



## OREGON DEPARTMENT OF JUSTICE

TO: Senate Committee on Judiciary

FROM: Leslie Wu, Policy Advisor to Attorney General Rayfield, Oregon Department of Justice

DATE: April 1, 2025

SUBJECT: Testimony on SB 169 -1 Amendment

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The Oregon Department of Justice is opposed to SB 169 and the -1 amendment as written but is supportive of the underlying policy goal of the bill. We would appreciate the opportunity to engage in continued work with the advocates and other stakeholders to improve the criminal justice system's response to convictions obtained using forensic scientific evidence that has been discredited or invalidated.

Forensic scientific evidence is constantly evolving. Some formerly used forensic techniques have been exposed as imprecise or inaccurate over time. For example, in 2012, the FBI and US DOJ announced that FBI examiner testimony on hair microscopy contained errors in at least 90 percent of cases and disavowed the discipline. Bite mark evidence, shoe print evidence, and the use of polygraph machines to evaluate truthfulness of confessions are also forensic science practices that were once accepted and have since been limited or eliminated from use in criminal trials.

On the other hand, many criminal cases today involve the use of valid forensic scientific evidence. That evidence is subject to foundational requirements under Oregon Evidence Code Rules 702, 401, and 403 and subject to the factors stated in *State v. Brown*, 297 Or 404 (1984), and *State v. O'Key*, 321 Or 285 (1995). The *Brown/O'Key* factors require a court to assess whether the scientific technique has undergone scrutiny of others in the field through testing, peer review, and publication, its acceptance within the relevant scientific community, its known or potential rate of error, the existence of operational standards, and the degree to which it relies on subjective interpretation.

The existing post-conviction review system does not create a mechanism for a convicted person to effectively challenge a conviction obtained using discredited scientific evidence if, at the time of the trial, the science was accepted. As written, the -1 amendment to SB 169 allows a convicted person to file a petition for post-conviction relief based on “currently available relevant forensic scientific evidence.” Allowing a post-conviction pathway to unwind wrongful convictions obtained with the use of debunked forensic scientific evidence is extremely important. However, the current drafting of the bill is overly broad in ways that would encompass forensic scientific evidence that is still admitted in federal and state courts under *Brown/O’Key*. The bill would benefit from additional discussions between stakeholders and advocates to refine the solution to this important problem.

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