



# Legislative Testimony

## Oregon Criminal Defense Lawyers Association

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February 11, 2019

The Honorable Floyd Prozanski, Chair  
Senate Judiciary Committee, Members

### **Re: Testimony in support of SB 321**

Dear Chair Prozanski and Members of the Committee:

#### **OCDLA Supports SB 321 to Increase Access to Post-Conviction DNA Testing**

Since the first DNA exoneration in 1989, over 480 people have been exonerated with the use of DNA testing in the United States.<sup>1</sup> The development of DNA testing has revolutionized our understanding of wrongful convictions and has forced our society to acknowledge that there has been, and still are, innocent people in prison. As of February of this year, there have been 2,372 exonerations in the United States.<sup>2</sup> While there have been 19 exonerations in Oregon since 1991, there has yet to be a single DNA exoneration. This is due in part to the fact that the majority of motions for post-conviction DNA testing are denied by Oregon courts. OCDLA wholeheartedly supports SB 321, which seeks to get innocent people out of prison by providing meaningful access to post-conviction DNA testing.

#### **The Prima Facie Requirement of Oregon's Current Post-Conviction DNA Testing Statute Limits Access to Post-Conviction DNA Testing and Ignores Its Use as an Investigative Tool**

As it is currently written, the prima facie requirement of Oregon's Post-Conviction DNA Testing Statute forces petitioners to first prove their case in order to gain access to post-conviction DNA testing. OCDLA strongly believes that this is a misuse of DNA testing. In the criminal justice system, whether by law enforcement, attorneys, or forensic scientists, DNA testing is used as an investigative tool to include or exclude suspects, and to paint a clearer picture of how a crime occurred. Law enforcement use *pre-conviction* DNA testing to guide their investigation, and OCDLA believes that *post-conviction* DNA testing should be used similarly.

With its current prima facie requirement, Oregon's Post-Conviction DNA Testing Statute is only accessible to petitioners who have already solved the crime for which they were convicted and seek DNA testing only to confirm their theory. Most exonerees did not know how the crime they were convicted of occurred, or who the real perpetrator was. It is unreasonable to ask petitioners

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<sup>1</sup> *Exonerations by Year: DNA and Non-DNA*, NATIONAL REGISTRY OF EXONERATIONS (Feb. 2, 2019), <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>.

<sup>2</sup> *Id.*

to first answer these questions in order to gain access to the very tool that would provide the answers. OCDLA supports SB 321, which removes the prima facie requirement from Oregon's Post-Conviction DNA Testing Statute, and thus increases access to post-conviction DNA testing and allows for its appropriate use as an investigative tool.

OCDLA believes that SB 321 restructures Oregon's Post-Conviction DNA Testing Statute to fulfill the Legislature's original intent: to increase accuracy in the criminal justice system by providing Oregonians with access to a tool that can help prove their innocence. OCDLA supports SB 321 as a mechanism to increase access to post-conviction DNA testing as an investigative tool, allowing Oregonians who have been wrongfully convicted, a meaningful chance to prove their innocence.

**For the reasons outlined above, OCDLA strongly urges a "yes" to SB 321. Thank you for your consideration.**

**/s/ Caitlin Skurky**

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### **About OCDLA**

The Oregon Criminal Defense Lawyers Association (OCDLA) is a private, non-partisan, non-profit bar association of attorneys who represent juveniles and adults in delinquency, dependency, criminal prosecutions, appeals, civil commitment, and post-conviction relief proceedings throughout the state of Oregon. The Oregon Criminal Defense Lawyers Association serves the defense and juvenile law communities through continuing legal education, public education, networking, and legislative action.

OCDLA promotes legislation beneficial to the criminal and juvenile justice systems that protects the constitutional and statutory rights of those accused of crime or otherwise involved in delinquency and dependency systems as well as to the lawyers and service providers who do this difficult work. We also advocate against issues that would harm our goals of reform within the criminal and juvenile justice systems.

**For questions or comments contact:**

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