

SB 1515: Change in Science Fiscal Analysis National Landscape

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I. Background

Today, seven states have addressed gaps in their post-conviction review processes by adopting a Change in Science mechanism which allows the wrongfully convicted to return to court to prove their innocence if their case involved false or misleading forensics. Without these legal frameworks, innocent individuals faced procedural bars and often had no pathway to challenge their wrongful conviction. Six states – California, Texas, Nevada, Connecticut, West Virginia, Wyoming – enacted Change in Science statutory changes via legislation while in one state, Michigan, the court used its unique rulemaking authority to create a pathway for relief via a court rule.¹

No state provided a state appropriation related to this work. This memorandum summarizes the impact on the six states that previously enacted legislation and provides an analysis of the potential fiscal impact of SB 1515 in Oregon.

II. Potential Fiscal Impact in Oregon

To understand the potential fiscal impact of Change in Science legislation in Oregon, we can look to other states that have enacted similar policies. **This analysis tells us that Oregon should not expect a significant fiscal impact.**

Of the six states that enacted Change in Science legislation, **none appropriated any funding to address any projected fiscal impact before or after the legislation took effect.** While only one state – California – reported a fiscal impact at the time of consideration, no appropriation was made.

Most importantly, SB 1515 is much more limited in scope compared to other states. The bill is narrowly tailored so a wrongfully convicted person can only file a claim for post-conviction relief if their case involved any of these three specific discredited forensic disciplines: hair microscopy; bite mark analysis or comparison; or comparative bullet lead analysis.

California's law broadly allows petitioners to challenge their wrongful conviction if a significant dispute emerges regarding the expert medical, scientific, or forensic testimony provided in their case. The state's fiscal impact report noted three agencies that could be impacted:

¹ Cal Pen Code § 1473(b), Conn. Gen. Stat. § 52-582(b)(1), Nev. Rev. Stat. Ann. § 34.930, Tex. Code Crim. Proc. Art. 11.073, W. Va. Code § 53-4A-1, Wyo. Stat. § 7-12-402 et. seq.

1. California projected that costs to the Department of Justice would total \$55,000 in the first three years, and then \$9,000 in ongoing costs thereafter.
2. The report noted there may be an increased workload for the courts, but did not put a dollar amount on that cost, and did not appropriate additional funds to the Trial Court Trust Fund.
3. Finally, California predicted potential cost savings for the Department of Corrections based on fewer people in prison.

Oregon has a significantly lower population than California, which ranks first in population size, and should not expect similar costs. Oregon will likely see no cost impact simply because fewer people will take advantage of the law. Additionally, Oregon has significantly fewer known exonerations, according to the National Registry of Exonerations.

By population size and total exonerations, Oregon is far more similar to Connecticut, which reported no fiscal impact on their 2018 legislation.

Table: Comparison of State Change in Science Laws

	California	Texas	Oregon	Connecticut
Population size ²	39,431,263 people (ranked #1)	31,290,831 (ranked #2)	4,272,371 people (ranked #27)	3,675,069 people (ranked #29)
Number of known exonerations ³	297 exonerations	505 exonerations	43 exonerations	43 exonerations
% False or misleading forensics contributes to known exoneration ⁴	26%	40%	42%	42%
Year statute was enacted	2014, amended 2022	2013	N/A	2018
State appropriation for Statute	\$0	\$0	N/A	\$0
Number of claims under broader Change in Science Bill	In the first four years, advocates filed 14 total claims	In the first ten years, 70 petitions were filed and reviewed	N/A	

² U.S. Census, Annual Estimates of the Resident Population for the United States, <https://www.census.gov/data/tables/time-series/demo/popest/2020s-state-total.html>.

³ National Registry of Exonerations, Exonerations since 1989, https://exoneratiregistry.org/cases?f%5B0%5D=n_pre_1989%3A0.

⁴ *Id.*

III. Potential Policy Implications in Oregon

Oregon currently lacks a clear mechanism for wrongfully convicted people to prove their innocence if their case involved flawed or misapplied forensic evidence, a contributing factor in 42% of the state's known wrongful convictions. A wrongfully convicted person typically only has two years to file a petition for post-conviction relief. Because flaws in forensic methodology can take decades to emerge, an individual is often denied the ability to bring forward claims due to procedural time bars.

SB 1515 would simply create a pathway for an innocent person to file a petition and be heard – in order to be granted relief, the petitioner would still have to prove that, had the discredited forensic discipline not been admitted, there is a reasonable probability of a different outcome.

If the proposed bill were to take effect, Oregon can expect to see the majority of claims raised and adjudicated in the first two years of enactment and then significant dropoff.

The reality is that wrongfully convicted individuals fighting for their freedom are already filing petitions reviewed by the Department of Justice, but they can be unsuccessful because they are not tailored to the issue at the heart of their wrongful conviction. Because Oregon does not have a Change in Science statute, petitioners who were convicted based on false or misleading forensic evidence, can typically only file a writ of habeas corpus and allege ineffective assistance of counsel or official misconduct in hopes of returning to court to prove their innocence. These types of petitions often fail because at their core, the underlying cause for the wrongful conviction was misapplied forensic evidence.

With SB 1515, the burden on Oregon courts is unlikely to see an increase. Courts are already receiving and reviewing petitions requesting relief, but with a Change in Science statute, the courts would be able to properly consider petitions under the right framework.

Finally, Oregon should not expect to see a “flood of litigation.” Oregon's bill is much more narrowly tailored and includes a filing deadline. Furthermore, states with Change in Science statutes have not seen a significant rise in petitions. **In the first four years of California's statute taking effect, innocence advocates filed 14 claims.** In Texas, which has the highest state prison population⁵, there were only 74 claims filed and adjudicated in the first ten years their Change in Science statute was in effect.⁶

⁵ U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/document/p22st.pdf>

⁶ Texas Defender Service (2024) An Unfulfilled Promise: Assessing the Efficacy of Article 11.073 <https://www.texasdefender.org/wp-content/uploads/2024/07/TDS-11.073-Report.pdf>

III. Changes in Science Legislation Fiscal Note Summaries

California

Fiscal Impact:

- Appropriation: No
- Fiscal Com.: Yes
- Local: No

Department of Justice (DOJ): The department reports costs of \$19,000 in FY 2022- 2023, \$36,000 in FYs 2023-2024 and 2024-25, and \$9,000 annually thereafter to support anticipated workload addressing new habeas petitions seeking relief under changes proposed by this bill. (General Fund)

Courts: Unknown, potentially-significant workload cost pressures to adjudicate habeas corpus petitions filed under changes proposed by this bill. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. The Governor's 2022-23 budget proposes to allocate \$117.8 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

Transportation & supervision: Unknown workload costs in the thousands of dollars to the Department of Corrections and Rehabilitation to supervise and transport individuals in state custody to attend habeas corpus hearings. Actual costs would depend on the number of incarcerated persons who file a petition pursuant to this measure and make a prima facie showing that they are entitled to relief and for whom remote/video appearances at the proceedings are not exercised. (General Fund)

Incarceration savings: Unknown, potentially savings in state incarceration costs for individuals who are granted a writ of habeas corpus. The proposed FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. The contract bed rate averages to about \$35,000 annually. Actual savings would depend on the number of incarcerated persons who successfully petition the court for relief pursuant to changes proposed by this measure. Aside from marginal cost savings per individual, however, the department would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

Connecticut

Fiscal impact: The amendment clarifies the jurisdictional duties of the courts and does not result in a fiscal impact.

Nevada

Fiscal Impact: The Attorney General's Office has reviewed this reprint and finds no impact to the agency.

Texas

Fiscal Impact: No significant fiscal impact to the state is anticipated.

West Virginia

No fiscal note included in bill documents.

Wyoming

Fiscal Impact: The fiscal impact to the judicial system is indeterminable due to an unknown number of cases. The draft bill was provided multiple times to the District Attorney's Office for Judicial District 1 (Laramie County), but no fiscal note response was provided.