Testimony of Becky Straus, Legislative Director
In Support of SB 42A
House Committee on Judiciary
April 22, 2013

Chair Barker and Members of the Committee:

Thank you for the opportunity to provide comments in support of SB 42A, which clarifies that a circuit court's decision to grant or deny a post-conviction motion for DNA testing is appealable.

In the recent case of *State v. Stressla Johnson*, the Oregon Court of Appeals ruled that such decisions cannot be appealed. The central factor for the court in deciding that case was whether clear statutory authority exists for appeal of decisions on motions submitted pursuant to ORS 138.690 (requesting DNA testing). The opinion provided no commentary on the public policy value of the availability of appeal in this context, so we interpret this decision only to say that the court is bound by current statutes rather than saying that an appeal process is not proper.

SB 42A would affirmatively state for courts that defendants do have the right to appeal decisions denying or requesting DNA testing. We view this change as promoting fundamental fairness for defendants and encouraging consistent application of the DNA testing statute across jurisdictions.

In cases across the country DNA has not only been used to convict the guilty, but also to exonerate the innocent, sometimes decades after conviction and many years of incarceration. In 2009, recognizing the importance of using DNA testing as a criminal justice tool, the Legislature made a commitment to strengthening the practice and procedure of preserving DNA evidence.[1] The use of this tool ought to include the same safeguard that is employed throughout our criminal statutes – the right to appeal.

SB 42A is an important and common sense clarification to our criminal statutes. We urge your support.

Thank you for your consideration. Please feel free to be in touch with any questions or comments that you may have.

[1] SB 310 (2009), certain provisions extended by SB 731 (2011)