

Requested by Senator THATCHER (at the request of the Oregon Innocence Project)

**PROPOSED AMENDMENTS TO  
SENATE BILL 321**

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages  
2 2 and 3 and insert:

3 **“SECTION 1. Section 2 of this 2019 Act is added to and made a part  
4 of ORS 138.690 to 138.698.**

5 **“SECTION 2. (1) A person described in ORS 138.690 may file in the  
6 circuit court in which the judgment of conviction was entered a peti-  
7 tion to commence post-conviction DNA testing proceedings under ORS  
8 138.690 to 138.698.**

9 **“(2) The court may not charge a fee for any filing under ORS 138.690  
10 to 138.698.**

11 **“(3) The State Court Administrator shall develop forms for pe-  
12 titions, orders and other documents required for proceedings under  
13 ORS 138.690 to 138.698. The State Court Administrator shall provide the  
14 forms to the clerk of each circuit court, who shall make the forms  
15 available to the public.**

16 **“(4) After proceedings have been initiated by a person described in  
17 ORS 138.690 under subsection (1) of this section:**

18 **“(a) Upon motion of the person, the court shall order that the per-  
19 son be provided with an inventory of, and documentation of the chain  
20 of custody for, all evidence related to the investigation or prosecution  
21 that resulted in the judgment of conviction. If forensic testing on the**

1 evidence has previously occurred, the court shall further order that  
2 the person be provided with access to the results of the testing and to  
3 any other written materials related to the testing, including reports,  
4 underlying data, notes and protocols.

5 “(b) Upon motion of the person and a showing that good faith ef-  
6 forts to obtain discovery materials from prior defense counsel were  
7 made and were unsuccessful, the court shall order that the person be  
8 provided reasonable access to discovery materials in the possession of  
9 the district attorney and law enforcement agencies that the person  
10 would have received under ORS 135.815 prior to trial.

11 “(5) ORS 138.690 to 138.698 are not the exclusive means by which a  
12 person convicted of a crime may obtain post-conviction DNA testing,  
13 and nothing in ORS 138.690 to 138.698 limits or affects any other means  
14 by which a person convicted of a crime may obtain post-conviction  
15 DNA testing.

16 “SECTION 3. ORS 138.690 is amended to read:

17 “138.690. (1) A person may file in the circuit court in which the judgment  
18 of conviction was entered a motion requesting the performance of DNA  
19 (deoxyribonucleic acid) testing on specific evidence if the person has been  
20 convicted of aggravated murder or a felony in which DNA evidence could  
21 exist and is [*relevant to establishing an element of the offense*] **related to the**  
22 **investigation or prosecution that resulted in the judgment of con-**  
23 **viction.**

24 “(2) **If, after filing a petition to commence proceedings under sec-**  
25 **tion 2 of this 2019 Act or a motion under this section, the person no-**  
26 **tifies the court that the person does not wish to proceed with DNA**  
27 **testing, the court shall dismiss the proceedings without prejudice.**

28 “SECTION 4. ORS 138.692 is amended to read:

29 “138.692. [(1)(a)] (1) When a person files a motion under ORS 138.690 re-  
30 questing the performance of DNA (deoxyribonucleic acid) testing on evi-

1 dence, the motion must be supported by *[an affidavit. The affidavit must]:*

2 “[A] (a) *[Contain a statement]* **A sworn declaration by the person** that  
3 the person is innocent of the offense for which the person was convicted;  
4 **and**

5 “[B] (b) **A statement that:**

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

11 “[C] (B) *[Include]* **Includes** the results of any previous DNA test of the  
12 evidence if a previous DNA test was conducted by either the prosecution or  
13 the defense[.]; **and**

14 “[b] (C) *[Consistent with the statement of innocence described in para-*  
15 *graph (a)(A) of this subsection, the person must present a prima facie*  
16 *showing]* **Presents a theory of the reasonable probability** that DNA test-  
17 ing of the evidence would, assuming exculpatory results, lead to a *[finding*  
18 *that the person is actually innocent of the offense for which the person was*  
19 *convicted]* **more favorable outcome for the person after a new trial.**

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

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

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

29 “[a] *The requirements of subsection (1) of this section have been met;*]

30 “[b] (a) Unless the parties stipulate otherwise, the evidence to be tested

1 has been subject to a chain of custody sufficient to establish that the evi-  
2 dence has not been altered in any material aspect;

3 “[*(c)*] **(b)** The motion is made for the purpose of demonstrating the inno-  
4 cence of the person of the offense and not to delay the execution of the  
5 sentence or administration of justice; and

6 “[*(d)*] **(c)** There is a reasonable [*possibility*] **probability**, assuming  
7 exculpatory results, that the testing would lead to a [*finding that the person*  
8 *is actually innocent of the offense for which the person was convicted*] **more**  
9 **favorable outcome for the person after a new trial.**

10 “(5) In granting a motion under this section, the court may impose rea-  
11 sonable conditions designed to protect the interests of the state in the in-  
12 tegrity of the evidence and the testing process.

13 “(6) Unless both parties agree or the court finds compelling circumstances  
14 otherwise, the court shall order the Department of State Police to conduct  
15 the DNA testing. The court may order a second test upon a showing that the  
16 state police failed to follow appropriate DNA protocols and that failure  
17 reasonably affected the accuracy of the DNA test.

18 “(7) The costs of DNA tests ordered under this section must be paid by:

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

22 “(b) The state if counsel at state expense has been appointed under ORS  
23 138.694.

24 “(8) The laboratory conducting the DNA test shall provide [*a copy of*]  
25 **access to the results of the test, and to any other written materials re-**  
26 **lated to the testing, including reports, underlying data, notes and**  
27 **protocols**, to the person filing the motion and to the state.

28 “(9) Notwithstanding the fact that an appeal of the conviction or a peti-  
29 tion for post-conviction relief in the underlying case is pending at the time  
30 a motion is filed under ORS 138.690, the circuit court shall consider the

1 motion. If the court grants the motion, the court shall notify the court con-  
2 sidering the appeal or post-conviction petition of that fact. When a court  
3 receives notice under this subsection, the court shall stay the appeal or  
4 post-conviction proceedings pending the outcome of the motion filed under  
5 ORS 138.690 and any further proceedings resulting from the motion.

6 “(10) The court shall make **written** findings when issuing an order under  
7 this section.

8 **“SECTION 5.** ORS 138.696 is amended to read:

9 “138.696. (1) If DNA (deoxyribonucleic acid) testing ordered under ORS  
10 138.692 produces inconclusive evidence or evidence that is unfavorable to the  
11 person requesting the testing:

12 “(a) The court shall forward the results to the State Board of Parole and  
13 Post-Prison Supervision; and

14 “(b) The Department of State Police shall compare the evidence to DNA  
15 evidence from unsolved crimes in the Combined DNA Index System.

16 “(2) If DNA testing ordered under ORS 138.692 produces exculpatory evi-  
17 dence, the person who requested the testing may file in the court that or-  
18 dered the testing a motion for a new trial based on newly discovered  
19 evidence. Notwithstanding the time limit established in ORCP 64 F, a person  
20 may file a motion under this subsection at any time during the 60-day period  
21 that begins on the date the person receives the test results.

22 **“(3)(a) If DNA testing ordered under ORS 138.692 produces an uni-**  
23 **identified DNA profile and the profile meets the applicable database**  
24 **submission requirements, the court shall order the Department of**  
25 **State Police to compare the profile, by either uploading the profile or**  
26 **performing a keyboard search, to other DNA profiles in:**

27 **“(A) The DNA database established by the Federal Bureau of In-**  
28 **vestigation; and**

29 **“(B) The DNA database maintained by the department.**

30 **“(b) The department shall provide a copy of any confirmed match**

1 **results obtained from the comparison performed under paragraph (a)**  
2 **of this subsection to the person who requested testing and to the state.**

3 “[3] (4) Upon receipt of a motion filed under subsection (2) of this sec-  
4 tion and notwithstanding the time limits in ORCP 64 F, the court shall hear  
5 the motion pursuant to ORCP 64.

6 **“SECTION 6. Section 7 of this 2019 Act is added to and made a part**  
7 **of ORS 138.690 to 138.698.**

8 **“SECTION 7. (1) As used in this section:**

9 **“(a) ‘Accredited laboratory’ means a laboratory that does not par-**  
10 **ticipate in the National DNA Index System but that is accredited by**  
11 **a nonprofit professional association of persons actively involved in**  
12 **forensic science that is national recognized within the forensic science**  
13 **community and approved by the director of the Federal Bureau of In-**  
14 **vestigation.**

15 **“(b) ‘CODIS’ means the Combined DNA Index System.**

16 **“(c) ‘Federal standards’ means the Federal Bureau of Investigation**  
17 **Quality Assurance Standards for Forensic DNA Testing Laboratories,**  
18 **as modified or amended by the Federal Bureau of Investigation, or any**  
19 **successor standards adopted by the Federal Bureau of Investigation.**

20 **“(d) ‘NDIS-participating laboratory’ means a forensic laboratory**  
21 **that has been designated to operate CODIS and participate in the Na-**  
22 **tional DNA Index System.**

23 **“(2)(a) If a party to post-conviction DNA testing proceedings seeks**  
24 **to conduct the testing at an accredited laboratory, and intends to have**  
25 **any DNA profile resulting from the testing submitted to CODIS, the**  
26 **party may identify a NDIS-participating laboratory within this state**  
27 **and request the court, by motion, to order the NDIS-participating**  
28 **laboratory to evaluate whether the accredited laboratory is in compli-**  
29 **ance with federal standards for the purpose of uploading DNA profiles**  
30 **to CODIS. The party shall provide notice of the requested order to the**

1 opposing party and to the NDIS-participating laboratory identified in  
2 the motion.

3 “(b) The state may appear on the motion as a party to post-  
4 conviction DNA testing proceedings or on behalf of the  
5 NDIS-participating laboratory if the laboratory is a public entity.

6 “(3) The court may order the NDIS-participating laboratory to  
7 conduct an evaluation pursuant to subsection (2) of this section if the  
8 moving party demonstrates and the court finds:

9 “(a)(A) The NDIS-participating laboratory is not able to, or for  
10 practical reasons has determined not to, perform the specific testing  
11 and analysis sought by the moving party;

12 “(B) The NDIS-participating laboratory’s testing and analysis would  
13 not be substantially equivalent to testing and analysis by the accred-  
14 ited laboratory; or

15 “(C) Testing and analysis by the NDIS-participating laboratory  
16 would not otherwise be appropriate;

17 “(b) The evaluation will not delay investigations or unduly burden  
18 the resources of the NDIS-participating laboratory; and

19 “(c) There is a reasonable likelihood that the evaluation would re-  
20 sult in a finding that:

21 “(A) The accredited laboratory is in compliance with federal stan-  
22 dards; and

23 “(B) If a DNA profile is generated from testing by the accredited  
24 laboratory, the profile would comply with federal requirements for  
25 inclusion in CODIS.

26 “(4) If the court orders an evaluation of an accredited laboratory  
27 under subsection (3) of this section, within 120 days of receiving the  
28 court order the NDIS-participating laboratory shall comply with the  
29 order as follows:

30 “(a) The NDIS-participating laboratory may conduct the evaluation

1 by obtaining and reviewing the records of an on-site visit and assess-  
2 ment of the accredited laboratory previously conducted by the Federal  
3 Bureau of Investigation or an NDIS-participating laboratory.

4 “(b) If a previously conducted on-site visit and assessment were not  
5 conducted within a time frame required by federal law, the results of  
6 the previously conducted on-site visit and assessment are unavailable,  
7 or the accredited laboratory is not in compliance with other applicable  
8 standards, the NDIS-participating laboratory may:

9 “(A) Evaluate the accredited laboratory by conducting a new on-site  
10 visit and assessment, provided that:

11 “(i) The ability to conduct the new on-site visit and assessment is  
12 within the limits of available resources of the NDIS-participating lab-  
13 oratory;

14 “(ii) The accredited laboratory agrees to cooperate with the new  
15 on-site visit and assessment; and

16 “(iii) The moving party bears the costs associated with the new  
17 on-site visit and assessment; or

18 “(B) Notify the court of the inability to evaluate the accredited  
19 laboratory by conducting a new on-site visit and assessment due to the  
20 available resources of the NDIS-participating laboratory, a refusal to  
21 cooperate with the on-site visit and assessment by the accredited lab-  
22 oratory or the refusal by the moving party to bear the costs associated  
23 with the new on-site visit and assessment.

24 “(5) A determination by the NDIS-participating laboratory as to  
25 whether the accredited laboratory is in compliance with federal stan-  
26 dards is not subject to judicial review.”.

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