

**PROPOSED AMENDMENTS TO
HOUSE BILL 3206**

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

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

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

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

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

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

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

18 “[*(A)(i)*] **(A)** [*For a person described in ORS 138.690 (1),*] Contain a
19 statement that the person is innocent of the offense for which the person
20 was convicted; [*or of the conduct underlying any mandatory sentence en-*
21 *hancement; or]*

22 “[*(ii) For a person described in ORS 138.690 (2), contain a statement that*

1 *the person is innocent of the offense for which the person was convicted;]*

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

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

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

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

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

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

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

26 “[*(2)*] (4) The court shall order the DNA testing requested in a motion
27 under subsection (1) of this section if the court finds that:

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

29 “(b) Unless the parties stipulate otherwise, the evidence to be tested [*is*
30 *in the possession of a city, county, state or the court and*] has been subject to

1 a chain of custody sufficient to establish that the evidence has not been al-
2 tered in any material aspect;

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

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

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

11 “[*(B) Conduct, if the exoneration of the person of the conduct would result*
12 *in a mandatory reduction in the person’s sentence*] **would lead to a finding**
13 **that the person is actually innocent of the offense for which the per-**
14 **son was convicted.**

15 “[~~(3)~~] **(5)** In granting a motion under this section, the court may impose
16 reasonable conditions designed to protect the interests of the state in the
17 integrity of the evidence and the testing process.

18 “[~~(4)~~] **(6)** Unless both parties agree **or the court finds compelling cir-**
19 **cumstances** otherwise, the court shall order the Department of State Police
20 to conduct the DNA testing. The court may order a second test upon a
21 showing that the state police failed to follow appropriate DNA protocols and
22 that failure reasonably affected the accuracy of the DNA test.

23 “[~~(5)~~] **(7)** The costs of DNA tests ordered under this section must be paid
24 by:

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

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

30 “[~~(6)~~] **(8)** The [*results of a DNA test ordered under this section must be*

1 *disclosed]* **laboratory conducting the DNA test shall provide a copy of**
2 **the results of the test** to the person filing the motion and to the state.

3 “[7] **(9)** Notwithstanding the fact that an appeal of the conviction or a
4 petition for post-conviction relief in the underlying case is pending at the
5 time a motion is filed under ORS 138.690, the circuit court shall consider the
6 motion. If the court grants the motion, the court shall notify the court con-
7 sidering the appeal or post-conviction petition of that fact. When a court
8 receives notice under this subsection, the court shall stay the appeal or
9 post-conviction proceedings pending the outcome of the motion filed under
10 ORS 138.690 and any further proceedings resulting from the motion.

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

13 On page 3, delete lines 1 through 4.

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

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

16 In line 26, restore the bracketed material.

17 On page 4, line 3, restore the bracketed material and delete the boldfaced
18 material and insert “pursuant to ORCP 64”.

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