

Enrolled House Bill 2312

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary)

CHAPTER

AN ACT

Relating to DNA testing; creating new provisions; amending sections 1 and 2, chapter 697, Oregon Laws 2001; and repealing section 5, chapter 697, Oregon Laws 2001.

Be It Enacted by the People of the State of Oregon:

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

Sec. 1. (1) A person may file in the circuit court in which the judgment of conviction was entered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evidence if the person:

(a) Is incarcerated in a Department of Corrections institution as the result of a conviction for aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice Commission; or

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

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

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

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

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

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

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

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

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

[*(A) The identity of the perpetrator;*]

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

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

[(B)] DNA testing of the specified evidence would, assuming exculpatory results, establish the actual innocence of the person of:

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

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

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

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

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

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

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

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

(B) Conduct, if the exoneration of the person of the conduct would result in a mandatory reduction in the person's sentence.

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

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

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

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

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

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

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

SECTION 3. When a conviction has been set aside as the result of evidence obtained through DNA (deoxyribonucleic acid) testing conducted under section 2, chapter 697, Oregon Laws 2001, the 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 within the later of:

(1) The period of limitation established for the offense under ORS 131.125 to 131.155; or

(2) Notwithstanding ORS 131.125 and 131.155, two years after the date the conviction was set aside.

SECTION 4. Section 5, chapter 697, Oregon Laws 2001, is repealed.

Passed by House April 13, 2005

Repassed by House August 1, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 29, 2005

Repassed by Senate August 1, 2005

.....
President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State