

Senate Bill 321: Improving Access to DNA Testing for Oregon’s Wrongfully Convicted

Oregon’s post-conviction DNA testing was intended to help the innocent overturn their wrongful convictions by providing meaningful access to DNA testing. However, it has been more of a roadblock than a pathway to justice.

Fixing the law is a matter of justice and public safety. Nationally, 362 wrongful convictions were overturned with DNA, and the real perpetrators went on to be convicted of 153 additional violent crimes, including 81 rapes and 35 murders.

Senate Bill 321, sponsored by Senator Kim Thatcher (R-Keizer), Rep. Carla Piluso (D-Gresham) and Rep. Mike McLane (R- Powell Butte) would:

- **Create a more reasonable standard to obtain testing:** Under the current law, a person must show that DNA would lead to a finding of actual innocence BEFORE testing can be granted, when the entire point of testing is to assess what the results mean AFTER testing is done. SB 321 creates a more reasonable standard.

National Picture: 25 states have a standard of reasonable probability of more favorable outcome or non-conviction, or preponderance of the evidence the person would not have been convicted: (AZ, CA, CT, FL, GA, HI, IL, IN, IA, KY, MO, MS, MT, NY, NC, NV, OK, RI, SC, TN, UT, VT, TX, WV)

- **Allowing courts to order DNA database comparisons to identify real perpetrators.** The state laboratory is the only entity with access to local, state and national DNA databases of known offender profiles. The proposed legislation would allow a court to order the Oregon State Police to compare an unidentified DNA profile generated through testing to offender profiles in DNA databases to potentially identify actual perpetrators and help wrongfully convicted people prove their innocence.

National Picture: 12 states allow courts to order DNA profiles to be uploaded into CODIS for possible matches (CO, GA, IL, MD, MS, MT, NJ, NY, NC, OH, PA, TX).

CASE IN POINT: Michael Morton was exonerated of his wife’s murder in Austin, Texas in 2011 after he served 25 years in prison. DNA testing of a bandanna found near the crime scene excluded Mr. Morton and matched to the profile of Mark Alan Norwood, a convicted offender. Mr. Morton likely would not have been granted testing under Oregon’s current law, which requires that BEFORE testing is granted, a petitioner must prove that DNA testing would, “lead to a finding that the person is actually innocent of the offense.” However, the absence of Mr. Morton’s DNA on the bandana alone would not necessarily lead to a finding of actual innocence, since this evidence could have been irrelevant to the crime. It was only AFTER testing was done, and the results matched to Norwood that Mr. Morton could prove his innocence.

- **Clarifying what evidence must be relevant to.** The current law limits eligibility to felony cases in which DNA “is relevant to establishing an element of the offense.” However, defendants fearing the consequences of higher charges will often plead guilty to lesser-included offenses, and testing might be “relevant” to the original charge, but not to the crime for which they pleaded. SB 321 would allow testing in cases where DNA evidence is “related to the investigation or prosecution” that resulted the conviction.

National Picture: 15 states require that evidence is related to the investigation or prosecution that resulted in the judgment of conviction (AL, AZ, HI, IN, KS, KY, ME, NE, NH, OK, RI, SC, TN, VT, WI)

- **Streamlining access to evidence & information.** The bill would allow a court to order an evidence inventory when a petition is filed, so the person knows what evidence the state still has from his or her case that could be tested. SB 321 would also require the laboratory conducting the DNA testing to produce the underlying data, notes and protocols related to the testing.

National Picture: 6 states specify that a court MAY order an evidence inventory when a petition is filed (CA, HI, MS, MT, PA, VT); 7 states REQUIRE an evidence inventory when a petition is filed (AZ, IN, KY, ME, NE, NV, TX).