

HOUSE AMENDMENTS TO HOUSE BILL 3206

By COMMITTEE ON RULES

May 12

1 On page 1 of the printed bill, delete lines 5 through 29 and delete page 2 and insert:

2 “**SECTION 1.** ORS 138.690 is amended to read:

3 “138.690. A person may file in the circuit court in which the judgment of conviction was entered
4 a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evidence if
5 the person[:]

6 “[*(1) Is incarcerated in a Department of Corrections institution as the result of a conviction for
7 aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice Commis-
8 sion; or]*

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

12 “**SECTION 2.** ORS 138.692 is amended to read:

13 “138.692. (1)(a) When a person files a motion under ORS 138.690 requesting the performance of
14 DNA (deoxyribonucleic acid) testing on [*specified*] evidence, the motion must be supported by an
15 affidavit. The affidavit must:

16 “[*(A)(i) (A) [For a person described in ORS 138.690 (1),]* Contain a statement that the person is
17 innocent of the offense for which the person was convicted; [*or of the conduct underlying any man-
18 datory sentence enhancement; or]*

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

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

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

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

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

31 “[*(B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
32 duction in the person’s sentence]* **lead to a finding that the person is actually innocent of the
33 offense for which the person was convicted.**

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

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

5 “[(2)] (4) The court shall order the DNA testing requested in a motion under subsection (1) of
6 this section if the court finds that:

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

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

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

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

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

17 “[(B) *Conduct, if the exoneration of the person of the conduct would result in a mandatory re-*
18 *duction in the person’s sentence*] **would lead to a finding that the person is actually innocent of**
19 **the offense for which the person was convicted.**

20 “[(3)] (5) In granting a motion under this section, the court may impose reasonable conditions
21 designed to protect the interests of the state in the integrity of the evidence and the testing process.

22 “[(4)] (6) Unless both parties agree **or the court finds compelling circumstances** otherwise,
23 the court shall order the Department of State Police to conduct the DNA testing. The court may
24 order a second test upon a showing that the state police failed to follow appropriate DNA protocols
25 and that failure reasonably affected the accuracy of the DNA test.

26 “[(5)] (7) The costs of DNA tests ordered under this section must be paid by:

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

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

30 “[(6)] (8) The [*results of a DNA test ordered under this section must be disclosed*] **laboratory**
31 **conducting the DNA test shall provide a copy of the results of the test** to the person filing the
32 motion and to the state.

33 “[(7)] (9) Notwithstanding the fact that an appeal of the conviction or a petition for post-
34 conviction relief in the underlying case is pending at the time a motion is filed under ORS 138.690,
35 the circuit court shall consider the motion. If the court grants the motion, the court shall notify the
36 court considering the appeal or post-conviction petition of that fact. When a court receives notice
37 under this subsection, the court shall stay the appeal or post-conviction proceedings pending the
38 outcome of the motion filed under ORS 138.690 and any further proceedings resulting from the mo-
39 tion.

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

41 On page 3, delete lines 1 through 4.

42 In line 15, delete “or of the conduct”.

43 In line 16, delete “that resulted in a mandatory sentence enhancement”.

44 In line 26, restore the bracketed material.

45 On page 4, line 3, restore the bracketed material and delete the boldfaced material and insert

1 “pursuant to ORCP 64”.

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