

SB 321 B STAFF MEASURE SUMMARY

Carrier: Rep. McLane

House Committee On Judiciary**Action Date:** 05/08/19**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.)**Vote:** 10-0-1-0**Yeas:** 10 - Barker, Bynum, Gorsek, Greenlick, Lewis, McLane, Piluso, Power, Stark, Williamson**Exc:** 1 - Sprenger**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 5/6, 5/8**WHAT THE MEASURE DOES:**

Creates new process to initiate a petition for post-conviction DNA testing. Allows petitioner to obtain a copy of property and evidence control, disposition records, results, and written materials of any previous forensic testing. Allows reasonable access to discovery materials. Establishes process for petitioner to dismiss the proceeding without prejudice. Prohibits the court from charging filing fees. Allows the victim to receive notification that a motion for post-conviction DNA testing has been filed and provides the district attorney discretion to notify the victim if they have not chosen to receive notice. Requires that a declaration that the person is innocent of the offense be included in a motion for post-conviction DNA testing. Requires that the motion include a statement identifying the evidence to be tested, the results of any previous DNA testing, and whether the identity of the individual who committed the crime or conduct is at issue or that no crime occurred. Requires an explanation, in light of all the evidence, as to the reasonable probability that, had exculpatory results been available at the time of the underlying prosecution, the person would not have been prosecuted or convicted or there would have been a more favorable outcome. Requires court to order testing when all elements are met and prosecution or conviction would not have been prosecuted or convicted. Permits court to order testing when all elements are met and DNA testing would have resulted in a more favorable outcome. Requires court to issue written findings. Requires the district attorney to notify the victim if post-conviction DNA testing is ordered and if a new trial is ordered in light of the post-conviction DNA testing results. Establishes procedures for testing by a private laboratory. Gives court authority to order that an unidentified DNA profile be compared against DNA profiles in the State DNA Index System and/or the National DNA Index System when certain standards have been met. Requires Oregon Judicial Department (OJD) to create new forms for use by petitioners in post-conviction DNA proceedings. Defines terms.

ISSUES DISCUSSED:

- Work group process
- Stories of wrongful conviction
- Current post-conviction DNA testing standard
- Defendant's entitlement to a copy of the evidence log or existing records not an affirmative search or inventory requirement
- Obligation to provide the results of any previous forensic testing falls on laboratories
- Guilty pleas, confessions, or admissions are not procedural bar to an order for post-conviction DNA testing

EFFECT OF AMENDMENT:

Replaces the term "accredited laboratory" with "nonparticipating laboratory."

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BACKGROUND:

Oregon law provides any person convicted of a crime the opportunity to seek post-conviction relief. Defendants may seek post-conviction relief by moving the court for additional or new DNA testing of evidence. *See* ORS 138.690-138.698. A motion for post-conviction DNA testing must be supported by an affidavit containing specified information. Along with this statement of innocence, the person must present a prima facie showing that DNA testing of the evidence would, assuming exculpatory results, lead to a finding that the person is actually innocent of the offense for which the person was convicted. The court must order the DNA testing if all of the specified requirements are met, and unless stipulated otherwise, the evidence to be tested has been subject to a sufficient chain of custody. The court must stay an appeal or other post-conviction proceedings pending the outcome of the motion to test DNA. The court must make findings when issuing an order. The defendant is entitled to counsel during all stages of these proceedings.

If DNA testing produces exculpatory evidence, the person who requested the testing may file a timely motion for a new trial and the court shall hear the motion. When a conviction has been set aside as the result of evidence obtained through DNA testing, the timely prosecution of any offense that was dismissed or not charged pursuant to a plea agreement that resulted in the conviction that has been set aside may be commenced. If DNA testing ordered produces inconclusive evidence or evidence that is unfavorable to the person requesting the testing, the court shall forward the results to the State Board of Parole and Post-Prison Supervision and the Department of State Police shall compare the evidence to DNA evidence from unsolved crimes.

Senate Bill 321 B creates a process by which a person can initiate post-conviction DNA testing, provides a manner through which petitioner can access property and evidence records from the initial conviction, provides a process by which the proceeding can be dismissed without prejudice, removes the requirement that a motion for post-conviction relief include a prima facie showing of actual innocence, creates both a mandatory standard and a permissive standard under which the Court can order post-conviction DNA testing, and directs the Department of State Police to compare any unidentified DNA profile discovered by post-conviction testing with the Combined DNA Index System when certain requirements are met and provide those findings to the petitioner.