

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2312

By COMMITTEE ON JUDICIARY

June 27

1 In line 2 of the printed A-engrossed bill, delete “section 1” and insert “sections 1 and 2”.

2 Delete lines 5 through 16 and insert:

3 “**SECTION 1.** Section 1, chapter 697, Oregon Laws 2001, is amended to read:

4 “**Sec. 1.** (1) A person may file in the circuit court in which the judgment of conviction was en-
5 tered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evi-
6 dence if the person:

7 “(a) Is incarcerated in a Department of Corrections institution as the result of a conviction for
8 aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice Com-
9 mission; or

10 “(b) Is not in custody but has been convicted of aggravated murder, murder or a sex crime as
11 defined in ORS 181.594.

12 “(2) A motion requesting the performance of DNA testing under this section must be filed in the
13 circuit court no later than [48] **24** months after the effective date of [*this 2001 Act*] **this 2005 Act**.

14 “**SECTION 2.** Section 2, chapter 697, Oregon Laws 2001, is amended to read:

15 “**Sec. 2.** (1)(a) When a person files a motion under section 1, **chapter 697, Oregon Laws 2001,**
16 [*of this 2001 Act*] requesting the performance of DNA (deoxyribonucleic acid) testing on specified
17 evidence, the motion must be supported by an affidavit. The affidavit must:

18 “(A)(i) For a person described in section 1 (1)(a), **chapter 697, Oregon Laws 2001** [*of this 2001*
19 *Act*], contain a statement that the person is innocent of the offense for which the person was con-
20 victed or of the conduct underlying any mandatory sentence enhancement; or

21 “(ii) For a person described in section 1 (1)(b), **chapter 697, Oregon Laws 2001** [*of this 2001*
22 *Act*], contain a statement that the person is innocent of the offense for which the person was con-
23 victed;

24 “(B) Identify the specific evidence to be tested and a theory of defense that the DNA testing
25 would support. The specific evidence must have been secured in connection with the prosecution,
26 including the investigation, that resulted in the conviction of the person; and

27 “(C) Include the results of any previous DNA test of the evidence if a previous DNA test was
28 conducted by either the prosecution or the defense.

29 “(b) The person must present a prima facie showing that[:]

30 “[*(A) The identity of the perpetrator:*]

31 “[*(i) Was at issue in the trial that resulted in the conviction of the person; or*]

32 “[*(ii) If the person was documented as having mental retardation prior to the time the crime was*
33 *committed, should have been at issue in the trial or plea agreement that resulted in the conviction of*
34 *the person; and*]

35 “[*(B)*] DNA testing of the specified evidence would, assuming exculpatory results, establish the

1 actual innocence of the person of:

2 “[(i)] (A) The offense for which the person was convicted; or

3 “[(ii)] (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory
4 reduction in the person’s sentence.

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

7 “(a) The requirements of subsection (1) of this section have been met;

8 “(b) Unless the parties stipulate otherwise, the evidence to be tested is in the possession of a
9 city, county, state or the court and has been subject to a chain of custody sufficient to establish that
10 the evidence has not been altered in any material aspect;

11 “(c) The motion is made in a timely manner and for the purpose of demonstrating the innocence
12 of the person of the offense or of the conduct and not to delay the execution of the sentence or
13 administration of justice; and

14 “(d) There is a reasonable possibility that the testing will produce exculpatory evidence that
15 would establish the innocence of the person of:

16 “(A) The offense for which the person was convicted; or

17 “(B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
18 duction in the person’s sentence.

19 “(3) In granting a motion under this section, the court may impose reasonable conditions de-
20 signed to protect the interests of the state in the integrity of the evidence and the testing process.

21 “(4) Unless both parties agree otherwise, the court shall order the Department of State Police
22 to conduct the DNA testing. The court may order a second test upon a showing that the state po-
23 lice failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy
24 of the DNA test.

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

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

28 “(b) The state if counsel at state expense has been appointed under section 4, **chapter 697,**
29 **Oregon Laws 2001** [*of this 2001 Act*].

30 “(6) The results of a DNA test ordered under this section must be disclosed to the person filing
31 the motion and to the state.

32 “(7) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction
33 relief in the underlying case is pending at the time a motion is filed under section 1, **chapter 697,**
34 **Oregon Laws 2001** [*of this 2001 Act*], the circuit court shall consider the motion. If the court grants
35 the motion, the court shall notify the court considering the appeal or post-conviction petition of that
36 fact. When a court receives notice under this subsection, the court shall stay the appeal or post-
37 conviction proceedings pending the outcome of the motion filed under section 1, **chapter 697,**
38 **Oregon Laws 2001,** [*of this 2001 Act*] and any further proceedings resulting from the motion.

39 “**SECTION 3. Section 5, chapter 697, Oregon Laws 2001, is repealed.**”.