

House Judiciary Hearing on House Bill 3206
Testimony of Michelle Feldman, State Policy Advocate, The Innocence Project
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March 25th, 2015

My name is Michelle Feldman and I am the State Policy Advocate at the Innocence Project, a national organization that works to exonerate the wrongfully convicted with DNA evidence. Everyone has an interest in overturning wrongful convictions because if an innocent person has been convicted, the real perpetrator can be free to harm others. Real perpetrators have been identified in 160 of the nation's 325 DNA exoneration cases. While the innocent person was behind bars, the actual criminals in these cases went on to commit and be convicted of 145 additional crimes, including 78 rapes and 34 murders.

These numbers underscore the importance of effective post-conviction DNA testing laws that permit fair access to crime-solving technology. House Bill 3206 would significantly strengthen Oregon's current law and align it with statutes in many other states to better enable the wrongfully convicted to prove their innocence and law enforcement to identify the truly guilty.

Removing incarceration requirement

Under the current law, a person who is no longer incarcerated is only eligible for post-conviction testing if he or she has been convicted of aggravated murder, murder or a sex crime. However, people who are no longer in prison are ineligible if they have been convicted of crimes including manslaughter, robbery, and kidnapping.

You might wonder why someone would wait until after they are released from prison to seek post-conviction DNA testing. The reality is that filing a motion for testing is legally complicated, and it often takes an organization like the Innocence Project that has technical expertise in this area to successfully petition for testing. The national project has a multiyear backlog of cases, and an individual may contact us while still in prison but not have their case reviewed and accepted until after they are released.

While being out of prison may end one nightmare for an innocent person, they will likely still face the collateral consequences of a conviction including sex offender registration, barriers to housing and employment, and social stigma. Ted Bradford, who will testify soon, can talk about this in more detail. He spent 10 years in prison for a rape he did not commit, and was only able to prove his innocence after his release from prison. Mr. Bradford is one of 22 people nationwide who has been exonerated with DNA evidence after incarceration. The real perpetrator was later identified and convicted in 8 of these cases, and had the wrongfully convicted person been ineligible for testing, the true criminals may not have been brought to justice.

Based on the experiences of the 37 other states that do not have an incarceration requirements, this provision will not result in an uptick in the number of petitions filed and will not strain court resources. Nationwide, the Innocence Project has 244 active cases and only 12 involve clients who are no longer incarcerated. We've found that only the truly innocent have an incentive to seek testing after prison, because unfavorable results could negatively impact their post-release supervision.

Expanding Crime Categories Eligible for Testing

HB 3206 would also expand eligibility for post-conviction testing for any crime with available DNA evidence. Under the current law, a person is eligible to file a motion if they have been convicted of aggravated murder or a person felony. This excludes people who have been convicted of other crimes for which DNA testing may be probative such as sexual abuse in the 3rd degree, offensive sexual contact and strangulation.

In 21 other states defendants are eligible for post-conviction testing for any crime, and none have reported a “flood of litigation.” This includes Minnesota, where only 5 petitions have been filed since the law was enacted in 2005, according to the Minnesota Innocence Project. It also includes Wisconsin, where only 46 petitions have been filed by the Wisconsin Innocence Project since the law took effect in 2001.

No additional evidence preservation requirements

While HB 3206 expands eligibility for testing it would not impact the current evidence preservation law. Oregon’s current law requires evidence to be preserved for 60 years from the date of conviction for murder, rape, sodomy or unlawful sexual penetration, or until the sentence is completed for aggravated vehicular homicide and manslaughter.

The evidence preservation law is already narrower than the scope of the post-conviction DNA testing law and nothing in this proposal requires an expansion of the preservation requirements.

Thank you for the opportunity to testify in support of House Bill 3206 today, which will improve fair and meaningful access to post-conviction DNA testing. I hope that you will vote in support of this legislation. I am happy to answer any questions.