon Laws 2001** [*of this 2001 Act*].
 - 12 (2) The court shall grant a petition filed under this section if:
 - 13 (a) The petitioner complies with the requirements of subsection (1) of this section; and
 - 14 (b) It appears to the court that the petitioner is financially unable to employ suitable counsel
 - 15 possessing skills and experience commensurate with the nature and complexity of the matter.
 - 16 (3) When a court grants a petition under this section, the court shall appoint the attorney ori-
 - 17 ginally appointed to represent the petitioner in the action that resulted in the conviction unless the
 - 18 attorney is unavailable.
 - 19 (4) An attorney appointed under this section:
 - 20 (a) If other than counsel provided pursuant to ORS 151.460, is entitled to compensation and ex-
 - 21 penses as provided in ORS 135.055; or
 - 22 (b) If counsel provided pursuant to ORS 151.460, is entitled to expenses as provided in ORS
 - 23 135.055.
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