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## Strengthening Oregon's Post-Conviction DNA Testing Law

Nationally, 329 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.

Oregon was one of the earliest states to pass a post-conviction DNA testing law in 2001, but only one request has 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 to access testing.**

The current law creates a Catch-22 by essentially requiring a person to prove their innocence before a court may grant post-conviction DNA testing. HB 3206 creates a fairer standard by requiring the court to assume exculpatory results, 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 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 for non-incarcerated defendants.**

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 from prison is not. Being out of prison may end one nightmare for an innocent person, but he or she will likely continue facing collateral consequences including barriers to housing and employment, sex offender registration and social stigma. Nationally, 22 people have been exonerated with DNA evidence after incarceration, and the real perpetrator has been identified in 8 of these cases. Had the innocent person been ineligible for testing, the true criminal 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.

➤ **Creating transparency in the petition review process.**

Only one post-conviction testing request has been granted since Oregon's statute was enacted 14 years ago. The law was revised in 2013 to allow defendants to appeal court decisions to deny testing, and since then at least 18 defendants have asked the Office Public of Defenders to assist with their appeals. We know that the majority of requests for testing have been denied—but we don't know why in every instance. HB 3206 would require the court to provide a reason for granting or denying an application, which would improve the process by helping attorneys and defendants understand how the statute is being applied, and possibly reduce the number of appeals filed for denials of testing.

## Costs & Resources

The Legislative Fiscal Office projected that HB 3206 would have minimal fiscal impact. The main costs associated, with post-conviction DNA testing statutes are: 1) laboratory testing fees, 2) the cost of evidence storage, and 3) costs accrued by the time judges and clerks spend in court. 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. House Bill 3206 would not create additional evidence preservation requirements. Finally, 36 other states do not require an individual to be incarcerated to be eligible for testing, and none have reported a flood of litigation, including:

- NE: 25 petitions for post-conviction testing have been filed since the law took effect in 2001, according to the state public defender's office.
- AZ: 43 petitions were filed from the time the AZ law was enacted in 2000 to 2009, according to the Arizona Justice Project.
- MN: 5 petitions have been filed since the law took effect in 2005, according to the Minnesota Innocence Project.



**Case in Point: Ted Bradford** (Washington) Bradford was wrongfully convicted of rape in 1995 based on mistaken witness identification and a false confession. He spent 10 years in prison for a crime he did not commit, and was forced to register as a sex offender upon his release. Every time Mr. Bradford left the area he had to report his whereabouts to a parole officer, and risked going back to prison for failing to do so. The Innocence Project Northwest took his case and successfully petitioned for DNA testing which excluded Mr. Bradford as the perpetrator. He was finally exonerated in 2010, 14 years after his conviction, and 4 years after his release from prison.