

STAFF MEASURE SUMMARY**House Committee On Judiciary****Fiscal:** Has minimal fiscal impact**Revenue:** No Revenue Impact**Action Date:** 04/20/15**Action:** Without Recommendation As To Passage And Be Referred To Rules.**Meeting Dates:** 03/25, 04/20**Vote:**

Yeas: 9 - Barker, Barton, Greenlick, Krieger, Lininger, Olson, Post, Sprenger, Williamson

Prepared By: Eric Deitrick, Counsel**WHAT THE MEASURE DOES:**

Authorizes court to appoint counsel and order DNA testing for any criminal conviction with relevant DNA evidence. Modifies existing procedures regarding DNA testing. Changes requirements of prima facie standard in order to obtain DNA testing and counsel. Requires court to state reasons on the record if denying DNA testing.

ISSUES DISCUSSED:

- Types of crimes that would be eligible for post-conviction DNA testing
- Inconsistent application of existing law and need to update statute
- Oregon was one of first states to establish post-conviction DNA testing statutes
- Differences between actual innocence and legal innocence

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

BACKGROUND:

ORS 138.690 – 138.698 detail when and how a person convicted of a criminal offense can seek post-conviction DNA testing. Currently, a person can file a motion and affidavit with the court seeking an order for DNA testing when a person has been convicted of murder, a sex crime, or is incarcerated for a person crime. The person must file an affidavit of innocence with the court and identify specific evidence that will establish the actual innocence of the person. The DNA testing is done by the Oregon State Police. The court will only appoint counsel if the identity of the perpetrator was at issue in the underlying prosecution, unless the defendant had developmental disabilities.

House Bill 3206 expands the number of offenses for which a person can seek post-conviction DNA testing to all offenses for which relevant DNA evidence is available. The defendant would be eligible for DNA testing if he or she made a prima facie showing that exculpatory DNA evidence 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 were admitted at the prior trial. The bill requires the court to put findings on the record if denying a motion for DNA testing. If granting a motion, the court must appoint counsel. The appointment of counsel is no longer contingent upon whether identity of the perpetrator was at issue in the underlying trial. The court is not required to appoint the original trial counsel.

In addition, the bill no longer requires the State Police to conduct the DNA testing; rather, the testing may occur at certain accredited laboratories if both parties agree or if the court finds good cause. If the parties do not agree or if there is no good cause, the State Police will conduct the DNA testing.