

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## SECOND REGULAR SESSION-2006

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Legislative Document

No. 1907

H.P. 1348

House of Representatives, January 4, 2006

### An Act To Amend the Law Governing DNA Testing

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PARADIS of Frenchville.  
Cosponsored by Senator MARTIN of Aroostook and  
Representatives: CAMPBELL of Newfield, CHURCHILL of Washburn, CUMMINGS of  
Portland, DAVIS of Augusta, DUPLESSIE of Westbrook, GERZOF SKY of Brunswick,  
GROSE of Woolwich, LUNDEEN of Mars Hill, Speaker RICHARDSON of Brunswick,  
SMITH of Van Buren, Senators: DOW of Lincoln, NUTTING of Androscoggin.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §2136, sub-§1-A** is enacted to read:

6 **1-A. Biological evidence.** "Biological evidence" means:

8 **A. The contents of a sexual assault examination kit; or**

10 **B. Any item that contains blood, semen, hair, saliva, skin**  
12 **tissue or other identifiable biological material, whether**  
14 **that evidence is catalogued separately or is present on**  
16 **other evidence, including, but not limited to, clothing,**  
18 **ligatures, bedding or other household materials, drinking**  
20 **cups and cigarettes.**

22 **Sec. 2. 15 MRSA §2136, sub-§6-A** is enacted to read:

24 **6-A. Petitioner.** "Petitioner" means a person authorized  
26 **pursuant to section 2137 to bring a postjudgment of conviction**  
28 **motion to order DNA analysis.**

30 **Sec. 3. 15 MRSA §2137,** as enacted by PL 2001, c. 469, §1, is  
32 amended to read:

34 **§2137. Postjudgment of conviction motion for DNA analysis; new**  
36 **trial based on analysis results**

38 A person convicted of a crime under the laws of this State  
40 ~~that carries the potential punishment of imprisonment of at least~~  
42 ~~20 years and for which the person is in actual execution of a~~  
44 ~~sentence of imprisonment or is subject to a sentence of~~  
46 ~~imprisonment that is to be served in the future because another~~  
48 ~~sentence must be served first~~ may file, at any time, a written  
50 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.

52 **Sec. 4. 15 MRSA §2138,** as enacted by PL 2001, c. 469, §1, is  
54 amended to read:

56 **§2138. Motion; process**

58 **1. Filing motion.** A person authorized in section 2137 who  
60 chooses to move for DNA analysis shall file the motion in the  
underlying criminal proceeding. The motion ~~must~~ may be assigned  
to the trial judge or justice who imposed the sentence unless  
that judge or justice is unavailable, in which case the

2 appropriate chief judge or chief justice shall assign the motion  
to another any judge or justice. Filing and service must be made  
4 in accordance with Rule 49 of the Maine Rules of Criminal  
Procedure.

6 1-A. Response; hearing. The State shall file a response to  
the motion filed pursuant to subsection 1 within 30 days of  
8 receipt of the motion. The court shall hear the motion no sooner  
than 30 days or later than 90 days after the motion is filed  
10 pursuant to subsection 1.

12 2. Preservation of evidence. If a motion is filed under  
this chapter, the court shall order the State to preserve  
14 during the pendency of the proceeding all evidence in the State's  
possession or control that could be subjected to DNA analysis for  
16 the period of time that a person remains incarcerated, on  
probation, civilly committed or subject to registration as a sex  
18 offender under Title 34-A, chapter 15. When a motion is  
filed pursuant to this chapter, the State shall prepare an  
20 inventory of the evidence and submit a copy of the inventory to  
the defense and the court. If evidence is intentionally  
22 destroyed after the court orders its preservation, the court may  
impose appropriate sanctions on the responsible party.

24 2-A. Discovery. Following the filing of a motion pursuant  
26 to this chapter, the court may:

28 A. Order the State to locate and provide the petitioner  
filing the motion with any documents, notes, logs or reports  
30 relating to items of physical evidence collected in  
connection with the petitioner's case and assist the  
32 petitioner in locating items of biological evidence that the  
State contends may have been lost or destroyed. The court  
34 may order the State to take reasonable measures to locate  
biological evidence that may be in the State's custody or to  
36 assist the petitioner in locating evidence that may be in  
the custody of a public or private hospital, laboratory or  
38 other facility;

40 B. Order the production of laboratory reports, including  
the underlying data and notes, that have been prepared in  
42 connection with evidence that has previously been subjected  
to DNA analysis; or

44 C. Require that, if any DNA analysis or biological evidence  
testing was previously conducted by either the State or the  
46 petitioner without the knowledge of the other party, such  
analysis or testing be revealed in the motion for analysis  
48 or the response.

50

2           **3. Counsel; fees.** If the court finds that the person  
3 ~~filing a motion under section 2137~~ petitioner is indigent, the  
4 court may appoint counsel for the person petitioner at any time  
5 during the proceedings under this chapter. If the petitioner has  
6 retained private pro bono counsel, including, but not limited to,  
7 counsel from a nonprofit organization that represents indigent  
8 persons, the court may award reasonable attorney's fees and costs  
9 at the conclusion of the litigation.

10           **4. Proof required.** The court shall order DNA analysis if a  
11 ~~person authorized under section 2137~~ petitioner presents prima  
12 facie 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 ~~petitioner would not have been convicted, or would have~~  
17 ~~received a lesser sentence, if favorable results had been~~  
18 ~~obtained through DNA analysis at the time of the original~~  
19 ~~prosecution;~~  
20 petitioner would not have been convicted, or would have  
21 received a lesser sentence, if favorable results had been  
22 obtained through DNA analysis at the time of the original  
23 prosecution;

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

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

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

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

36           F. The application for testing is being made for the  
37 purpose of demonstrating innocence or the appropriateness of  
38 a lesser sentence and not to delay unreasonably the  
39 execution of sentence or administration of justice.

40           **5. Court finding; analysis ordered.** The court shall state  
41 its findings of fact on the record or shall make written findings  
42 of fact supporting its decision to grant or deny a motion to  
43 order DNA analysis. ~~If the court grants a motion for DNA~~  
44 ~~analysis under this section, the crime lab shall perform DNA~~  
45 ~~analysis on the identified evidence and on a DNA sample obtained~~  
46 ~~from the person.~~  
47 analysis on the identified evidence and on a DNA sample obtained  
48 from the person.

If the court orders DNA analysis:

2  
4     A. The analysis must be conducted by a facility mutually  
6     acceptable to the petitioner and the State and approved by  
8     the court. If the parties are unable to agree, the court  
   shall designate the analysis facility and provide the  
   parties with reasonable opportunity to be heard on the issue  
   of the choice of the laboratory;

10    B. The court shall impose reasonable conditions on the  
12    analysis to protect the parties' interests in the integrity  
   of the evidence and the analysis process; and

14    C. The court may make other orders it considers  
16    appropriate, including, but not limited to, requiring the  
   collection and DNA analysis of biological samples from a 3rd  
   party. The court may also:

18           (1) Specify the type of DNA analysis to be used;

20           (2) Specify the testing procedure to be followed;

22           (3) Require the preservation of some portion of the  
24           sample for the purpose of repeating the DNA analysis; or

26           (4) Require additional DNA analysis if the results of  
28           the initial DNA analysis are inconclusive or otherwise  
   merit additional scientific analysis.

30    Notwithstanding any law to the contrary, a sample taken  
32    pursuant to this paragraph from a 3rd party is exempt from  
34    any law requiring the disclosure of information to the  
   public.

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

44    **7. Payment.** ~~If the person authorized in section 2137 is~~  
   ~~able, the person shall pay for the cost of the DNA analysis,--If~~  
46    ~~the court finds that the person is indigent, the crime lab shall~~  
   ~~pay for the cost of DNA analysis ordered under this section~~ DNA  
48    analysis ordered by the court pursuant to subsection 5 is  
   conducted by the crime lab, the State shall bear the costs of the  
50    DNA analysis. If the DNA analysis is performed at a private

2 laboratory, the court may order as the interests of justice  
3 require either the State or the petitioner, if the petitioner is  
4 able, to pay the costs of the DNA analysis.

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

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

22 B. If the results of the DNA analysis show that the person  
23 is not the source of the evidence ~~and the person does not~~  
24 ~~have counsel, the court shall appoint counsel if the court~~  
25 ~~finds that the person is indigent. The,~~ the court shall  
26 then hold a hearing at ~~which the person must establish by~~  
27 ~~clear and convincing evidence that,~~ pursuant to subsection  
28 10.

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

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

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

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

2           **10. Hearing on results of DNA analysis; relief.** The If the  
4 results of the DNA analysis show that the petitioner is not the  
source of the evidence, the court shall state--its-findings--of  
6 fact--on--the--record--or--make--written--findings--of--fact--supporting  
its--decision--to--grant--or--deny--the--person--authorized--in--section  
8 2137--a--new--trial--under--this--section hold a hearing to determine  
the appropriate relief to be granted the petitioner. If the  
10 petitioner does not have counsel, the court shall appoint counsel  
if the court finds that the person is indigent.

12 Based on the results of the DNA analysis and any other evidence  
14 or matter presented at the hearing, the court shall issue an  
order:

16           A. Setting aside or vacating the petitioner's judgment of  
18 conviction, judgment of not guilty by reason of mental  
disease or defect or adjudication;

20           B. Granting the petitioner a new trial or fact-finding  
hearing;

22           C. Granting the petitioner a new sentencing hearing,  
24 commitment hearing or dispositional hearing;

26           D. Discharging the petitioner from custody;

28           E. Specifying the disposition of any evidence that remains  
30 after the completion of the DNA analysis;

32           F. Granting the petitioner additional discovery on matters  
related to the DNA analysis or the underlying conviction or  
34 sentence, including, but not limited to, documents  
pertaining to the criminal investigation or the identities  
36 of other suspects; or

38           G. Directing the State to place any unidentified DNA  
profile obtained from postjudgment of conviction DNA  
40 analysis into the state DNA database and state DNA data bank.

42 The court shall state its findings of fact on the record or make  
written findings of fact supporting the order that is issued  
44 pursuant to this subsection.

46           **11. Appeal from a court decision.** An--aggrieved--person A  
petitioner or the State may not appeal from the denial--of--a--new  
48 trial order of the court made pursuant to subsection 10,  
paragraphs A to G as a matter of right. The time, and manner and  
50 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 petitioner 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 petitioner 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~~ petitioner 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~~ order made pursuant to subsection 10.

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.

Effective October 1, 2006, 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 remains incarcerated, on probation, civilly

2 committed or subject to registration as a sex offender under  
3 Title 34-A, chapter 15.

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

12 **16. Successive motions.** If the petitioner has filed a  
13 prior motion under this chapter, the petitioner may file another  
14 motion that must be heard by the court if the petitioner asserts  
15 new or different grounds for relief, including, but not limited  
16 to, factual, scientific or legal arguments not previously  
17 presented or the availability of more advanced DNA analysis  
18 technology.

19 **17. Mutual consent to DNA analysis.** This section may not  
20 be construed to prohibit a convicted person and the State from  
21 consenting to and conducting postjudgment of conviction DNA  
22 analysis without filing a motion pursuant to this chapter. The  
23 results of DNA analysis conducted pursuant to this subsection are  
24 governed by the provisions of subsections 8 and 10.

## 28 SUMMARY

29 **30** This bill, modeled on the Innocence Project's model statute  
31 for obtaining postconviction DNA testing, amends the laws  
32 regarding postjudgment conviction motions for DNA analysis in the  
33 following ways:

34 1. It allows a motion to be brought at any time by any  
35 convicted person, regardless of whether the person is  
36 incarcerated and the length of the sentence of incarceration;

37 2. It allows the motion to be brought before any judge or  
38 justice, not just the judge or justice who imposed the sentence;

39 3. It provides a time limit for the State to respond to the  
40 motion and for the court to hear the motion;

41 4. It requires the State or law enforcement agency to  
42 preserve all evidence in the State's or law enforcement agency's  
43 possession or control for the period of time that a person  
44 remains incarcerated, on probation, civilly committed or subject  
45 to registration as a sex offender;

2           5. It allows the court, if the petitioner has retained  
4 private counsel, including a nonprofit organization that  
represents indigent persons, to award reasonable attorney's fees  
and costs to that private counsel;

6  
8           6. It allows a petition to be brought if the petitioner is  
able to show that the person would not have been convicted or  
would have received a lesser sentence if favorable results had  
10 been obtained through DNA analysis at the time of the original  
prosecution;

12  
14           7. It requires the petitioner and the State to agree on a  
laboratory to perform the DNA analysis or, if agreement is not  
possible, requires the court to choose the laboratory with input  
16 from the petitioner and the State;

18           8. It requires the State to bear the costs of DNA analysis  
if it is performed by the Maine State Police Crime Laboratory  
20 located in Augusta;

22           9. It allows the court, if it orders DNA analysis, to make  
other orders including specifying the type of DNA analysis and  
24 testing procedures to be used and requiring the collection and  
analysis of biological samples from persons other than the  
26 petitioner;

28           10. If the results of the DNA analysis are inconclusive or  
show that the petitioner is the source of the DNA, the court is  
30 required to notify the petitioner's probation officer;

32           11. If the results of the DNA analysis are favorable to the  
petitioner, it requires the court to hold a hearing on the  
34 results. Based on the DNA analysis and any other evidence or  
matter raised at the hearing, the court is required to issue an  
36 order:

38           A. Setting aside or vacating the petitioner's judgment of  
conviction, judgment of not guilty by reason of mental  
40 disease or defect or adjudication;

42           B. Granting the petitioner a new trial or fact-finding  
hearing;

44           C. Granting the petitioner a new sentencing hearing,  
46 commitment hearing or dispositional hearing;

48           D. Discharging the petitioner from custody;

2 E. Specifying the disposition of any evidence that remains  
after the completion of the DNA analysis;

4 F. Granting the petitioner additional discovery on matters  
6 related to the DNA analysis or the underlying conviction or  
sentence, including, but not limited to, documents  
8 pertaining to the criminal investigation or the identities  
of other suspects; or

10 G. Directing the State to place any unidentified DNA  
12 profile obtained from postjudgment of conviction DNA  
analysis into the state DNA database and state DNA data bank;

14 12. It eliminates the requirement that the petitioner prove  
that only the perpetrator of the crime or crimes for which the  
16 petitioner was convicted could be the source of the DNA evidence;

18 13. It allows the petitioner to appeal, as a matter of  
right, the court's denial of the motion for DNA analysis;

20 14. It allows the petitioner or the State, as a matter of  
22 right, to appeal an order of the court made after the hearing  
conducted due to DNA analysis results favorable to the petitioner;

24 15. It allows successive motions for DNA analysis to be  
26 brought if the petitioner asserts new or different grounds for  
relief, including, but not limited to, factual, scientific or  
28 legal arguments not previously presented or the availability of  
more advanced DNA analysis technology; and

30 16. It allows a convicted person and the State to consent  
32 to and conduct postjudgment of conviction DNA analysis without  
filing a motion before the court. The process following the  
34 completion of DNA analysis is the same as if the DNA analysis had  
been ordered by the court.