

Enrolled House Bill 3206

Sponsored by Representatives WILLIAMSON, LININGER; Representative BARKER, Senator PROZANSKI

CHAPTER

AN ACT

Relating to DNA testing for certain convicted persons; amending ORS 138.690, 138.692, 138.694, 138.696 and 138.697.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 138.690 is amended to read:

138.690. A person may file in the circuit court in which the judgment of conviction was entered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evidence if the person[:]

[(1) Is incarcerated in a Department of Corrections institution as the result of a conviction for aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice Commission; or]

*[(2) Is not in custody but has been convicted of aggravated murder, murder or a sex crime as defined in ORS 181.805] **has been convicted of aggravated murder or a felony in which DNA evidence could exist and is relevant to establishing an element of the offense.***

SECTION 2. ORS 138.692 is amended to read:

138.692. (1)(a) When a person files a motion under ORS 138.690 requesting the performance of DNA (deoxyribonucleic acid) testing on [*specified*] evidence, the motion must be supported by an affidavit. The affidavit must:

[(A)(i)] (A) [For a person described in ORS 138.690 (1),] Contain a statement that the person is innocent of the offense for which the person was convicted; [or of the conduct underlying any mandatory sentence enhancement; or]

[(ii) For a person described in ORS 138.690 (2), contain a statement that the person is innocent of the offense for which the person was convicted;]

*(B) Identify the [*specific*] evidence to be tested **with as much specificity as is reasonably practicable** and a theory of defense that the DNA testing would support. The [*specific*] evidence must have been secured in connection with the prosecution, including the investigation, that resulted in the conviction of the person; and*

(C) Include the results of any previous DNA test of the evidence if a previous DNA test was conducted by either the prosecution or the defense.

*(b) **Consistent with the statement of innocence described in subparagraph (a)(A) of this subsection,** the person must present a prima facie showing that DNA testing of the [*specified*] evidence would, assuming exculpatory results, [*establish the actual innocence of the person of:*]*

[(A) The offense for which the person was convicted; or]

[(B) Conduct, if the exoneration of the person of the conduct would result in a mandatory reduction in the person's sentence] **lead to a finding that the person is actually innocent of the offense for which the person was convicted.**

(2) The state shall answer the motion requesting the performance of DNA testing and may refute the basis for the motion.

(3) Upon the motion of a party or the court's own motion, the court may allow the testimony of witnesses if the testimony will assist the court in making its determination to grant or deny the motion requesting the performance of DNA testing. The court may not allow testimony from the victim of the offense without the consent of the victim.

[(2)] **(4) The court shall order the DNA testing requested in a motion under subsection (1) of this section if the court finds that:**

(a) The requirements of subsection (1) of this section have been met;

(b) Unless the parties stipulate otherwise, the evidence to be tested [*is in the possession of a city, county, state or the court and*] has been subject to a chain of custody sufficient to establish that the evidence has not been altered in any material aspect;

(c) The motion is made [*in a timely manner and*] for the purpose of demonstrating the innocence of the person of the offense [*or of the conduct*] and not to delay the execution of the sentence or administration of justice; and

(d) There is a reasonable possibility, **assuming exculpatory results, that the testing [*will produce exculpatory evidence that would establish the innocence of the person of:*]**

[(A) The offense for which the person was convicted; or]

***[(B) Conduct, if the exoneration of the person of the conduct would result in a mandatory reduction in the person's sentence]* would lead to a finding that the person is actually innocent of the offense for which the person was convicted.**

[(3)] **(5) In granting a motion under this section, the court may impose reasonable conditions designed to protect the interests of the state in the integrity of the evidence and the testing process.**

(6) Unless both parties agree **or the court finds compelling circumstances otherwise, the court shall order the Department of State Police to conduct the DNA testing. The court may order a second test upon a showing that the state police failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy of the DNA test.**

[(5)] **(7) The costs of DNA tests ordered under this section must be paid by:**

(a) The person making the motion for DNA testing if the person is not incarcerated or, if the person is incarcerated, if the person is financially able to pay; or

(b) The state if counsel at state expense has been appointed under ORS 138.694.

[(6)] **(8) The [*results of a DNA test ordered under this section must be disclosed*] **laboratory conducting the DNA test shall provide a copy of the results of the test** to the person filing the motion and to the state.**

[(7)] **(9) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction relief in the underlying case is pending at the time a motion is filed under ORS 138.690, the circuit court shall consider the motion. If the court grants the motion, the court shall notify the court considering the appeal or post-conviction petition of that fact. When a court receives notice under this subsection, the court shall stay the appeal or post-conviction proceedings pending the outcome of the motion filed under ORS 138.690 and any further proceedings resulting from the motion.**

(10) The court shall make findings when issuing an order under this section.

SECTION 3. ORS 138.694 is amended to read:

138.694. (1) A person described in ORS 138.690 is entitled to counsel during all stages of the proceedings described in ORS 138.692, 138.696 and 138.697.

[(1)] **(2) A person described in ORS 138.690 [*(1)*] may file a petition in the circuit court in which the judgment of conviction was entered requesting the appointment of counsel at state expense to assist the person in determining whether to file a motion under ORS 138.690. The petition must be accompanied by:**

- (a) A completed affidavit of eligibility for appointment of counsel at state expense; and
- (b) An affidavit stating that:
 - (A) The person meets the criteria in ORS 138.690 [(1)];
 - (B) The person is innocent of the charge for which the person was convicted [*or of the conduct that resulted in a mandatory sentence enhancement*]; **and**

[(C) *The identity of the perpetrator of the crime or conduct was at issue in the original prosecution or, if the person was documented as having mental retardation prior to the time the crime was committed, should have been at issue; and*]

[(D)] (C) The person is without sufficient funds and assets, as shown by the affidavit required by paragraph (a) of this subsection, to hire an attorney to represent the person in determining whether to file a motion under ORS 138.690.

[(2)] (3) The court shall grant a petition filed under this section if:

- (a) The petitioner complies with the requirements of subsection [(1)] (2) of this section; and
- (b) It appears to the court that the petitioner is financially unable to employ suitable counsel possessing skills and experience commensurate with the nature and complexity of the matter.

[(3) *When a court grants a petition under this section, the court shall appoint the attorney originally appointed to represent the petitioner in the action that resulted in the conviction unless the attorney is unavailable.*]

(4) An attorney appointed under this section:

- (a) If other than counsel provided pursuant to ORS 151.460, is entitled to compensation and expenses as provided in ORS 135.055; or
- (b) If counsel provided pursuant to ORS 151.460, is entitled to expenses as provided in ORS 135.055.

SECTION 4. ORS 138.696 is amended to read:

138.696. (1) If DNA (deoxyribonucleic acid) testing ordered under ORS 138.692 produces inconclusive evidence or evidence that is unfavorable to the person requesting the testing:

- (a) The court shall forward the results to the State Board of Parole and Post-Prison Supervision; and
- (b) The Department of State Police shall compare the evidence to DNA evidence from unsolved crimes in the Combined DNA Index System.

(2) If DNA testing ordered under ORS 138.692 produces exculpatory evidence, the person who requested the testing may file in the court that ordered the testing a motion for a new trial based on newly discovered evidence. Notwithstanding the time limit established in ORCP 64 F, a person may file a motion under this subsection at any time during the 60-day period that begins on the date the person receives the test results.

(3) Upon receipt of a motion filed under subsection (2) of this section and notwithstanding the time limits in ORCP 64 F, the court shall hear the motion **pursuant to ORCP 64.**

SECTION 5. ORS 138.697 is amended to read:

138.697. (1) A person described in ORS 138.690 may appeal to the Court of Appeals from a circuit court's final order or judgment denying or limiting DNA (deoxyribonucleic acid) testing under ORS 138.692, denying appointment of counsel under ORS 138.694 or denying a motion for a new trial under ORS 138.696.

(2) The state may appeal to the Court of Appeals from a circuit court's final order or judgment granting a motion for DNA testing under ORS 138.692 or granting a motion for a new trial under ORS 138.696.

(3) The time limits described in ORS 138.071, the notice requirements described in ORS 138.081 and 138.090 and the provisions of ORS 138.225, 138.227, 138.240, 138.250[,] **and** 138.255 [*and 138.261*] apply to appeals under this section unless the context requires otherwise.

(4) A circuit court shall appoint counsel to represent a person described in ORS 138.690 on appeal in the same manner as for criminal defendants under ORS 138.500.

Passed by House May 14, 2015

Repassed by House June 11, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 9, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

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Jeanne P. Atkins, Secretary of State