



Senate Committee on Judiciary
RE: HB 3206 A-Engrossed - Testimony in Support
Professor Aliza Kaplan
June 1, 2015

- My name is Aliza Kaplan and I am an associate professor at Lewis and Clark Law School and co-founder of the Oregon Innocence Project, which one year ago became the first program in the state dedicated to investigating wrongful convictions.
- 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 329 wrongfully convicted individuals.
- Oregon was one of the earlier states to enact a post-conviction DNA testing law in 2001 to provide a clear legal avenue for the wrongfully convicted to access this technology.
- Now that all 50 states have adopted such laws we have the benefit of knowing which areas can be improved.
- We only know of only one request for testing that has been granted in the 14 years since Oregon's law was enacted.
- House Bill 3206 would ensure that the statute works more effectively to allow the wrongfully convicted to prove their innocence.

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, when the whole point is to determine guilt or innocence *after* the results are in.
- HB 3206 creates a fairer standard by requiring the court to assume that testing would be exculpatory, and by permitting a court to grant testing if it would "lead to a finding of actual innocence" rather than the current requirement to "establish actual innocence."
- This change would permit testing in cases where DNA testing by itself would not necessarily prove innocence, but could be a part of the puzzle in proving innocence.

Providing Fair Access to Testing After Prison

- Next, House Bill 3206 would allow defendants who are no longer incarcerated to apply for testing for the same crimes as those who are currently in prison.
- Under the current law, an incarcerated person is eligible for testing for crimes such as kidnapping and robbery, while a person who has been released is not.

- Being out of prison may end one nightmare for an innocent person, but they will likely continue facing collateral consequences including barriers to housing and employment, sex offender registration and social stigma. In fact, the American Bar Association has identified 46,000 possible consequences of a criminal conviction.
- Ted Bradford, who testified, talked 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.
- Under HB 3206, both incarcerated and non-incarcerated people would be eligible for testing if they have been convicted of aggravated murder or a felony.
- This would bring Oregon's law in line with 36 other states and ensure that a person would not be excluded if advances in technology could prove innocence after prison.

Promoting Transparency

- Finally, HB 3206 would promote transparency by requiring a judge to state the reasons for denying a motion for testing.
- We know that the majority of requests have been denied—but we don't know why.
- 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 costs or flood of litigation

- The Legislative Fiscal Office projected that HB 3206 would have a minimal fiscal impact.
- It 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.
- House Bill 3206 would not create additional evidence preservation requirements.
- Finally, 36 other states do not have an incarceration requirement and none have reported a flood of litigation, including Nebraska, where 25 petitions have been filed since the law took effect in 2001, according to the state public defenders' office and Arizona, where 43 petitions were filed from the time the law was enacted in 2000 to 2009, according to the Arizona Justice Project.
- House Bill 3206 would fulfill the intended purpose of Oregon's post-conviction DNA testing statute—to ensure that our 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.