

House Judiciary Hearing on House Bill 3206
Testimony of Aliza Kaplan, Co-Founder, Oregon Innocence Project
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- My name is Aliza Kaplan, I am a law professor at Lewis & Clark Law School in Portland. And just last year, I co-founded the Oregon Innocence Project. The Oregon Innocence Project's mission is to exonerate the wrongfully convicted, educate and train law students, and promote legal reforms aimed at preventing wrongful convictions. Previously, I served as Deputy Director of the Innocence Project's national organization, and co-founded the New England Innocence Project in 2000. I've taught wrongful convictions legal clinics and courses over the last 10 years, I have worked directly or as a consultant on dozens of wrongful conviction cases around the country, and I've co-authored numerous legal briefs on these issues in federal and state courts around the country.
- I am here in support of House Bill 3206 and will explain what the legislation will and will not do.

Background

- Since the first DNA exoneration in 1989, DNA evidence has transformed the fabric of our criminal justice system, helping to prove the innocence of 325 wrongfully convicted individuals.
- When DNA testing first became available, it provided little help to the wrongfully convicted, who often exhausted all available appeals without being able to access this technology.
- States began enacting post-conviction DNA testing statutes to provide a clear legal avenue for the wrongfully convicted to prove their innocence.
- Oregon was one of the earlier states to enact such a law in 2001, and now that all 50 states have post-conviction DNA testing statutes we have the benefit of knowing which areas can be improved.
- To our knowledge, only two requests for testing have been granted in the 14 years that Oregon's law has been effective.
- It is clear that the statute should be revisited to fulfill its potential of enabling justice for the wrongfully convicted, victims and our communities.

Creating a more reasonable standard to access testing

- First, House Bill 3206 would create a more reasonable standard for a court to grant testing.
- The current law directs a court to order testing if it finds "there is a reasonable possibility that the testing will produce exculpatory evidence that would establish the innocence of the person."
- This standard creates a Catch-22, essentially requiring a person to prove their innocence *before* testing is granted. However, the whole purpose of testing is to determine guilt or innocence *after* the results are in.
- The legislation would allow a court to grant testing if it finds that there is a reasonable possibility that testing results would have led to non-conviction or to a lesser sentence at the original trial. A court would only apply this standard after the petitioner has filed an affidavit setting forth his innocence, identifying the evidence to be tested, and meeting the prima facie requirement that the if testing result is

exculpatory, it would lead to a finding that the person would not have been convicted or would have received a lesser sentence if the DNA test results had been admitted at trial

- In 22 states, the standard for a court to grant testing is either “a reasonable probability that the person would not have been convicted” OR “would not have been convicted or would have received a lesser sentence.”
- House Bill 3206 would bring Oregon in line with these states and enable fair access to testing.

Requiring court to put a reason for denying a motion for testing on the record

- Next, House Bill 3206 would promote transparency by requiring a judge to state the reasons for denying a motion for testing.
- We know that only two requests for post-conviction testing have been granted, and that the majority of requests have been denied—but we don’t know why.
- Providing a clear explanation would improve the process by helping attorneys and defendants understand how the statute is being applied.
- In 2013, the Oregon legislature revised the law to allow defendants to file appeals if testing is denied. At least 18 people have asked the state’s Office of the Public Defender to file appeals.
- Understanding the reason why judges deny requests for testing would enable attorneys to file stronger petitions the first time around, which could help reduce the number of appeals.

No flood of litigation

- House Bill 3206 would also improve meaningful access to post-conviction DNA testing for the wrongfully convicted by expanding eligibility for testing to individuals, whether or not they are incarcerated, for any crime in which DNA evidence is available and relevant to establishing an element of the offense--allowing him/her to file a motion/request for testing. My colleague from the national Innocence Project will discuss this provision in more detail.
- 7 states have statutes with a similar framework to HB 3206: the standard for granting testing is reasonable probability of a non-conviction or lesser sentence and defendants are eligible for “any crime which DNA evidence is available and relevant to establishing an element of the offense”, whether or not the person is incarcerated.
- Based on the experiences of other states with similar frameworks, HB 3206 would not result in a “flood of litigation,” that would require additional court resources.
- In Nebraska, 25 petitions have been filed since the law was enacted in 2001. In Texas, where the prison population is 168, 280¹ more than 10 times that of Oregon, approximately 100 petitions are filed each year, according to the Texas County Attorneys and Commission on Indigent Defense.

¹ Bureau of Justice Statistics, National Prisoner Statistics Program, 2012–2013.

- House Bill 3206 would increase transparency and fairness in post-conviction DNA testing, and ensure that Oregon's criminal justice system can correct wrongful convictions when they occur.

Thank you for the opportunity to discuss House Bill 3206, and I am happy to answer any questions.