Strengthening Oregon's Post-Conviction DNA Testing Law

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Nationally, 325 wrongfully convicted individuals have been exonerated through DNA testing. These cases prove that sometimes the justice system gets it wrong. When mistakes occur it is critical to have strong laws in place that offer a clear legal avenue for the wrongfully convicted to access DNA testing to prove innocence and for law enforcement to identify the real perpetrators. The true perpetrator was later identified in 160 of these cases, and went on to be convicted of 145 additional crimes—including 78 rapes and 34 murders---while the innocent person was behind bars.

Oregon was one of the earliest states to pass a post-conviction DNA testing law in 2001, but only two requests for DNA testing have been granted under the statute. Now that all 50 states have such statutes, we can see which areas of the law can benefit from revisions. House Bill 3206 would better enable justice for the wrongfully convicted, victims and our communities by:

- **Creating a more reasonable standard for a petitioner to be granted 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.

HB 3206 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. This standard is in line with statutes in 22 other states that allow a court to grant testing if there 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."

- **Allowing additional deserving Oregonians to access testing.**

Under Oregon's current law, individuals are only eligible for testing if they have been convicted of murder or a person felony, but excludes other crimes for which DNA evidence could be probative. In addition, eligibility after incarceration is further limited to those convicted of aggravated murder, murder or a sex crime, but not crimes such as kidnapping or robbery. While being released from prison may end one nightmare for a wrongfully convicted person, he or she must still face the collateral consequences of a conviction—including barriers to employment and housing, sex offender registration and social stigma.

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HB 3206 would expand eligibility for testing to any crime with available DNA evidence, whether or not the person is currently in prison. This would bring Oregon's law in line with 21 states that allow post-conviction testing for any crime, and 37 states that permit testing for those who are no longer incarcerated.

- **Creating transparency in review process for DNA testing petitions.**

There is no explanation for why the majority of petitions for post-conviction DNA testing have been rejected in Oregon. HB 3206 would require the court to provide a reason for rejecting a request, which would help 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.

Costs & Resources

The legislation would not change the existing requirement that all non-incarcerated individuals pay for testing and that incarcerated individuals pay for testing if they are financially able to do so. In addition, House Bill 3206 would not create additional evidence preservation requirements.

Based on the reported number of post-conviction DNA testing petitions filed in states with statutes containing provisions similar to those proposed in House Bill 3206 there will be no flood of litigation that would require additional court resources. D. 7 states have statutes that: 1) do not have an incarceration requirement, 2) allow pcDNA testing for any crime, AND 3) set the standard for the court to grant testing as "reasonable probability that the person would not have been convicted" or "reasonable probability that the person would not have been convicted or would have received a lesser sentence." (HI, MO, NE, NY, NC, TX, WI). None of these states have reported a flood of litigation, including:

- HI: 2 petitions have been filed since the law was enacted in 2006, according to the Hawaii Innocence Project.
-NE: 25 petitions have been filed since the law took effect in 2001, according to the Commission on Public Advocacy.
-WI: The Wisconsin Innocence Project has filed 46 petitions since the law was enacted in 2001.
-TX: Texas has a prison population more than 10 times that of Oregon. Approximately 100 petitions are filed each year, according to a survey conducted by the Texas County Attorneys Association and Texas Commission on Indigent Defense (Law effective 2001).

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