

# Senate Bill 321

Sponsored by Senator THATCHER, Representatives PILUSO, MCLANE (Pre-session filed.)

## 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**.

Modifies procedures by which person convicted of felony initiates proceedings to obtain DNA testing. Directs State Court Administrator to develop forms for use during court proceedings on DNA test requests. Authorizes person requesting testing to file motion requesting documentation of evidence and written materials relating to prior forensic testing. Modifies requirements of motion for DNA testing.

## A BILL FOR AN ACT

1  
2 Relating to post-conviction DNA testing; creating new provisions; and amending ORS 138.690,  
3 138.692 and 138.696.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS 138.690 to**  
6 **138.698.**

7 **SECTION 2. (1) A person described in ORS 138.690 may file in the circuit court in which**  
8 **the judgment of conviction was entered a petition to commence post-conviction DNA testing**  
9 **proceedings under ORS 138.690 to 138.698.**

10 (2) The court may not charge a fee for any filing under ORS 138.690 to 138.698.

11 (3) The State Court Administrator shall develop forms for petitions, orders and other  
12 documents required for proceedings under ORS 138.690 to 138.698. The State Court Adminis-  
13 trator shall provide the forms to the clerk of each circuit court, who shall make the forms  
14 available to the public.

15 (4) After proceedings have been initiated by a person described in ORS 138.690 under  
16 subsection (1) of this section:

17 (a) Upon motion of the person, the court shall order that the person be provided with  
18 an inventory of, and documentation of the chain of custody for, all evidence related to the  
19 investigation or prosecution that resulted in the judgment of conviction. If forensic testing  
20 on the evidence has previously occurred, the court shall further order that the person be  
21 provided with access to the results of the testing and to any other written materials related  
22 to the testing, including reports, underlying data, notes and protocols.

23 (b) Upon motion of the person and a showing that good faith efforts to obtain discovery  
24 materials from prior defense counsel were made and were unsuccessful, the court shall order  
25 that the person be provided reasonable access to discovery materials in the possession of the  
26 district attorney and law enforcement agencies that the person would have received under  
27 ORS 135.815 prior to trial.

28 (5) ORS 138.690 to 138.698 are not the exclusive means by which a person convicted of a  
29 crime may obtain post-conviction DNA testing, and nothing in ORS 138.690 to 138.698 limits  
30 or affects any other means by which a person convicted of a crime may obtain post-

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 **conviction DNA testing.**

2 **SECTION 3.** ORS 138.690 is amended to read:

3 138.690. (1) A person may file in the circuit court in which the judgment of conviction was en-  
4 tered a motion requesting the performance of DNA (deoxyribonucleic acid) testing on specific evi-  
5 dence if the person has been convicted of aggravated murder or a felony in which DNA evidence  
6 [could exist and is relevant to establishing an element of the offense] **is related to the investigation**  
7 **or prosecution that resulted in the judgment of conviction.**

8 **(2) If, after filing a petition to commence proceedings under section 2 of this 2019 Act**  
9 **or a motion under this section, the person notifies the court that the person does not wish**  
10 **to proceed with DNA testing, the court shall dismiss the proceedings without prejudice.**

11 **SECTION 4.** ORS 138.692 is amended to read:

12 138.692. [(1)(a)] (1) When a person files a motion under ORS 138.690 requesting the performance  
13 of DNA (deoxyribonucleic acid) testing on evidence, the motion must be supported by [an affidavit.  
14 The affidavit must]:

15 [(A)] (a) [Contain a statement] **A sworn declaration by the person** that the person is innocent  
16 of the offense for which the person was convicted; **and**

17 [(B)] (b) **A statement that:**

18 (A) [Identify] **Identifies** the evidence to be tested with as much specificity as is reasonably  
19 practicable and a theory of defense that the DNA testing would support. The evidence must have  
20 been secured in connection with the prosecution, including the investigation, that resulted in the  
21 conviction of the person; and

22 [(C)] (B) [Include] **Includes** the results of any previous DNA test of the evidence if a previous  
23 DNA test was conducted by either the prosecution or the defense.

24 [(b) Consistent with the statement of innocence described in paragraph (a)(A) of this subsection, the  
25 person must present a prima facie showing that DNA testing of the evidence would, assuming  
26 exculpatory results, lead to a finding that the person is actually innocent of the offense for which the  
27 person was convicted.]

28 (2) The state shall answer the motion requesting the performance of DNA testing and may refute  
29 the basis for the motion.

30 (3) Upon the motion of a party or the court's own motion, the court may allow the testimony  
31 of witnesses if the testimony will assist the court in making its determination to grant or deny the  
32 motion requesting the performance of DNA testing. The court may not allow testimony from the  
33 victim of the offense without the consent of the victim.

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

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

37 [(b)] (a) Unless the parties stipulate otherwise, the evidence to be tested has been subject to a  
38 chain of custody sufficient to establish that the evidence has not been altered in any material as-  
39 pect;

40 [(c)] (b) The motion is made for the purpose of demonstrating the innocence of the person of the  
41 offense and not to delay the execution of the sentence or administration of justice; and

42 [(d)] (c) There is a reasonable possibility, assuming exculpatory results, that the testing would  
43 lead to a finding that the person is actually innocent of the offense for which the person was con-  
44 victed.

45 (5) In granting a motion under this section, the court may impose reasonable conditions designed

1 to protect the interests of the state in the integrity of the evidence and the testing process.

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

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

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

9 (b) The state if counsel at state expense has been appointed under ORS 138.694.

10 (8) The laboratory conducting the DNA test shall provide [*a copy of*] **access to** the results of  
11 the test, **and to any other written materials related to the testing, including reports, under-**  
12 **lying data, notes and protocols**, to the person filing the motion and to the state.

13 (9) Notwithstanding the fact that an appeal of the conviction or a petition for post-conviction  
14 relief in the underlying case is pending at the time a motion is filed under ORS 138.690, the circuit  
15 court shall consider the motion. If the court grants the motion, the court shall notify the court  
16 considering the appeal or post-conviction petition of that fact. When a court receives notice under  
17 this subsection, the court shall stay the appeal or post-conviction proceedings pending the outcome  
18 of the motion filed under ORS 138.690 and any further proceedings resulting from the motion.

19 (10) The court shall make **written** findings when issuing an order under this section.

20 **SECTION 5.** ORS 138.696 is amended to read:

21 138.696. (1) If DNA (deoxyribonucleic acid) testing ordered under ORS 138.692 produces incon-  
22 clusive evidence or evidence that is unfavorable to the person requesting the testing:

23 (a) The court shall forward the results to the State Board of Parole and Post-Prison Supervision;  
24 and

25 (b) The Department of State Police shall compare the evidence to DNA evidence from unsolved  
26 crimes in the Combined DNA Index System.

27 (2) If DNA testing ordered under ORS 138.692 produces exculpatory evidence, the person who  
28 requested the testing may file in the court that ordered the testing a motion for a new trial based  
29 on newly discovered evidence. Notwithstanding the time limit established in ORCP 64 F, a person  
30 may file a motion under this subsection at any time during the 60-day period that begins on the date  
31 the person receives the test results.

32 **(3)(a) If DNA testing ordered under ORS 138.692 produces an unidentified DNA profile and**  
33 **the profile meets the applicable database submission requirements, the court shall order the**  
34 **Department of State Police to compare the profile, by either uploading the profile or per-**  
35 **forming a search, to profiles in the Combined DNA Index System and any DNA database**  
36 **maintained by the department.**

37 **(b) The department shall provide any results obtained from the comparison performed**  
38 **under paragraph (a) of this subsection to the person who requested testing and to the state.**

39 [(3)] (4) Upon receipt of a motion filed under subsection (2) of this section and notwithstanding  
40 the time limits in ORCP 64 F, the court shall hear the motion pursuant to ORCP 64.