

# 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)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates requirement that motion requesting performance of DNA testing be filed by certain date.

## A BILL FOR AN ACT

1  
2 Relating to DNA testing; amending sections 1, 2 and 4, chapter 697, Oregon Laws 2001; and repeal-  
3 ing section 5, chapter 697, Oregon Laws 2001.

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

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

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

9 *[(a)]* (1) Is incarcerated in a Department of Corrections institution as the result of a conviction  
10 for aggravated murder or a person felony as defined in the rules of the Oregon Criminal Justice  
11 Commission; or

12 *[(b)]* (2) Is not in custody but has been convicted of aggravated murder, murder or a sex crime  
13 as defined in ORS 181.594.

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

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

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

20 (A)(i) For a person described in section 1 (1), **chapter 697, Oregon Laws 2001** *[(1)(a) of this*  
21 *2001 Act]*, contain a statement that the person is innocent of the offense for which the person was  
22 convicted or of the conduct underlying any mandatory sentence enhancement; or

23 (ii) For a person described in section 1 (2), **chapter 697, Oregon Laws 2001** *[(1)(b) of this 2001*  
24 *Act]*, contain a statement that the person is innocent of the offense for which the person was con-  
25 victed;

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

- 1 (A) The identity of the perpetrator:
- 2 (i) Was at issue in the trial that resulted in the conviction of the person; or
- 3 (ii) If the person was documented as having mental retardation prior to the time the crime was
- 4 committed, should have been at issue in the trial or plea agreement that resulted in the conviction
- 5 of the person; and
- 6 (B) DNA testing of the specified evidence would, assuming exculpatory results, establish the
- 7 actual innocence of the person of:
- 8 (i) The offense for which the person was convicted; or
- 9 (ii) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
- 10 duction in the person's sentence.
- 11 (2) The court shall order the DNA testing requested in a motion under subsection (1) of this
- 12 section if the court finds that:
- 13 (a) The requirements of subsection (1) of this section have been met;
- 14 (b) Unless the parties stipulate otherwise, the evidence to be tested is in the possession of a city,
- 15 county, state or the court and has been subject to a chain of custody sufficient to establish that the
- 16 evidence has not been altered in any material aspect;
- 17 (c) The motion is made in a timely manner and for the purpose of demonstrating the innocence
- 18 of the person of the offense or of the conduct and not to delay the execution of the sentence or
- 19 administration of justice; and
- 20 (d) There is a reasonable possibility that the testing will produce exculpatory evidence that
- 21 would establish the innocence of the person of:
- 22 (A) The offense for which the person was convicted; or
- 23 (B) Conduct, if the exoneration of the person of the conduct would result in a mandatory re-
- 24 duction in the person's sentence.
- 25 (3) In granting a motion under this section, the court may impose reasonable conditions designed
- 26 to protect the interests of the state in the integrity of the evidence and the testing process.
- 27 (4) Unless both parties agree otherwise, the court shall order the Department of State Police to
- 28 conduct the DNA testing. The court may order a second test upon a showing that the state police
- 29 failed to follow appropriate DNA protocols and that failure reasonably affected the accuracy of the
- 30 DNA test.
- 31 (5) The costs of DNA tests ordered under this section must be paid by:
- 32 (a) The person making the motion for DNA testing if the person is not incarcerated or, if the
- 33 person is incarcerated, if the person is financially able to pay; or
- 34 (b) The state if counsel at state expense has been appointed under section 4, **chapter 697,**
- 35 **Oregon Laws 2001** [*of this 2001 Act*].
- 36 (6) The results of a DNA test ordered under this section must be disclosed to the person filing
- 37 the motion and to the state.
- 38 (7) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction
- 39 relief in the underlying case is pending at the time a motion is filed under section 1, **chapter 697,**
- 40 **Oregon Laws 2001** [*of this 2001 Act*], the circuit court shall consider the motion. If the court grants
- 41 the motion, the court shall notify the court considering the appeal or post-conviction petition of that
- 42 fact. When a court receives notice under this subsection, the court shall stay the appeal or post-
- 43 conviction proceedings pending the outcome of the motion filed under section 1, **chapter 697,**
- 44 **Oregon Laws 2001,** [*of this 2001 Act*] and any further proceedings resulting from the motion.
- 45 **SECTION 3.** Section 4, chapter 697, Oregon Laws 2001, is amended to read:

1       **Sec. 4.** (1) A person described in section 1 (1), **chapter 697, Oregon Laws 2001**, [(1)(a) of this  
 2 *2001 Act*] may file a petition in the circuit court in which the judgment of conviction was entered  
 3 requesting the appointment of counsel at state expense to assist the person in determining whether  
 4 to file a motion under section 1, **chapter 697, Oregon Laws 2001** [*of this 2001 Act*]. The petition  
 5 must be accompanied by:

6           (a) A completed affidavit of eligibility for appointment of counsel at state expense; and

7           (b) An affidavit stating that:

8           (A) The person meets the criteria in section 1 (1), **chapter 697, Oregon Laws 2001** [(1)(a) of this  
 9 *2001 Act*];

10          (B) The person is innocent of the charge for which the person was convicted or of the conduct  
 11 that resulted in a mandatory sentence enhancement;

12          (C) The identity of the perpetrator of the crime or conduct was at issue in the original prose-  
 13 cution or, if the person was documented as having mental retardation prior to the time the crime  
 14 was committed, should have been at issue; and

15          (D) The person is without sufficient funds and assets, as shown by the affidavit required by  
 16 paragraph (a) of this subsection, to hire an attorney to represent the person in determining whether  
 17 to file a motion under section 1, **chapter 697, Oregon Laws 2001** [*of this 2001 Act*].

18          (2) The court shall grant a petition filed under this section if:

19           (a) The petitioner complies with the requirements of subsection (1) of this section; and

20           (b) It appears to the court that the petitioner is financially unable to employ suitable counsel  
 21 possessing skills and experience commensurate with the nature and complexity of the matter.

22          (3) When a court grants a petition under this section, the court shall appoint the attorney ori-  
 23 ginally appointed to represent the petitioner in the action that resulted in the conviction unless the  
 24 attorney is unavailable.

25          (4) An attorney appointed under this section:

26           (a) If other than counsel provided pursuant to ORS 151.460, is entitled to compensation and ex-  
 27 penses as provided in ORS 135.055; or

28           (b) If counsel provided pursuant to ORS 151.460, is entitled to expenses as provided in ORS  
 29 135.055.

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