

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

DATE: 5-30-01

(Filing No. H-647)

CRIMINAL JUSTICE

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1250, L.D. 1698, Bill, "An Act to Amend the Laws Governing DNA Testing"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 15 MRSA c. 305-B is enacted to read:

CHAPTER 305-B

POST-JUDGMENT CONVICTION MOTION FOR DNA ANALYSIS

§2136. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. CODIS. "CODIS" means the Federal Bureau of Investigation's national DNA identification index system that allows for storage and exchange of DNA records submitted by state and local forensic DNA laboratories and is derived from the Combined DNA Index System.

2. Crime lab. "Crime lab" means the Maine State Police Crime Laboratory located in Augusta.

3. DNA. "DNA" means deoxyribonucleic acid.

4. DNA analysis. "DNA analysis" means DNA typing tests that derive identification information specific to a person from that person's DNA.

COMMITTEE AMENDMENT

2           **5. DNA record.** "DNA record" means DNA identification  
3 information obtained from DNA analysis and stored in the state  
4 DNA data base or CODIS.

6           **6. DNA sample.** "DNA sample" means a blood sample provided  
7 by a person convicted of one of the offenses listed in this  
8 chapter or submitted to the crime lab for analysis pursuant to a  
9 criminal investigation.

10           **7. State DNA data base.** "State DNA data base" means the  
11 DNA identification record system administered by the Chief of the  
12 State Police.

13           **8. State DNA data bank.** "State DNA data bank" means the  
14 repository of DNA samples maintained by the Chief of the State  
15 Police at the crime lab collected pursuant to chapter 194 and  
16 this chapter.

17  
18  
19           **§2137. Postjudgment of conviction motion for DNA**  
20 **analysis; new trial based on analysis results**

21  
22           A person convicted of a crime under the laws of this State  
23 that carries the potential punishment of imprisonment of at least  
24 20 years and for which the person is in actual execution of a  
25 sentence of imprisonment or is subject to a sentence of  
26 imprisonment that is to be served in the future because another  
27 sentence must be served first may file a written postjudgment of  
28 conviction motion in the underlying criminal proceeding moving  
29 the court to order DNA analysis of evidence in the control or  
30 possession of the State that is related to the underlying  
31 investigation or prosecution that led to the person's conviction  
32 and a new trial based on the results of that analysis as  
33 authorized by this chapter.

34  
35           **§2138. Motion; process**

36  
37           **1. Filing motion.** A person authorized in section 2137 who  
38 chooses to move for DNA analysis shall file the motion in the  
39 underlying criminal proceeding. The motion must be assigned to  
40 the trial judge or justice who imposed the sentence unless that  
41 judge or justice is unavailable, in which case the appropriate  
42 chief judge or chief justice shall assign the motion to another  
43 judge or justice. Filing and service must be made in accordance  
44 with Rule 49 of the Maine Rules of Criminal Procedure.

45           **2. Preservation of evidence.** If a motion is filed under  
46 this chapter, the court shall order the State to preserve during  
47 the pendency of the proceeding all evidence in the State's  
48 possession or control that could be subjected to DNA analysis.  
49  
50

2 The State shall prepare an inventory of the evidence and submit a  
3 copy of the inventory to the defense and the court. If evidence  
4 is intentionally destroyed after the court orders its  
5 preservation, the court may impose appropriate sanctions.

6 3. Counsel. If the court finds that the person filing a  
7 motion under section 2137 is indigent, the court may appoint  
8 counsel for the person at any time during the proceedings under  
9 this chapter.

10 4. Proof required. The court shall order DNA analysis if a  
11 person authorized under section 2137 presents prima facie  
12 evidence that:

13 A. The evidence sought to be analyzed is material to the  
14 issue of the person's identity as the perpetrator of, or  
15 accomplice to, the crime that resulted in the conviction;

16 B. A sample of the evidence is available for DNA analysis;

17 C. The evidence to be tested has been subject to a chain of  
18 custody sufficient to establish that it has not been  
19 substituted, tampered with, replaced or altered in a  
20 material way;

21 D. The evidence was not previously subjected to DNA  
22 analysis or, if previously analyzed, will be subject to DNA  
23 analysis technology that was not available when the person  
24 was convicted; and

25 E. The identity of the person as the perpetrator of the  
26 crime that resulted in the conviction was at issue during  
27 the person's trial.

28 5. Court finding; analysis ordered. The court shall state  
29 its findings of fact on the record or shall make written findings  
30 of fact supporting its decision to grant or deny a motion to  
31 order DNA analysis. If the court grants a motion for DNA  
32 analysis under this section, the crime lab shall perform DNA  
33 analysis on the identified evidence and on a DNA sample obtained  
34 from the person.

35 6. Appeal from court decision to grant or deny motion to  
36 order DNA analysis. An aggrieved person may not appeal as a  
37 matter of right from the denial of a motion to order DNA  
38 analysis. The time, manner and specific conditions for taking  
39 that appeal to the Supreme Judicial Court, sitting as the Law  
40 Court, are as the Supreme Judicial Court provides by rule. The  
41 State may not appeal from a court order to grant a motion to  
42 order DNA analysis.

2           7. Payment. If the person authorized in section 2137 is  
3 able, the person shall pay for the cost of the DNA analysis. If  
4 the court finds that the person is indigent, the crime lab shall  
5 pay for the cost of DNA analysis ordered under this section.

6  
7           8. Results. The crime lab shall provide the results of the  
8 DNA analysis under this chapter to the court, the person  
9 authorized in section 2137 and the attorney for the State. Upon  
10 motion by the person or the attorney for the State, the court may  
11 order that copies of the analysis protocols, laboratory  
12 procedures, laboratory notes and other relevant records compiled  
13 by the crime lab be provided to the court and to all parties.

14  
15           A. If the results of the DNA analysis are inconclusive or  
16 show that the person is the source of the evidence, the  
17 court shall deny any motion for a new trial. If the DNA  
18 analysis results show that the person is the source of the  
19 evidence, the defendant's DNA record must be added to the  
20 state DNA data base and state DNA data bank.

21           B. If the results of the DNA analysis show that the person  
22 is not the source of the evidence and the person does not  
23 have counsel, the court shall appoint counsel if the court  
24 finds that the person is indigent. The court shall then  
25 hold a hearing at which the person must establish by clear  
26 and convincing evidence that:

27                   (1) Only the perpetrator of the crime or crimes for  
28 which the person was convicted could be the source of  
29 the evidence;

30                   (2) The evidence was collected, handled and preserved  
31 by procedures that allow the court to find that the  
32 evidence is not contaminated or is not so degraded that  
33 the DNA profile of the analyzed sample of the evidence  
34 can not be determined to be identical to the DNA sample  
35 initially collected during the investigation; and

36                   (3) The person's purported exclusion as the source of  
37 the evidence, balanced against the other evidence in  
38 the case, is sufficient to justify that the court grant  
39 a new trial.

40           9. Request for reanalysis. Upon motion of the attorney for  
41 the State, the court shall order reanalysis of the evidence and  
42 shall stay the person's motion for a new trial pending the  
43 results of DNA analysis.  
44

10. Court's findings; new trial granted or denied. The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the person authorized in section 2137 a new trial under this section.

11. Appeal from a court decision to grant or deny a motion for new trial. An aggrieved person may not appeal from the denial of a new trial as a matter of right. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule. The State may appeal as a matter of right from a court decision to grant the person a new trial to the Supreme Judicial Court, sitting as the Law Court. The time, manner and specific conditions for taking that appeal to the Supreme Judicial Court, sitting as the Law Court, are as the Supreme Judicial Court provides by rule.

12. Exhaustion. A person who has taken a direct appeal from the judgment of conviction is not precluded from utilizing the remedy of this chapter while the appeal is pending, provided that the resolution of the motion is automatically stayed pending final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law Court, on motion otherwise directs.

A person who has initiated a collateral attack upon the judgment of conviction under chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-conviction review proceeding is pending, provided that resolution of the motion is automatically stayed pending final disposition of the post-conviction review proceeding unless the assigned justice in the post-conviction review proceeding otherwise directs.

13. Victim notification. When practicable, the attorney for the State shall make a good faith effort to give written notice of a motion under this section to the victim of the person described in subsection 1 or to the victim's family if the victim is deceased. The notice must be by first-class mail to the victim's last known address. Upon the victim's request, the attorney for the State shall give the victim notice of the time and place of any hearing on the motion and shall inform the victim of the court's grant or denial of a new trial to the person.

14. Preservation of biological evidence. Effective October 15, 2001, the investigating law enforcement agency shall preserve any biological evidence identified during the investigation of a crime or crimes for which any person may file a postjudgment of conviction motion for DNA analysis under this section. The

evidence must be preserved for the period of time that any person is incarcerated in connection with that case.

15. Report. Beginning January 2003 and annually thereafter, the Department of Public Safety shall report on post-conviction DNA analysis to the joint standing committee of the Legislature having jurisdiction over criminal justice matters. The report must include the number of postjudgment of conviction analyses completed, costs of the analyses and the results. The report also may include recommendations to improve the postjudgment of conviction analysis process.'

Further amend the bill by inserting at the end before the summary the following:

#### **'FISCAL NOTE**

The State Police program within the Department of Public Safety will incur some minor additional costs to conduct additional DNA testing. These costs can be absorbed within the program's existing budgeted resources.

The Judicial Department will require additional General Fund appropriations for indigent defense costs as a result of establishing a process for post-conviction motions related to DNA analysis. The amount required can not be estimated at this time and will depend on the number of motions filed and on the cost of court-appointed counsel assigned to these proceedings.

The additional costs associated with these post-conviction motions can be absorbed by the Department of the Attorney General and the Department of Corrections utilizing existing budgeted resources.'

#### **SUMMARY**

This amendment replaces the bill. The amendment creates a new chapter that sets up the process for postjudgment of conviction DNA analysis. A person convicted of a crime under the laws of this State that carries the potential punishment of imprisonment of at least 20 years and for which the person is currently in actual execution of a sentence of imprisonment or is subject to a sentence of imprisonment that is to be served in the future because another sentence must be served first may file a written postjudgment of conviction motion in the underlying

COMMITTEE AMENDMENT "A" to H.P. 1250, L.D. 1698

2 criminal proceeding, moving the court to order DNA analysis of  
evidence in the control or possession of the State that is  
4 related to the underlying investigation or prosecution that led  
to the person's conviction and a new trial based on the results  
of that analysis. The amendment also adds a fiscal note.