Oregon Innocence Project

INNOCENCE PROJECT

House Bill 3206: Associated Costs & Resources

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House Bill 3206 would 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 the offense. It would also create a more reasonable standard for a petitioner to be granted testing, and require courts to put on the record a reason for denying a petition.

The main costs associated, with post-conviction DNA testing statutes are: 1) laboratory testing fees, 2) the cost accrued by the time judges and clerks spend in court and, 3) the cost of evidence storage. The existing law already permits some incarcerated and non-incarcerated people to seek testing at their own expense. The legislation would not change the existing requirement that non-incarcerated individuals pay for testing and that incarcerated individuals pay for testing if they are financially able to do so. 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 (see below), there will be no flood of litigation that would require additional court resources. In addition, House Bill 3206 would not create additional evidence preservation requirements.

I. Existing testing cost requirement are unchanged.

Under the current law, the costs of DNA testing must be paid by the person making the motion for DNA testing if the person is not incarcerated. If the person is incarcerated, the cost will be paid by the person if he/she is financially able to pay or by the state if counsel has been appointed. This would not change under HB 3206.

II. Negligible additional court resources will be required: No "flood of litigation."

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. The legislation would expand eligibility for testing to individuals, whether or not they are incarcerated, for any crime in which DNA evidence is available and relevant to the offense. It would also create a more reasonable standard for a petitioner to be granted testing. Many states have similar provisions in their existing post-conviction DNA testing statutes, and none have reported a flood of litigation.

A. **37 states do not have an incarceration requirement** (AK, AZ, AR, DE, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, NE, NV, NM, NY, NC, ND, OH, OK, SD, TN, TX, UT, VA, WA, WI, WY)**.**

The current law states that a person who is no longer incarcerated is eligible for testing if he/she has been convicted of aggravated murder, murder or a sex crime. HB 3206 would allow a person who is no longer incarcerated to be eligible for testing for any crime in which DNA evidence exists and is relevant to establishing an element of the offense. None of the 37 states that do not have an "incarceration requirement" have reported a flood of litigation, including:

- AZ: 45 petitions filed from the time law effective in 2000-2012, according to Arizona Justice Project.
- HI: 2 petitions have been filed since the law was enacted in 2006, according to the Hawaii Innocence Project.
- LA: The Innocence Project New Orleans has filed 21 petitions since the law was enacted in 2001.
- NE: 25 petitions have been filed since the law took effect in 2001, according to the Commission on Public Advocacy.

- NM: 7 petitions have been filed since the law was enacted in 2003, according to the New Mexico Innocence Project.
- NY: 100 petitions were filed in the first seven years that the law was effective (1994-2001), according to the Justice Project.
- MN: 5 petitions have been filed since the law took effect in 2005, according to the Minnesota Innocence Project.
- AZ: 43 petitions were filed from 2000 to 2009, according to the Arizona Justice Project (Law effective 2000)
- 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).
- UT: 7 petitions were filed from the time the law was enacted in 2003 through 2008.
- WA: 9 petitions were filed in 2012 and 2013, according to the Innocence Project Northwest Clinic.
- WY: 1 petition has been filed since the law was enacted in 2008, according to the Rocky Mountain Innocence Project.
- WI: The Wisconsin Innocence Project has filed 46 petitions since the law was enacted in 2001.

B. **21 states allow post-conviction DNA testing for any crime** (AK, CO, CT, DE, HI, ID, IL, MA, MN, MS, MO, NE, NH, NJ, NY, NC, ND, PA, RI, TX, WI)

Under current OR law, a person is eligible for DNA testing if they have been convicted of aggravated murder or a person felony. HB 3206 would expand DNA testing eligibility to a person convicted of any crime for which DNA evidence exists and is relevant to establishing an element of the offense. None of the 21 states that allow post-conviction DNA testing for any crime 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.
- MN: 5 petitions have been filed since the law took effect in 2005, according to the Minnesota Innocence Project.
- NE: 25 petitions have been filed since the law took effect in 2001, according to the Commission on Public Advocacy.
- NY: 100 petitions were filed in the first 7 years that the law was effective (1994-2001), according to the Justice Project.
- 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).
- WI: The Wisconsin Innocence Project has filed 46 petitions since the law was enacted in 2001.

C. **22 states set the standard for a court to grant testing as "a reasonable probability that the person would not have been convicted" OR "would not have been convicted or would have received a lesser sentence."** (AZ, CA, CT, FL, GA, HI, IN, IA, KY, MD, MO, NE, NM, NY, NV, OK, RI, TN, TX, VT, WV, WI)

The current law states that a court shall order testing if it finds that "there is a reasonable possibility that the testing will produce exculpatory evidence that would establish the innocence of the person." HB 3206 would remove "establish innocence" and replace it with "would lead to a finding that the person would not have been convicted or would have received a lesser sentence if test results had been admitted at trial." None of the 22 states that set a standard for a court to grant testing as "a reasonable probability that the person would not have been convicted," OR a standard that "the person would not have been convicted or would have received a lesser sentence," have reported a flood of litigation, including:

- AZ: 45 petitions were filed from the time the law was effective in 2000 to 2012, according to the Arizona Justice Project.

- CA: Has the highest prison population in the country, and it is estimated that, on average, there are only 1-2 petitions filed per month for post-conviction DNA testing (Law effective in 2000).
- 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.
- NM: 7 petitions have been filed since the law was enacted in 2003, according to the New Mexico Innocence Project.
- NY: 100 petitions were filed in the first 7 years that the law was effective (1994-2001), according to the Justice Project.
- 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).
- WI: The Wisconsin Innocence Project has filed 46 petitions since the law was enacted in 2001.

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.
- NY: 100 petitions were filed in the first 7 years that the law was effective (1994-2001), according to the Justice Project.
- 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).
- WI: The Wisconsin Innocence Project has filed 46 petitions since the law was enacted in 2001.

III. **No additional evidence preservation requirements**.

Although HB 3206 would expand the categories of crimes that are eligible for post-conviction DNA testing and remove the incarceration requirement, it would not impact existing evidence preservation requirements.

Under the current law, for aggravated murder, murder, rape, sodomy or unlawful sexual penetration, evidence must be preserved for 60 years from the date of conviction, or until the person has died. Evidence must be preserved until the person's sentence has been served for aggravated vehicular homicide and manslaughter in the first or second degree.

HB 3206 does not expand or alter the current evidence preservation law. It is not uncommon for states to have an evidence preservation law that is narrower in scope than the post-conviction DNA testing law—this is the case in 18 states (AZ, AR, CO, IL, MT, NE, NC, OK, SD, TX, UT, VA, WA, WI, OR, RI, SC, TN). Language can also be added to clarify that HB 3206 would not create an obligation, right or requirement regarding evidence preservation.

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