

# MAINE STATE LEGISLATURE

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**ROS**

L.D. 1907

DATE: 4/11/06

(Filing No. H-994)

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
122ND LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1348, L.D. 1907, Bill, "An Act To Amend the Law 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'Sec. 1. 15 MRSA §2137, as enacted by PL 2001, c. 469, §1, is repealed and the following enacted in its place:

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

**1. Motion.** A person who has been convicted of and sentenced for a crime under the laws of this State that carries the potential punishment of imprisonment of at least one year and for which the person is in actual execution of either a pre-Maine Criminal Code sentence of imprisonment, including parole, or a sentencing alternative pursuant to Title 17-A, section 1152, subsection 2 that includes a term 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 criminal proceeding moving the court to order DNA analysis of evidence in the control or possession of the State that is 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 as authorized by this chapter. For criminal proceedings in which

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2 DNA testing was conducted before September 1, 2006, the person  
3 may file a written postjudgment of conviction motion in the  
4 underlying criminal proceeding moving the court for a new trial  
5 based on the results of the DNA testing already conducted using  
6 the standard set forth in this chapter if the DNA test results  
7 show that the person is not the source of the evidence.

8 2. Time for filing. A motion under this section must be  
9 filed by the later of:

10 A. September 1, 2008, including a motion pertaining to  
11 criminal proceedings in which DNA testing was conducted  
12 before September 1, 2006;

13 B. Two years after the date of conviction; and

14 C. In cases in which the request for analysis is based on  
15 the existence of new technology with respect to DNA analysis  
16 that is capable of providing new material information,  
17 within 2 years from the time that the technology became  
18 commonly known and available.

19 Sec. 2. 15 MRSA §2138, sub-§4, as enacted by PL 2001, c. 469,  
20 §1, is repealed.

21 Sec. 3. 15 MRSA §2138, sub-§4-A is enacted to read:

22 4-A. Standard for ordering DNA analysis. The court shall  
23 order DNA analysis if a person authorized under section 2137  
24 presents prima facie evidence that:

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

26 B. The evidence to be tested has been subject to a chain of  
27 custody sufficient to establish that the evidence has not  
28 been substituted, tampered with, replaced or altered in a  
29 material way;

30 C. The evidence was not previously subjected to DNA  
31 analysis or, if previously analyzed, will be subject to DNA  
32 analysis technology that was not available when the person  
33 was convicted;

34 D. The identity of the person as the perpetrator of the  
35 crime that resulted in the conviction was at issue during  
36 the person's trial; and

37 E. The evidence sought to be analyzed, or the additional  
38 information that the new technology is capable of providing  
39 regarding evidence sought to be reanalyzed, is material to  
40 the case.

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the issue of whether the person is the perpetrator of, or accomplice to, the crime that resulted in the conviction.

Sec. 4. 15 MRSA §2138, sub-§8, ¶B, as enacted by PL 2001, c. 469, §1, is amended to read:

B. If the results of the DNA analysis show that the person is not the source of the evidence and the person does not have counsel, the court shall appoint counsel if the court finds that the person is indigent. The court shall then hold a hearing ~~at which the person must establish by clear and convincing evidence that~~ pursuant to subsection 10.

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

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

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

Sec. 5. 15 MRSA §2138, sub-§10, as enacted by PL 2001, c. 469, §1, is repealed and the following enacted in its place:

**10. Standard for granting new trial; court's findings; new trial granted or denied.** If the results of the DNA testing under this section show that the person is not the source of the evidence, the person authorized in section 2137 must show by clear and convincing evidence that:

A. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the evidence, and that the DNA test results, when considered with all the other evidence in the case, old and new, admitted in the hearing conducted under this section on behalf of the person show that the person is actually innocent. If the court finds that the person authorized in section 2137 has met the evidentiary burden of this paragraph, the court shall grant a new trial;

B. Only the perpetrator of the crime or crimes for which the person was convicted could be the source of the

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2 evidence, and that the DNA test results, when considered  
3 with all the other evidence in the case, old and new,  
4 admitted in the hearing conducted under this section on  
5 behalf of the person would make it probable that a different  
6 verdict would result upon a new trial; or

7 C. All of the prerequisites for obtaining a new trial based  
8 on newly discovered evidence are met as follows:

10 (1) The DNA test results, when considered with all the  
11 other evidence in the case, old and new, admitted in  
12 the hearing conducted under this section on behalf of  
13 the person would make it probable that a different  
14 verdict would result upon a new trial;

16 (2) The proffered DNA test results have been  
17 discovered by the person since the trial;

18 (3) The proffered DNA test results could not have been  
19 obtained by the person prior to trial by the exercise  
20 of due diligence;

22 (4) The DNA test results and other evidence admitted  
23 at the hearing conducted under this section on behalf  
24 of the person are material to the issue as to who is  
25 responsible for the crime for which the person was  
26 convicted; and

28 (5) The DNA test results and other evidence admitted  
29 at the hearing conducted under this section on behalf  
30 of the person are not merely cumulative or impeaching,  
31 unless it is clear that such impeachment would have  
32 resulted in a different verdict.

34 The court shall state its findings of fact on the record or make  
35 written findings of fact supporting its decision to grant or deny  
36 the person authorized in section 2137 a new trial under this  
37 section. If the court finds that the person authorized in  
38 section 2137 has met the evidentiary burden of paragraph A, the  
39 court shall grant a new trial.

42 For purposes of this subsection, "all the other evidence in the  
43 case, old and new," means the evidence admitted at trial;  
44 evidence admitted in any hearing on a motion for new trial  
45 pursuant to Rule 33 of the Maine Rules of Criminal Procedure;  
46 evidence admitted at any collateral proceeding, state or federal;  
47 evidence admitted at the hearing conducted under this section  
48 relevant to the DNA testing and analysis conducted on the sample;  
49 and evidence relevant to the identity of the source of the DNA  
50 sample.

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2           **Sec. 6. Effective date.** This Act takes effect September 1,  
2006.'

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**SUMMARY**

10           The amendment replaces the bill. It amends the postjudgment  
12 of conviction motion for DNA analysis procedures in the Maine  
Revised Statutes, Title 15, chapter 305-B and specifically does  
the following:

14           1. It repeals and replaces Title 15, section 2137 in order  
16 to:

18           A. Expand the universe of convicted persons authorized to  
20 seek relief under Title 15, chapter 305-B from those persons  
22 who have been convicted of a murder or of a Class A, B or C  
24 crime, formerly referred to as a felony crime, that carries  
26 a potential punishment of imprisonment of at least 20 years  
and whose actual sentence includes a term of imprisonment  
that has not yet been fully served to those persons who have  
been convicted of any Maine felony crime and whose actual  
sentence includes straight imprisonment or imprisonment  
accompanied by parole, probation, supervised release or  
administrative release that has not yet been fully served.  
A "Maine felony crime" is an "infamous crime" and includes  
any former or current crime inside or outside of the Maine  
Criminal Code or any former pre-Maine Criminal Code crime  
that carries or carried a potential punishment of  
imprisonment for one year or more. See Opinion of the  
Justices, 338 A.2d 802 (Me. 1975) (careful examination of  
the history of the concept of "infamous crime" as used in  
Article 1, section 7 of the Constitution of Maine);

36           B. Clarify that a qualifying person who may have previously  
38 sought relief under Title 15, chapter 305-B and obtained DNA  
40 test results that showed that the person was not the source  
of the evidence may again seek relief based upon new  
standards set forth in section 2138, subsection 10; and

42           C. Establish a 2-year period of limitation for filing a  
44 motion seeking relief under Title 15, chapter 305-B. The  
46 period runs from the latest of: within 2 years of the  
effective date of this Act, including for criminal  
48 proceedings in which DNA testing was conducted before  
September 1, 2006; within 2 years after the date of a  
50 qualifying conviction; and, in cases in which the request  
for analysis is based on the existence of new technology

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2 with respect to DNA analysis that is capable of providing  
new material information, within 2 years from the time that  
4 the technology became commonly known and available.

6 2. It repeals Title 15, section 2138, subsection 4 and  
replaces it with subsection 4-A, thereby amending the law by:

8 A. Changing the headnote to better identify the purpose  
served by the subsection;

10 B. Changing the order of the 5 things to be demonstrated by  
12 the convicted person so that presenting prima facie evidence  
as to materiality of the evidence sought to be analyzed,  
14 currently Title 15, section 2138, subsection 4, paragraph A,  
is instead listed last as a new paragraph E, as logically it  
16 should be; and

18 C. Including in the new paragraph E consideration of what  
information DNA analysis technology that was not available  
20 when the person was convicted is capable of providing with  
respect to the evidence sought to be analyzed in the event  
22 the evidence has been previously analyzed. New technology  
that is not capable of producing new information with  
24 respect to who is responsible for the crime, such as  
technology that simply speeds up or simplifies the analysis  
26 process, would not be material and thus would not support a  
new court-ordered DNA analysis of the evidence.

28 3. It strikes from Title 15, section 2138, subsection 8,  
30 paragraph B the criteria for the hearing required in the event  
the results of the DNA analysis show that the convicted person is  
32 not the source of the evidence, instead referring to the criteria  
in Title 15, section 2138, subsection 10.

34 4. It repeals and replaces Title 15, section 2138,  
36 subsection 10 in order to:

38 A. Change the headnote to identify the fact that the  
standard for granting a new trial is now contained in the  
40 subsection;

42 B. Add to the subsection 3 alternative standards for  
granting a new trial in the event the results of the DNA  
44 analysis show the convicted person is not the source of the  
evidence. The 3rd and final standard, new paragraph C,  
46 differs from the first 2 in that a convicted person need not  
establish by clear and convincing evidence that only the  
48 perpetrator of the crime or crimes for which the person was  
convicted can be the source of the evidence. Because the  
50 convicted person is not required to make such a showing, the

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2 standard required under new paragraph C is made up of the 5  
 3 prerequisites for obtaining a new trial based on newly  
 4 discovered evidence set forth in State v. Casale, 148 Me.  
 5 312, 319-20, 92 A.2d 718, 722 (1952) and consistently  
 6 applied by the Law Court to the present. See 1 Cluchey &  
 7 Seitzinger, Maine Criminal Practice, § 33.3 at vi-33, n. 24  
 8 (Gardiner ed. 1995); State v. Cookson, 2003 ME 136, ¶29, 837  
 9 A.2d 101, 110. The convicted person must show all 5  
 10 prerequisites by clear and convincing evidence. Cookson,  
 11 Id.; State v. Doyon, 1999 ME 185, ¶9, 745 A.2d 365, 367;  
 12 State v. Andolino, 1999 ME 14, ¶8, 723 A.2d 870, 873. In  
 13 the first and 2nd standards listed as paragraphs A and B,  
 14 because the convicted person is required to make such a  
 15 showing, the 5 prerequisites for obtaining a new trial based  
 16 on newly discovered evidence are truncated. Prerequisites 2  
 17 and 3 are eliminated as a matter of fairness in order to  
 18 avoid foreclosing relief based on these timing hurdles.  
 19 Prerequisites 4 and 5 are eliminated as automatically  
 20 necessarily satisfied in these circumstances. The first and  
 21 2nd standards differ from one another, however, in what  
 22 additionally must be established by the convicted person in  
 23 order to obtain a new trial. Under the first standard, new  
 24 paragraph A, the person must also establish by clear and  
 25 convincing evidence that the DNA test results, when  
 26 considered with all the other admitted evidence, old and  
 27 new, show that the person is actually innocent of the crime  
 28 or crimes for which the person was convicted. Under the  
 29 second standard, new paragraph B, the person need not show  
 30 actual innocence, but instead must establish by clear and  
 31 convincing evidence that the DNA test results, when  
 32 considered with all the other admitted evidence, old and  
 33 new, would make it probable that a different verdict would  
 34 result upon a new trial. This second standard is like that  
 35 currently found in Title 15, section 2138, subsection 8,  
 36 paragraph B; and

37  
 38 C. Add a definition for "all the other evidence in the  
 39 case, old and new," as used in new paragraphs A and B and  
 40 new paragraph C, subparagraph (1). Further, although not  
 41 expressly stated in paragraphs A and B and paragraph C,  
 42 subparagraph (1), it is intended that the court, as in any  
 43 hearing for a new trial based on newly discovered evidence,  
 44 must determine both weight and credibility to be attached to  
 45 the newly discovered evidence. See State v. Hardy, 501,  
 46 A.2d 815, 816 (Me. 1985). And in the context of the DNA  
 47 analysis itself, this would include consideration by the  
 48 court as to whether the convicted person demonstrated that  
 49 the evidence was collected, handled and preserved by  
 50 procedures that allow the court to find that the evidence is  
 not contaminated or is not so degraded that the DNA profile

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2 of the analyzed sample of the evidence cannot be determined  
to be identical to the DNA sample initially collected during  
4 the investigation. See Title 15, section 2138, subsection  
8, paragraph B, subparagraph (2).

6 It is intended that the Maine Rules of Evidence apply at any  
hearing conducted under the subsection. See M.R. Evid. 1101.

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5. It establishes an effective date of September 1, 2006.

FISCAL NOTE REQUIRED  
(See attached)



# 122nd MAINE LEGISLATURE

LD 1907

LR 2904(02)

## An Act To Amend the Law Governing DNA Testing

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Judiciary

Fiscal Note Required: Yes

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### Fiscal Note

Undetermined current biennium cost increase - General Fund

Potential current biennium cost decrease - General Fund

#### Correctional and Judicial Impact Statements:

This legislation allows post-judgment conviction motions for DNA analysis to be brought by certain convicted persons and establishes standards for granting a new trial. These changes will likely result in an increase in the number of cases filed in the court system. This new caseload may require additional judges, clerks and security and necessitate additional indigent defense costs. The Department of the Attorney General may also experience an increase in workload. The bill has the potential for early release of prisoners in a few cases, decreasing correctional costs to the Department of Corrections.