

Fiscal: Has minimal fiscal impact

Revenue: No Revenue Impact

Action Date: 06/02/15

Action: Do Pass With Amendments To The A-Eng Bill. (Printed B-Eng.)

Meeting Dates: 06/01, 06/02

Vote:

Yeas: 4 - Burdick, Gelser, Prozanski, Thatcher

Exc: 1 - Kruse

Prepared By: Eric Deitrick, Counsel

WHAT THE MEASURE DOES:

Modifies Oregon’s post-conviction DNA testing (“testing”) procedures. Authorizes testing for felony offenses only. Requires person to use as much specificity as is reasonably practicable when identifying what evidence should to be tested. Requires prima facie showing that exculpatory DNA evidence would lead to finding that person is actually innocent of crime and requires prima facie showing be consistent with statement of innocence filed by person. Prohibits testimony from victim at hearing on motion for testing unless victim consents. Authorizes court to grant motion for testing if there is reasonable possibility that, assuming exculpatory results, testing would lead to finding that person is actually innocent of offense. Requires testing be done by Oregon State Police unless both parties agree or compelling circumstances exist. Requires court to make findings when issuing order on motion for testing. Permits court-appointed counsel only when person completes affidavit swearing person is innocent of offense and is financially unable to obtain suitable counsel. Authorizes court to hear motion for new trial if testing produces exculpatory evidence.

ISSUES DISCUSSED:

- Ted Bradford’s exoneration in Washington
- Oregon was one of first states to enact a post-conviction DNA testing statute
- Evolution of bill from original to A-engrossed
- Impact of wrongful convictions on both defendant and victim
- Practical problems with statute that bill addresses
- Oregon has had one person obtain post-conviction DNA testing since statute enacted

EFFECT OF COMMITTEE AMENDMENT:

Amendment corrects error in drafting of A-engrossed version by omitting phrase “of the conduct.” An earlier version of the bill authorized testing when a defendant was actually innocent of the offense or actually innocent of conduct that constituted a sentencing enhancement fact. The A-engrossed bill was limited to testing when one is actually innocent of the offense. The amendment makes the bill consistent and eliminates a phrase that was intended to be omitted earlier.

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 person must make a prima facie showing that the testing will establish his or her actual innocence. The 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-B changes the current statutory framework in the following ways. It expands the availability of testing to all felony offenses. It requires the defendant to identify the evidence to be tested with as much specificity as is practicable. It requires the defendant to make a prima facie showing that exculpatory evidence would lead to a finding that the person is actually innocent of the offense. It limits victim testimony in motion practice for testing. It changes when testing can be completed by labs other than the Oregon State Police. It requires the court to make written findings when denying a motion for testing. Finally, it clarifies the availability of court-appointed counsel to aid in the motions for testing.