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24-LS1222\X.1
Luckhaupt
4/18/06

AMENDMENT 1

OFFERED IN THE HOUSE BY REPRESENTATIVE KERTTULA

TO: CSHB 325(JUD)

Page 2, line 7:

Delete "and any lesser included offense"

HOUSE FINANCE COMMITTEE ROLL CALL

DATE: 4-19-06

Amendment: Amend. I - HB 325

MEMBER	Favor	Oppose
KERTTULA	✓	
MOSES	—	
STOLTZE	—	
WEYHRAUCH	✓	
FOSTER		✓
HAWKER		✓
HOLM		✓
JOULE	✓	
KELLY		✓
CHENAULT		✓
MEYER		✓
	3	6

ALASKA STATE LEGISLATURE

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Representative Gabrielle LeDoux

SPONSOR STATEMENT FOR CS HB 325(JUD)
24-LS1222\X

An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure.

DNA testing is a new technology that has enabled criminal justice systems worldwide to prove the guilt or innocence of many people who claim they were mistakenly convicted. This Act would enable Alaska criminal law to keep up with new technology, joining 40 other states in providing a statutory right to DNA testing when meaningful claims of innocence have been made by those convicted. In cases where the DNA would be probative of guilt or innocence, this Act will provide Alaska with a clear procedure for assessing such claims and, where appropriate, enable DNA testing of existing biological evidence. This will enable Alaska to quell any lingering doubts where such claims of innocence have been made. Providing access to such testing will serve victims, police, prosecutors, the public, and public faith in our criminal justice system.

This Act would help enable Alaska to receive funds under the Congressional Justice for All Act of 2004 (H.R. 5107), which, under the leadership of Senator Frist, Speaker Hastert and President Bush, provides financial incentives for states to allow post-conviction DNA testing, and provides funds for qualifying states to pay for such tests.

Specifically, this Act establishes an application procedure for DNA testing and the appointment of counsel. A person who has been convicted of a crime may petition the court for testing. If the court determines that the facts warrant testing, the court will appoint a public defender if the applicant is indigent and that agency will pay for the testing. Law enforcement agencies will retain any collected biological evidence pertaining to the offense.

In this way, a person has an opportunity for testing in order to prove actual innocence. The court will determine whether the case merits this extra step, so not every person who requests such testing will automatically receive it. Fourteen of the nation's 175 DNA exonerations involved innocent people facing execution. The other 161 innocent people were simply being forced to endure large parts of their lives behind bars for crimes they did not commit. Wrongful imprisonment, as well as wrongful execution, victimizes an innocent person-which is never the intent of our criminal justice system. This legislation can help free an innocent person and re-focus law enforcement attention on the real perpetrator, who otherwise enjoys the comfort of knowing an innocent person was deemed responsible for their crime.

Representative_Gabrielle_LeDoux@legis.state.ak.us

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Representative Gabrielle LeDoux

MEMO

TO: HOUSE FINANCE COMMITTEE MEMBERS
FROM: REPRESENTATIVE GABRIELLE LEDOUX
SUBJECT: CS HB 325(JUD)-VERSION X
POST-CONVICTION DNA TESTING
DATE: APRIL 12, 2006

24-LS1222\X

Changes Adopted in House Judiciary

Page 2, Line 24 — [45 days] 60 days
Increases the amount of time the attorney general has to respond to the application and any supplement filed by the applicant's counsel and to prepare for a hearing.

Page 2, Line 31 — [reasonable probability that a reasonable trier of fact would have]
Text deleted, due to redundancy.

Page 3, Lines 21-25 — The investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file an application for DNA testing under AS 12.72.200-12.72.250. The identified biological material shall be preserved for the period of time that person is incarcerated in connection with that case.
Text added to address the preservation of evidence.

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Representative Gabrielle LeDoux

MEMO

TO: HOUSE FINANCE COMMITTEE MEMBERS

FROM: REPRESENTATIVE GABRIELLE LEDOUX

SUBJECT: SECTIONAL SUMMARY 24-LS1222\X HB 325

DATE: APRIL 18, 2006

Section 1. Creates a new procedure in statute for convicted persons to request DNA testing of biological evidence from the conviction and sentence the person is serving.

Section 2. Provides notice that a portion of section 1 has the effect of amending Rule 35.1, Alaska Rules of Criminal Procedure.

Representative_Gabrielle_LeDoux@legis.state.ak.us

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MEMORANDUM

To: Alaska State Legislators
From: Stephen Saloom, Policy Director
Date: April 18, 2006
RE: H.B. 325: Denying DNA testing if possibly guilty of "lesser included offense"

Section 1. (b))2)(C) of H.B. 325 requires that for a post-conviction DNA testing application to be properly filed, the applicant must swear that he "was innocent of the crimes for which the applicant was convicted *and any lesser included offense.*" (Emphasis added.)

The Innocence Project has no quarrel at all with swearing innocence "of the crimes for which the applicant was convicted," but notes that **Alaska would be the only state in the nation that denies post-conviction DNA testing if the applicant might otherwise be convicted of a "lesser included offense." This provision is a radical departure from other states' practice, and in the interest of justice should be stricken from the bill.**

Below please find a list of the 40 states (plus DC) that provide a statutory right of DNA testing – as well as whether they deny testing if the applicant was involved in "any lesser included offense." (In short, the answer is that NONE of these states deny testing for that reason.)

AZ – no
AR – no
CA – no
CO – no
CT – no
DE – no
DC – no
FL – no
GA - no
HI – no
ID – no
IL – no
IN – no
IA – no

KS – no
KY – no
LA – no
ME – no
MD – no
MI – no
MN – no
MO – no
MT – no
NE – no
NV – no
NH – no
NJ – no
NM – no
NY - no
NC – no
ND – no
OR – no
PA – no
RI – no
TN – no
TX – no
UT – no
VA – no
WA – no
WV – no
WI - no

In fact 11 states (FL, IN, KS, KY, MD, MI, NE, OR, PA, WA and WV) allow the evidence to be heard **even if it would prove only that the charge or sentence was more severe than the facts merited.**

Thank you for your consideration of these facts. I would be pleased to answer any questions on this issue. Ssaloom@innocenceproject.org or 212.364.5394.

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MEMORANDUM

To: Alaska State Legislators
From: Stephen Saloom, Policy Director
Date: April 13, 2006
RE: Fiscal Note, H.B. 325, An Act Relating to Post-Conviction DNA Testing

The Innocence Project is extremely pleased to know that Alaska is seriously considering joining 40 other states in providing access to post-conviction DNA testing where such testing could settle legitimate questions of innocence or guilt. There have been 175 cases in the United States where post-conviction DNA testing has proven that an innocent person was convicted of a crime he did not commit – and the real perpetrator had not been brought to justice.

In short, the experiences of these other states has been positive, as faith in the integrity of the criminal process has been bolstered by the willingness to conduct such reviews. It is also important to note that there have been no reports that such laws have "opened floodgates" or otherwise created significant burdens for the courts.

This memo addresses the Fiscal Note that accompanies H.B. 325. While the Innocence Project respects concerns about ensuring the resources necessary to respect the intent of the legislation, our experience and that of our Innocence Network throughout the country is that many of the concerns expressed in the Fiscal Note are not likely to come to pass.

I have replicated the Fiscal Note language below, breaking it off into sections which are then addressed. I hope this is helpful to you, and would welcome any questions that you might have. SSaloom@innocenceproject.org or 212-364-5394.

ANALYSIS (For easy reading, original language in regular type, **comment in bold.**)
1) "This bill adds a new article to AS 12.72 allowing an incarcerated person to apply to the court for post-conviction DNA testing. This committee substitute of the original bill makes some changes that will cost the State money. Proposed AS 12.72.210(1) allows DNA testing if the results 'could' establish a reasonable doubt as to the applicant's guilt. This language is very broad in that just about anything 'could' do that."

INNOCENCE PROJECT

Comment:
The change to "could," must be read in light of the larger sentence, which is:
"A court may NOT order DNA testing UNLESS the applicant shows that 1) by clear and convincing evidence, that the results of DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime."

The applicant therefore has a significant burden ("clear and convincing")of proving to the judge that, in light of the facts of the case (see p. 2, lines 11 and 12) there could be such a determination.
The burden will be taken seriously by judges, as will their historical deference to jury determinations.

It's also important that for such applications to be seriously considered, there must be DNA evidence available which was not previously considered by the jury, or another judge on a previous such motion. (With advances in DNA technology, sometimes later testing can generate a DNA profile with certainty when previous technology was not available to the applicant. This is not "repeated bites at the apple," but continuing to seek an answer when previous technology did not do so.)

Finally, the applicant's burden of proof is consistent with that of the vast majority of other states' on this point, and as noted above, there have been no reports that such laws have "opened floodgates" or otherwise created significant burdens for the courts – even in larger states, with criminal justice systems much less reliable than that of Alaska.

2) "The bill does not require than (sic) an applicant show due diligence in pursuing requests for DNA testing. The Department of Law is currently litigating a case in court that is 15 years out from the original trial date, and is very difficult to handle as a result, and makes a due diligence standard important."

Comment:
A review of other states' statutes shows that the vast majority of states do not impose any deadline on applications for testing while the person is incarcerated, and in the few instances where there are such deadlines, those deadlines have always allowed those with old cases upon law's passage to have a similar amount of time to file[1]. Again, this should be

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[1] Statutory language addressing time limitations, or lack thereof, on motions for post-conviction DNA testing:
AZ – at any time
ARK – unless under direct appeal
CA – while serving a term
CT – at any time during incarceration
DE – within 3 years of conviction, but that restriction is not to apply to those convicted before 9/1/00, who were given three years from passage of the law.
DC – while in custody
FL – within 4 years of end of one's criminal process (see law for how defined FSA sec. 925.11) or 4 years

noted in light of the absence of claims of a significant burden created by such procedures. Similarly, I'm sure the Department of Law must handle various appeals; this law would only create an avenue for a clear procedure on this type of procedure.

Indeed, if this law were already in place in Alaska, the Department of Law would not have to be arguing so extensively, in both state and federal court, against such testing under current Alaska law, which is unclear about how and when post-conviction DNA should be tested. With the clarity of such a law, arguments over whether or not testing should be

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after passage of the law, whichever is later. (n.b. Alan Crotzer was just exonerated after 24 years in prison)
GA – within 20 days of entry of judgment new trial can be sought (or else good reason must be shown) or w/in 30 days of that denial (or extraordinary reason must be shown) (n.b. Robert Clark was just exonerated after 23 years in prison)
HI – at any time
ID – within 1 year, or within 1 year of law's passage – whichever is later
IL – no limit indicated
IN – no limit indicated
IA – no limit indicated
KS – at any time while in state custody
KY – at any time
LA – no time limit set (but after 2007 will have to seek relief under different section of laws – n.b. lifting that time limit is currently being considered by the legislature)
ME – no time limit indicated
MD – no time limit indicated
MI – while serving prison time for felony conviction (the bill has a 2008 deadline; lifting that is under consideration currently by the legislature)
MN – Except at a time when direct appellate relief is available
MO – while in custody at DOC
MT – while incarcerated for a felony
NE – no limit indicated
NV – no time limit indicated
NH – while in custody
NJ – while serving a term of imprisonment
NM – a person convicted of a felony
NY – no limit indicated
NC – no time limit indicated
ND – no limit indicated
OR – within 24 months of effective date of act (this was originally 48 months, but amended after sunset clause was lifted)
PA – no limit indicated
RI – no limit indicated
TN – at any time
TX – no limit indicated
UT – at any time
VA – no limit indicated
WA – while imprisoned
WV – while imprisoned
WI– at any time

conducted would be much more easily and reliably resolved, and the resources of the Department of Law, as well as the courts the public defenders, and indeed all Alaskans, could be dedicated to the merits of the case as opposed to whether or not consideration of the most probative evidence should be denied, despite its availability.

I urge the fiscal analysts to consider that in light of the Osborne litigation, this legislation might actually save money.

3) "An additional provision is needed that would allow an appointed attorney to file a certificate saying that the applicant's claim has no merit – as a deterrent to frivolous claims."

Comment:
Such a provision of law could actually cost – and waste – more money than it saves. I must first note that such a provision would be foreign to such laws nationwide, its affirmative requirement is clearly inimical to the attorney client relationship, and indeed would require extraordinary circumstances to be relevant.

That being the case, and given that the court can deny the application without hearing and without appointment of counsel, such an effort could be a waste in futility, seemingly requiring appointment of defense counsel – and inappropriate judge – to do the work of the court, in a situation where defense counsel would be less likely to stop proceedings than the court, which might itself deny the application and thus have wasted the time of the appointed counsel, who otherwise wouldn't ever have had to bother with the denied application.

4) "Also, the original bill allowed the court to deny a successive application under this section. The committee substitute does not include that language, allowing inmates to bring these lawsuits time and time again."

Comment:
Given that the court will review all past efforts to test the DNA, and would need to find that the new testing sought (despite all past efforts – and to be paid for by the applicant) would provide <u>newly</u> probative evidence despite the previous efforts, the availability of a successive application would be rare, and thus not costly at all. But it would fully serve justice.

5) "Related to that, the CS also added language that requires police agencies to preserve any biological material collected, for the entire time that the person is in prison. Again the broadness of this language would require that investigator save anything that is animal, vegetable or liquid, because it could be "biological." Litigious inmates will inundate the courts with request to test, and re-test, and re-re-test all that stored biological material every time science indicates a new testing method."

Comment:
Evidence preservation has proven critical to both solving cold cases – as in New York City, where underwear found in a drawer provided evidence that solved a series of rapes 20 years earlier – and to proving the innocence of persons – such as the 175 innocent people proven wrongly convicted by post-conviction DNA testing – who have spent an average of 11+ years behind bars for crimes they did not commit.

Proper storage of such evidence would of course require some resources, but not many. As it is clear that Alaska already does preserve evidence in many cases, such practice would simply continue on a more organized scale, requiring perhaps slightly more space – although this needn't be on the same site; a central preservation area where space isn't an issue could be established – and perhaps some more boxes for storage.

Further, large items themselves needn't be retained, just the appropriate sections thereof that are likely to contain probative biology. Example, a car seat cover could be saved instead of the car.

Finally, even the craftiest litigious inmates will have to convince a judge that the specific biological material he is requesting to have tested exists and can be probative of innocence. I would suggest that if a "fishing expedition" begins for a litigious inmate, quick court review of the applicant's file would indicate as much, and such applications could clearly easily be denied by the courts.

6) All of these considerations taken together will increase the workload of Law's Special Prosecution and Appeals section if this committee substitute is passed as written. It is anticipated that an additional ½ full time attorney will be needed to handle these cases. The cost of the position is in keeping with the Department of Law's FY 2007 timekeeping and billing rate. One time costs of $6,500 are added for the first year of the funding, and removed thereafter. A full time position is requested to allow for a full-time attorney if the workload and funds should be available. The criminal division does not employ part-time attorneys as a rule.

Comment:
As noted earlier, this law would clear procedures for considering post-conviction DNA testing, and if the Osborne case is any example, would thus save time, resources and money, specifically because meritorious claims would ultimately prevail anyhow.

Further, it seems excessive to need a new full-, or even part-time attorney to handle the few applications that would pass court review, and thus require response. If it is Alaska practice to automatically similarly increase the public defender budget with each sentence enhancement and creation of new crimes, then perhaps such a move, for consistency's sake, would be merited here.

INNOCENCE PROJECT

Thank you for your consideration of the points made above. I would be glad to answer any questions or other information requests at any time.

Kimberly Wallace

From: Tres [lewis@acsalaska.net]
Sent: Wednesday, April 12, 2006 6:26 PM
To: Kimberly Wallace
Subject: HB 325 Fiscal Note Issues

Kim

I have copied the Analysis section of the fiscal note and will make comments in *italics* based on the current version of the bill .. version 24-LS1222\X

"An Act relating to post-conviction DNA testing;
and amending Rule 35.1, Alaska Rules of Criminal Procedure."
This bill adds a new article to AS 12.72 allowing an incarcerated person to apply to the court for post conviction

---

DNA testing. This committee substitute of the original bill makes some changes that will cost the
State money. Proposed AS 12.72.210 (1) allows DNA testing if the results "could" establish a reasonable
doubt as to the applicant's guilt. This language is very broad in that just about anything "could" do that.

The department of law is taking to broad a view on this -- the word could in this case means DNA testing it does not mean other evidence it only means the DNA evidence could show not some other thing or evidence

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The bill does not require than an applicant show due diligence in pursuing requests for DNA testing.
The defendant has no control over the speed at which new types of DNA testing becomes available. It may be true that he has DNA testing in the past but because of a new type of DNA testing he could show that he is innocent at some point in the process he is going to have to explain that he had DNA testing done but it is because of the new type of test that he is making application.

The defendant is not going to wait 20 years to attempt to do this testing. If he is innocent he will want to see if the DNA testing could set him free, this is common sense.

The Department of Law is currently litigating a case in court that is 15 years out from the original trial date, and

is very difficult to handle as a result, and makes a due diligence standard important. *The Osborne case is a true exception to the rule. The department of law does not handle that many 15 year old cases. My understanding of Osborne is that the evidence was collected 26 hours after the crime and the question is the evidence even related to the crime for which Osborne was convicted. This is a a very different situation than what is the envisioned use of HB 325. Even if the DNA cases are old cases the issues will be surrounding DNA which in most cases will cause clear cut issues of innocence or guilt and will not require the department of Law to be involved in long drawn out litigation. I would also point out that at the time of the Osborne case DNA testing was only 3 years old as a science and was considered a very controversial form of testing.*

An additional provision
is needed that would allow an appointed attorney to file a certificate saying that the applicant's claim has
no merit - as a deterrent to frivolous claims. *To this I would refer them to page 2 line 19 on investigation of the application for testing , counsel believes sufficient grounds exist to support an order for DNA testing -- if the attorney does not think grounds exist for testing then he he can not file the request for a hearing and can tell the court that grounds do not exist.*
I would also like to point out that the Attorney General office can file a motion that say's it is a frivolous claim and ask the court to dismiss the claim.

Also, the original bill allowed the court to deny a successive
application under this section. This committee substitute does not include that language, allowing inmates to bring these lawsuits time and time again.

Here I refer the department of law to the language at page 2 line 11 If the application , files and record of the case show to the satisfaction of the court that the applicant is not entitled to relief based on the criteria specified in AS 12.72.210 the court can deny the application. page 3 line 5 the applicant must jump through hoops about why DNA testing was not done before conviction -- ineffective assistance of counsel or excusable neglect. How many times can the applicant meet these requirements in a unique way as to satisfy a court that he has a right to the DNA test. I would think that maybe once or twice -- after that the court could just deny the application. The court can always review the case file if it has questions about past applications.
I would also like to point out that the Attorney General office can file a motion that say's it is a frivolous claim and ask the court to dismiss the claim.

Related to that, the CS also added language that requires police agencies to preserve any biological material
collected, for the entire time that the person is in prison. Again, the broadness of this language would
require that investigators save anything that is animal, vegetable or liquid, because it all could be

"biological." Litigious inmates will inundate the courts with requests to test, and re-test, and re-re-test all
that stored biological material every time science indicates a new testing method.
When the police collect evidence at the crime scene the evidence is stored at the police department. Some of the evidence is sent to the State Crime Lab and is tested at the lab but after the testing the evidence is returned to the police department.
In the event that evidence is not sent to the the lab for testing it remains with the police department until the case goes to trial. If it goes to trial the evidence is then sent to the district attorney's office for use during trial. After the trial is over the evidence that was used at trial is held buy the court system until the time runs for the defendant to file an appeal. After the time runs for the appeal the evidence is returned to the parties - the DA gets the items they submitted as evidence the defense gets the evidence back that they submitted at trial. The DA's office will send the evidence back to the police department.
If the case does not go to trial the evidence is still at the police department. The police department will destroy the evidence in a case after the case has been resolved by trial, by plea bargain or is dismissed and after all times for appeal have run.
The amendment made to the bill dealing with the preservation of evidence only requires that the materials that can be tested for DNA be maintained. In my experience that would consist of things like a bed sheet with blood or other biological evidence, blood spots on a shirt, swabs taken of fluids found at a crime scene. These items do not take up much room. I would think that most of these items can be stored in a file cabinet in envelopes. I have never had a case were the biological evidence would have required more space than a storage box.
The costs of storage of these items would not be much more than the price of a few envelopes, file folders and a file cabinet.

I would think that you would not need to keep the whole car if blood was found in the car you would only need to keep those parts or seat covers that contain the blood evidence--common sense should apply and the Department of Public Safety Crime Lab can come up with regulations about the preservation of the biological evidence that can make this reasonable.

All of these considerations taken together will increase the workload of Law's Special Prosecution and
Appeals section if this committee substitute is passed as written. It is anticipated that an additional 1/2 full
time attorney will be needed to handle these cases. The cost of the position is in keeping with the
Department of Law's FY 2007 time keeping and billing rate. One time costs of $6,500 are added for the
first year of the funding, and removed thereafter.
A full-time position is requested to allow for a full-time attorney if the workload and funds should be
available. The criminal division does not employ part-time attorneys as a rule.

I will admit that I do not know what the case load is for an attorney working in Special Prosecutions and Appeals but I would think that the few cases that will be a result of this bill could not be distributed among the attorneys that are currenly work for the AG's office.

But lets look at DNA for a minute. The science is only been in use in criminal cases starting in 1988. Up until 1988 items were not tested for DNA. Of the number of persons in Alaska prisons with convictions prior to 1988 I do not think that there will be very many that can meet the requirements for DNA testing for the following reasons 1) the biological evidence in the case has been destroyed. 2. evidence at the crime scene was not collected because no one knew about DNA testing.

The second group of people in prison those with convictions after 1988, have to show that the DNA evidence has not been destroyed . I think the number of cases will be rather small were the DNA testable evidence still exists.

The third group of people will be those who are convicted after HB 325 becomes law. This group will have a much harder time using this statue because DNA testing is so routine today that most materials are tested prior to trial by the State Crime Lab at the DA's request or by the Defendant's attorney at a private lab all of which is pretrial.

I would also point out that it is a relatively small group of people in prison in which the evidence was or is of a biological nature. We have to think about the guy who is in jail for sale of drugs the bootlegger the forger the assaulter the thief they will never have a use for post conviction DNA testing because biological or DNA evidence was never part of the case for which they were convicted.

Kim these are my comments I hope they help. You may distribute them to those who you think will be able to use them. Tres Lewis

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4/18/2006

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****
The World is Small if You Investigate.[(c) 1985]*
****

Kimberly Wallace

From: Tres [lewis@acsalaska.net]
Sent: Thursday, April 13, 2006 3:23 PM
To: Kimberly Wallace
Subject: Re: CS HB 325(JUD)

Kim

The following is based on the 2003 Alaska Department of Corrections 2003 Offender Profile as posted on the Department of Corrections Web Site.

Offense Level	
Felony Level	2465
Misdemeanor	1265
Violation	13
Totals in jail	3743

Crimes that most likely would not have evidence with DNA issues.
Number of persons in jail for crimes in these classes both Felony and Misdemeanor.

Alcohol	357
Drugs	175
Assault 4 (Misdo)	254
Attempted Assaults	5
Attempted Extortion	1
Attempted Kidnapping	1
Attempted Robbery	1
Custodial Interference	1
Coercion	2
Conspiracy Murder	2
Property Crimes	464
Public Order	328
Parol/Probation Violations	477
Non Register Sex Offenses	7
Traffic Driving	146
Weapons	80
Conspiracy Robbery	2
DV Assault	45
Endanger Vulnerable Adult	1
Endanger Welfare Minor	1
Reckless Endangerment	7
Robbery 1	91
Robbery 2	33
Stalking	2
Indecent Viewing	1
Posses Child Porn	6
Total Non DNA type case	2,489
Total Inmates	3,743
Non DNA	2,489
DNA possible	1,254

Total Inmates DNA possible 1,254 Of this number I estimate that 90 percent have had DNA testing done in their cases and no further testing can be done leaving a total of 125 who could need testing done. I say 90 percent based on the fact that DNA testing has now been around for 18 years and those who are serving more than 37 months is only 380 persons. (See Below)

Another way to look at this is based on the time they have to serve in jail

6 months or less	1,660
7 to 12 months	518

13 to 24 months	850
25 to 36 months	335
37 months or more	380
Total	3,743

Those with more than 37 months is the group that I would think the highest number of people who would look to use the Post DNA conviction testing. Of the Group of 380 I would guess 90 percent will not use the Post conviction testing because testing has been done or the biological evidence to test has been destroyed. This leaves a group of 38 people.

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****

The World is Small if You Investigate.[(c) 1985]*

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Demographic Information for Offenders in Institutions
1999-2003

	Females					Males					All Offenders				
Ethnicity	**03**	**02**	**01**	**00**	**99**	**03**	**02**	**01**	**00**	**99**	**03**	**02**	**01**	**00**	**99**
Asian/Pacific Islander	8	8	6	6	3	78	69	78	77	62	86	77	84	83	65
Black	18	23	40	23	32	388	389	392	427	410	406	412	432	450	442
Hispanic	7	18	7	9	8	85	108	97	88	98	92	126	104	97	106
Alaska Native	117	87	92	76	66	1256	1251	1268	1236	1178	1373	1338	1360	1312	1244
White	141	125	141	126	124	1629	1535	1528	1511	1445	1770	1660	1669	1637	1569
Unknown	2	1	-	-	-	14	11	89	4	2	16	12	89	4	2
Total	**293**	**262**	**286**	**240**	**233**	**3450**	**3363**	**3452**	**3343**	**3195**	**3743**	**3625**	**3738**	**3583**	**3428**
Age Group (Years)															
19 and Under	6	11	11	5	3	116	119	127	76	93	122	130	138	81	96
20-24	42	45	36	35	40	607	580	577	524	447	649	625	613	559	487
25-29	47	40	43	36	29	455	467	503	502	503	502	507	546	538	532
30-34	45	34	51	37	39	478	474	505	521	537	523	508	556	558	576
35-39	58	42	65	53	49	549	551	596	579	578	607	593	661	632	627
40-44	55	53	39	38	38	551	500	498	509	439	606	553	537	547	477
45-49	23	21	18	19	16	304	320	321	313	297	327	341	339	332	313
50-54	9	9	14	10	10	204	175	173	162	149	213	184	187	172	159
55-59	2	3	5	3	5	97	99	74	82	84	99	102	79	85	89
60-64	2	4	3	4	4	55	43	46	41	34	57	47	49	45	38
65 and over	4	-	1	-	-	34	35	32	34	34	38	35	33	34	34
Total	**293**	**262**	**286**	**240**	**233**	**3450**	**3363**	**3452**	**3343**	**3195**	**3743**	**3625**	**3738**	**3583**	**3428**
Mean Age	***35.47***					***35.99***					***35.96***				
Median Age	***35.74***					***35.74***					***35.74***				

New for 2003
Length of Time from Admission for Offenders in Institutions
December 31, 2003

Months In	**Females**	**Males**	**Total**
6 months or less	192	1468	1660
7 months - 12 months	47	471	518
13 months - 24 months	18	832	850
25 months - 36 months	12	323	335
37 months or more	24	356	380
Total	**293**	**3450**	**3743**
Mean Length (months)	***11.8***	***20.56***	***19.88***
Median Length (months)	***2.73***	***9.07***	***8.27***

Offense Classifications of Offenders in Institutions
December 31, 2003

Offense Level	Female	Male	Total	Pct
Felony	167	2298	2465	65.9%
Misdemeanor	124	1141	1265	33.8%
Violation	2	11	13	.3%
Total	**293**	**3450**	**3743**	**100.0%**
Alcohol				
Allow Minor on Premises	1	1	2	
Drinking in Public	-	2	2	
Driving While Intoxicated	27	173	200	
Drunk Person on Lic Premises	1	4	5	
Felony DWI - 2+ Priors w/in 5 Yrs	14	86	100	
Felony Refusal of Chem Test- 2+ Priors	1	2	3	
Furnish Alcohol to a Minor	-	13	13	
License or Permit Required	1	-	1	
Manuf/Sell Alcohol w/o lic - in Dry Area	1	5	6	
Minor Consuming/Possessing Alcohol	1	11	12	
Refuse to Submit to Chem Test	1	7	8	
Trans Alcohol by Carrier to Dry Area	1	3	4	
Alcohol - other	0	1	1	
Total	**49**	**308**	**357**	**9.5%**
Drugs				
Attempted Drugs 3	-	1	1	
Attempted Drugs 4	-	3	3	
Dangerous Drugs - Other	-	1	1	
Misconduct - Controlled Substance 1	-	7	7	
Misconduct - Controlled Substance 2	5	24	29	
Misconduct - Controlled Substance 3	12	39	51	
Misconduct - Controlled Substance 4	16	58	74	
Misconduct - Controlled Substance 5	-	1	1	
Misconduct - Controlled Substance 6	1	7	8	
Total	**34**	**141**	**175**	**4.7%**
Person				
Assault 1	2	62	64	
Assault 2	2	52	54	
Assault 3	7	112	119	
Assault 4	22	232	254	
Attempted Assault 1	-	2	2	
Attempted Assault 2	-	1	1	
Attempted Assault 3	-	1	1	
Attempted Assault 4	-	1	1	
Attempted Extortion	-	1	1	
Attempted Kidnapping	-	1	1	
Attempted Murder 1	2	22	24	
Attempted Robbery 2	-	1	1	
Custodial Interference 1	1	-	1	
Coercion	-	2	2	
Conspiracy Murder 1	-	2	2	

Person	Female	Male	Total	Pct
Conspiracy Robbery 1	-	2	2	
Criminally Negligent Homicide	-	6	6	
DV Assault	3	42	45	
Endanger Vulnerable Adult 1	-	1	1	
Endanger Welfare Minor 1	1	-	1	
Kidnapping	1	37	38	
Manslaughter	5	26	31	
Murder 1	14	208	222	
Murder 2	8	145	153	
Reckless Endangerment	3	4	7	
Robbery 1	5	86	91	
Robbery 2	3	29	32	
Stalking 1	-	2	2	
Total	**79**	**1,080**	**1,159**	**31.0%**
Property				
Arson 1	-	7	7	
Arson 2	1	5	6	
Attempted Arson 2	-	1	1	
Attempted Auto Theft 1	-	1	1	
Attempted Burglary 1	-	2	2	
Attempted Theft 1	-	2	2	
Attempted Theft 2	-	2	2	
Attempted Theft 3	1	-	1	
Burglary 1	1	41	42	
Burglary 2	-	26	26	
Conceal Merch - Value $500+	-	1	1	
Conceal Merch - Value =< $500	11	23	34	
Concealed Weapon	-	1	1	
Criminal Impersonation	-	1	1	
Criminal Mischief 2	1	1	2	
Criminal Mischief 3	1	20	21	
Criminal Mischief 4	2	16	18	
Criminal Mischief 5	-	5	5	
Criminal Trespass 1	13	13		
Criminal Trespass 2	1	22	23	
Criminally Negligent Burning	-	1	1	
Forgery 1	-	2	2	
Forgery 2	13	11	24	
Forgery 3	1	1	2	
Fraud Use Credit Card - Value =< $500	1	-	1	
Fraud Use Credit Card - Value $500+	-	1	1	
Insurance or other Security Fraud	1	1		
Issuing Bad Check - Value $500-$24,999	1	-	1	
Issuing Bad Check - Value =<$50	-	2	2	
Scheme to Defraud	1	2	3	
Theft 1	-	2	2	
Theft 2	13	84	97	
Theft 3	11	41	52	
Theft 4- Value =<$50	2	18	20	
Theft by Deception	-	1	1	
Theft of Services	-	2	2	

Property	Female	Male	Total	Pct
Unauthorized Entry	-	3	3	
Vehicle Tampering	-	1	1	
Vehicle Theft 1	2	34	36	
Vehicle Theft 2	-	3	3	
Total	**65**	**399**	**464**	**12.4%**
Public Order/Administration				
Contempt of Court	4	20	24	
Contribute to Delinquency of Minor <16	-	3		
Contribute to Delinquency of Minor <18	1	1		
Escape 1	-	1	1	
Escape 2	-	21	21	
Escape 3	-	3	3	
Escape 4	-	10	10	
Failure to Appear	3	31	34	
Failure to Comply	-	9	9	
Failure to Reg as Sex Offender 1	-	5	5	
Failure to Reg as Sex Offender 2	-	5	5	
False Information	2	27	29	
Federal Offense	-	5	5	
Fugitive from Justice	1	6	7	
Hindering Prosecution 1	-	1	1	
Impersonate Public Officer	-	1	1	
Insurance	-	1	1	
Interfere w/ Report of DV Crime	-	3	3	
Interference w/ Official Proceedings	-	2	2	
Leaving Scene of Accident	-	8	8	
Perjury	-	6	6	
Promote Contraband 1	-	9	9	
Promote Contraband 2	-	3	3	
Resist/Interfere Arrest	1	24	25	
Tamper Phys Evid	-	3	3	
Unlawful Contact 1	-	2	2	
Unlawful Contact 2	-	1	1	
Unlawful Evasion	2	28	30	
Violate Conditions of Release	3	52	55	
Violate DV Restraining Order	1	19	20	
Total	**18**	**310**	**328**	**8.8%**
Parole/Probation Violations				
Parole Violation	4	192	196	
Probation Violation	21	260	281	
Total	**25**	**452**	**477**	**12.8%**
Non-Registerable Sex Offenses				
Attempted Indecent Exposure	-	1	1	
Indecent Exposure 2 - Victim16+	-	1	1	
Indecent Exposure 2 Victim <16	-	3	3	
Practicing Prostitution	1	-	1	
Promoting Prostitution	1	-	1	
Total	**2**	**5**	**7**	**0.2%**

Registerable Sex Offenses	Female	Male	Total	Pct
Attempted Sex Abuse Minor 1	-	18	18	
Attempted Sex Abuse Minor 2	-	9	9	
Attempted Sex Assault 1	-	15	15	
Attempted Sex Assault 2	-	4	4	
Attempted Sex Assault 3	-	2	2	
Incest	-	2	2	
Indecent View/Photo w/o Consent of Minor	-	1	1	
Possess Child Pornography	-	6	6	
Sex Abuse Minor 1	2	135	137	
Sex Abuse Minor 2	1	122	123	
Sex Abuse Minor 3	1	17	18	
Sex Assault 1	-	120	120	
Sex Assault 2	1	75	76	
Sex Assault 3	18	18		
Solicitation Sex Abuse1	1	1		
Unlawful Exploit of Minor	2			
Total	**5**	**545**	**550**	**14.7%**
Traffic/Driving				
Driving in Viol of Instr Permit	-	1	1	
Driving w/ License Rev/Sus	10	107	117	
Driving w/ Registration Rev/Sus	-	1	1	
Fail to Stop at Direction of Officer 1	1	7	8	
Fail to Stop at Direction of Officer 2	-	2	2	
False Affadavit	-	1	1	
No MV Liability Insurance	-	3	3	
Reckless Driving	2	11	13	
Total	**13**	**133**	**146**	**3.9%**
Weapons				
Disorderly Conduct	2	23	25	
Harassment	1	10	11	
Misconduct - Weapons 1	5	5		
Misconduct - Weapons 2	5	5		
Misconduct - Weapons 3	-	20	20	
Misconduct - Weapons 4	-	13	13	
Misconduct - Weapons 5	-	1	1	
Total	**3**	**77**	**80**	**2.1%**
Total All	**293**	**3,450**	**3,743**	**100.0%**

Kimberly Wallace

From: Janey Wineinger [janey_wineinger@correct.state.ak.us]
Sent: Thursday, April 13, 2006 3:28 PM
To: Kimberly Wallace
Subject: RE: Cost per felon

Cost of care for a prisoner for FY06 is $107.42

From: Kimberly Wallace [mailto:Kimberly_Wallace@legis.state.ak.us]
Sent: Thursday, April 13, 2006 3:11 PM
To: laura_wineinger@correct.state.ak.us
Subject: Cost per felon

Hi Janey,

How much does it cost to keep a felon in prison per day?

Thanks, K

Kimberly Wallace
Legislative & Fisheries Committee Aide
Representative Gabrielle LeDoux
State Capitol
District 36
Juneau, AK 99801-1121
Phone: 907.465.2487
Fax: 907.465.4956

Kimberly Wallace

From: Portia Parker [portia_parker@correct.state.ak.us]
Sent: Tuesday, April 11, 2006 4:05 PM
To: Kimberly Wallace
Cc: Cliff Stone; Richard Schmitz
Subject: Total Number of Convicted Felons Incarcerated in ADOC (as of today)

Ms. Wallace,

Today, Alaska DOC has 3942 prisoners in correctional facilities who have been convicted of a felony. Please let me know if you require supplemental information. Thank you.

Portia C.K. Parker
Deputy Commissioner
Alaska Department of Corrections
Juneau Tel 907.465.4652
Juneau Fax 907.465.3390
Anchorage Tel 907.269.7397
Anchorage Fax 907.269.7390
Portia_Parker@correct.state.ak.us

Table 1: Post-Conviction DNA Laws of Selected Western States—Citations and Years of Enactment				
State	**Year Passed**	**Statute**	**Enacted Legislation**	**Amendments**
Arizona	2000	Ariz. Rev. Stat. § 13-4240	Laws 2000, Ch. 373, § 1	None
California	2000	Cal. Penal Code § 1405	Stats 2000 Ch, 821 § 1 (SB 1342)	Stats 2001 ch 943 § 1 (SB 83); Stats 2004 ch 405 § 16 (SB 1796)
Colorado	2003	Colo. Rev. Stat. Ann. § 18-1-411 to 416	L. 2003: Entire section added, p. 815	None
Idaho	2001	Idaho Code §19-4901 and 19-4902	2001, ch. 317, § 3, p. 1126	None
Montana	2003	Mont. Code Ann. § 46-21-110 and 53-1-214	Sec. 1, Ch. 79, L. 2003; Sec. 1, Ch. 255, L. 2003	None
Nebraska	2001	Neb. Rev. Stat. § 29-4119 to 29-4123	Laws 2001, LB 659, § 4	Laws 2002, LB 876, § 70-71; Laws 2003, LB 245, § 2
Nevada	2003	Nev. Rev. Stat. § 176.0918 and 176.0919	2003, Ch. 335, § 2 and 3, (pp. 1892 and, 1894)	None
Oregon	2001	Or. Rev. Stat. §14.138	Secs. 1 to 5, Ch. 697, OR Laws 2001	Ch. 759, OR Laws 2005
Utah	2001	Utah Code Ann. § 78-35a-301 and 302	L. 2001, Ch. 261, § 1-4	None
Washington	2000	Wash. Rev. Code Ann. § 10.73.170	2000 Ch. 92 § 1	2001 Ch. 301, § 1; 2003 Ch. 100, § 1; 2005 Ch. 5
Source: Lexis database of state laws.				

Table 2 compares provisions of HB 325 with information compiled by the American Society of Law, Medicine, and Ethics (ASLME) on the post-conviction DNA laws of selected western states and of the Justice for All Act of 2004. Attachment B includes the ASMLE's guide to the information included in the Table 2.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

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T-CONVICTION DNA TESTING STATUTES IN THE UNITED STATES

Statute / Regulation / Case Law	The Court to Which a Testing Request Is Made	Standard of Proof Applied by the Court to Allow for Testing	Standard of Proof Applied by the Court for a Granting of a New Trial – Based on Post-Conviction DNA Test Results
Ariz. Rev. Stat. § 13-4240	Not specified in the statute. - however, general petitions for post-conviction relief are filed in the court in which the conviction occurred (see §13-4234) - After notice to the prosecutor and an opportunity to respond, the court shall or may order testing	After notice to the prosecutor and an opportunity to respond, the court shall order DNA testing if the court finds that all of the following apply **(1) A reasonable probability exists** that petitioner would not have been prosecuted or convicted had exculpatory results been obtained via DNA testing, and (2) The evidentiary criteria have been met	(Not available)
Ark. Code Ann. §§ 16-112-201 to 16-112-208	The court in which the conviction was entered	New testing shall be approved if it may produce new material evidence that would raise a **reasonable probability** that the person making a motion under this section did not commit the offense (SOURCE: 16-112-202)	The court may grant the motion of the person for a new trial or resentencing if the deoxyribonucleic acid (DNA) test results, when considered with all other evidence in the case regardless of whether the evidence was introduced at trial, **establish by compelling evidence** that a new trial would result in an acquittal (SOURCE: 16-112-208)
Cal. Penal Code § 1405	The trial court that entered the judgment of conviction	The evidence must meet either of the following conditions (1) The evidence was not tested previously, or (2) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice **or have a reasonable probability of contradicting prior test results.**	(Not available)
Colo. Rev. Stat. Ann. §§ 18-1-411 to 417	The district court in the district where the conviction was secured	The court shall not order DNA testing unless the petitioner demonstrates by a **preponderance of the evidence** that favorable results of the DNA testing will demonstrate the petitioner's "actual innocence" (see § 18-1-411 for a definition of "actual innocence")	(Not available)
Conn. Gen. Stat. § 54-102kk	The sentencing court	Mandatory if **(1) A reasonable probability exists** that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing By request if **(1) A reasonable probability** exists that the requested testing will produce DNA results which would have altered the verdict or reduced the petitioner's sentence if the results had been available at the prior proceedings leading to the judgment of conviction	(Not available)
Del. Code Ann. 11 § 4504	The court that entered the judgment of conviction	The motion may be granted if: (1) The evidentiary criteria are met, (2) The movant presents a prima facie case that identity was an issue at trial, (3) The requested testing has the scientific potential to produce **new, noncumulative evidence materially relevant** to the person's claim of actual innocence, and (4) The requested testing employs a scientific method which is generally accepted within the relevant scientific community, and which satisfies the pertinent Delaware Rules of Evidence governing the admission of scientific testimony or evidence	The court may grant a NEW TRIAL if the person establishes by clear and convincing evidence that no reasonable trier of fact, considering the evidence presented at trial, evidence that was available at trial but was not presented or was excluded, and the evidence obtained would have convicted the person
D.C. Code Ann. §§ 22-4133, 22-4135	Superior Ct. of D.C.	The court shall order DNA testing if there is a **reasonable probability** that testing will produce non-cumulative evidence that would help establish that the applicant was actually innocent of the crime for which the applicant was convicted or adjudicated as delinquent. (§ 22-4133)	If the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new trial. (§ 22-4135)

Compiled by: Innocence Project
subcommittee discussions

Fla. Stat. Ann. §§ 925.11, 943.3251 and Fla. Crim. P. 3.853	(not specified)	The court shall make the following findings when ruling on the petition (1) Whether the sentenced defendant has shown that the physical evidence that may contain DNA still exists; (2) Whether the results of DNA testing of that physical evidence would be admissible at trial and whether there exists reliable proof to establish that the evidence has not been materially altered and would be admissible at a future hearing; and (3) Where there is a **reasonable probability** that the sentenced defendant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial	The court shall grant a new trial if any of the following grounds is established (1) The jurors decided the verdict by lot (2) The verdict is contrary to law or the weight of the evidence (3) New and material evidence, which, if introduced at the trial would probably have changed the verdict or finding of the court, and which the defendant could not with reasonable diligence have discovered and produced at the trial, has been discovered (This provision pertains to new trials generally – not just DNA -- and comes from Fla. R. Crim. P. Rule 3.600)
Ga. Code Ann. § 5-5-41	The court that entered the judgment of conviction	The court shall grant the motion for DNA testing if it determines the requested DNA testing would raise a **reasonable probability** that the petitioner would have been acquitted if the results of DNA testing had been available at the time of conviction, in light of all the evidence in the case	"The judge shall set forth by written order the rationale for the grant or denial of the motion for new trial filed pursuant to this subsection."
2005 HI. ALS 112 (Part 11)	(not specified)	The court shall order testing after a hearing if: (1) A **reasonable probability** exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained through DNA analysis, even if the defendant later pled guilty or no contest; (2) Identity was or should have been an issue in the proceeding that led to the verdict or sentence; (3) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis, provided that questions as to the chain of custody of the evidence shall not constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence; (4) The evidence was not previously subjected to DNA analysis or was not subjected to analysis that can now resolve an issue not resolved by previous analysis; and (5) The application for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice	If the results of the post-conviction DNA testing are favorable to the defendant, the court shall conduct a hearing pursuant to applicable law or court rule governing post-conviction proceedings and thereafter make such orders as are necessary for disposition of those proceedings If the results of the DNA analysis are not favorable to the defendant, the court shall give notice of the results to probation or parole authorities, as appropriate
Idaho Code §§ 19-4901, 19-4902	The trial court that entered the judgment of conviction	The trial court shall allow the testing upon a determination that: (1) The result of the testing has the scientific potential to produce new, noncumulative evidence that would show that it is **more probable than not** that the petitioner is innocent; and (2) The testing method requested would likely produce admissible results under the Idaho rules of evidence	(Not available)
725 Ill. Comp. Stat. Ann. 5/116-3	The trial court that entered the judgment of conviction	The trial court shall allow the testing upon a determination that: (1) The result of the testing has the scientific potential to produce new, noncumulative evidence **materially relevant** to the defendant's assertion of actual innocence even though the results may not completely exonerate the defendant; (2) The testing requested employs a scientific method generally accepted within the relevant scientific community	(Not available)
Ind. Code Ann. §§ 35-38-7-1 to 19	The court that sentenced the petitioner for the offense	The court shall order DNA testing and analysis if the court makes the following findings: (1) That the evidence sought to be tested **is material** to identifying the petitioner as the perpetrator of, or an accomplice to, the offense that resulted in the petitioner's conviction; (2) That the evidentiary criteria have been met; (3) A **reasonable probability** exists that the petitioner would not have been prosecuted for, or convicted of, the offense, or would not have received as severe a sentence for the offense. (Ind. Code Ann. §§ 35-38-7-8)	Notwithstanding any law that would bar a trial as untimely, if the results of postconviction DNA testing and analysis are favorable to the person who was convicted of the offense, the court shall order any of the following: (1) Upon motion of the prosecuting attorney and good cause shown, order retesting of the identified biological material and stay the petitioner's motion for a new trial pending the results of the DNA retesting. (2) Upon joint petition of the prosecuting attorney and the petitioner, order the release of the person. (3) **Order a new trial or any other relief as may be appropriate under Indiana law or court rule.** (Ind. Code Ann. §§ 35-38-7-19)

I C A § 81 10 (and amended by 2005 Ia Legis Serv Ch 158 (H F 619) (WEST) (2005))	A motion filed under this section shall be filed in the county where the defendant was convicted	The court shall allow DNA testing if all of the following apply a The identity of the person who committed the crime for which the defendant was convicted was a **significant issue** in the case for which the defendant was convicted b **The evidence** subject to DNA analysis is material to, and not merely cumulative or impeaching of, evidence included in the trial record or admitted to at a guilty plea proceeding c DNA analysis of the evidence would raise a **reasonable probability** that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction	(Not available)
Kan Stat Ann § 21-2512	The court that entered the judgment	The court shall order DNA testing if 1 A sample was not previously subjected to DNA testing, or can be subjected to retesting with new DNA techniques that provide a **reasonable likelihood** of more accurate and probative results. 2 upon a determination that testing **may produce noncumulative, exculpatory evidence** relevant to the claim of the petitioner that the petitioner was wrongfully convicted or sentenced	If the results of DNA testing conducted under this section are favorable to the petitioner, the court shall (A) order a hearing, notwithstanding any provision of law that would bar such a hearing, and (B) enter any order that serves the interests of justice, including, but not limited to, an order (i) Vacating and setting aside the judgment, (ii) discharging the petitioner if the petitioner is in custody, (iii) resentencing the petitioner, or (iv) granting a new trial
Ky Rev Stat Ann §§ 422 285, 422 287	(not specified)	The Court shall order DNA testing and analysis if the court finds that all of the following apply (1) A **reasonable probability** exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing and analysis, and (2) The evidentiary criteria have been met After notice to the prosecutor and an opportunity to respond, the Court may order DNA testing and analysis if the court finds that all of the following apply (1) A **reasonable probability** exists that either (a) The petitioner's verdict or sentence would have been more favorable if the results of DNA testing and analysis had been available at the trial leading to the judgment of conviction, or (b) DNA testing and analysis will produce exculpatory evidence, and (2) The evidentiary criteria have been met	(Not available)
La Code Crim Proc §§ 924 thru 926 1	(not specified)	The court shall dismiss any application unless it finds all of the following • There is an **articulable doubt based on competent evidence**, whether or not introduced at trial, as to the guilt of the petitioner and there is a **reasonable likelihood** that the requested DNA testing will resolve the doubt and establish the innocence of the petitioner (• In making this finding the court shall consider the evidentiary importance of the DNA sample to be tested) (2) The application has been timely filed (3) The evidentiary criteria have been met	(Not available)
Me Rev Stat Ann 15 §§ 2136-2138	Proceedings for post-conviction review are filed in the Superior Court in the county in which the criminal judgment was entered (see § 2129)	The court shall order DNA analysis if the person presents prima facie evidence that (1) The evidence sought to be analyzed is **material** to the issue of the person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction, (2) The evidentiary criteria have been met, and (3) **The identity of the person as the perpetrator of the crime that resulted in the conviction was at issue** during the person's trial (2138)	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 the section (2138)

Md. Code Ann., Crim. Proc. § 8-201	(not specified)	A court shall order DNA testing if the court finds that (1) **A reasonable probability** exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing, and (2) The requested DNA testing employs a method of testing generally accepted within the relevant scientific community	(Not available)
Mich. Comp. Laws Ann. § 770.16	The circuit court for the county in which the defendant was sentenced	The court shall order DNA testing if the defendant does all of the following (1) Presents *prima facie* proof that the evidence sought to be tested is **material to the issue** of the convicted person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction (2) Establishes all of the following by **clear and convincing** evidence (a) The evidentiary criteria have been met, and (b) The identity of the defendant as the perpetrator of the crime was at issue during his or her trial	If the results of the DNA testing show that the defendant is not the source of the identified biological material, the court shall appoint counsel pursuant to MCR § 505(a) and hold a hearing to determine **by clear and convincing evidence** all of the following (a) That only the perpetrator of the crime or crimes for which the defendant was convicted could be the source of the identified biological material. (b) That the identified biological material was collected, handled, and preserved by procedures that allow the court to find that the identified biological material is not contaminated or is not so degraded that the DNA profile of the tested sample of the identified biological material cannot be determined to be identical to the DNA profile of the sample initially collected during the investigation described in subsection (1) (c) That the defendant's purported exclusion as the source of the identified biological material, balanced against the other evidence in the case, is sufficient to justify the **grant of a new trial**.
Minn. Stat. Ann. §§ 590.01 to 590.06	The district court that entered the judgment of conviction	The court shall order that testing be performed if (1) The petitioner has established a prima facie case that identity was an issue in the trial and that the evidence was subject to a sufficient chain of custody; (2) The testing has the scientific potential to produce new noncumulative evidence **materially relevant** to the defendant's assertion of actual innocence; and (3) The testing requested employs a scientific method generally accepted within the relevant scientific community	(Not available)
Mo. Ann. Stat. §§ 547.035, 650.050	The sentencing court	The court shall order appropriate testing if the court finds (1) **A reasonable probability** exists that the movant would not have been convicted if exculpatory results had been obtained through the requested DNA testing; and (2) That movant is entitled to relief	(Not available)
Mont. Code Ann. §§ 46-21-110, 53-1-214	The court that entered the judgment of conviction	The court shall grant the petition if it determines that the petition is not made for purpose of delay and that The evidence sought to be tested was not previously tested or was tested previously but another test would provide results that are reasonably more discriminating and probative on the question of whether the petitioner was the perpetrator of the felony that resulted in the conviction **or would have a reasonable probability** of contradicting the prior test results	(Not available)

Neb. Rev. Stat. § 29-2101 and §§ 29-4119 thru 29-4125	The court that entered the judgment	Upon consideration of affidavits or after a hearing, the court shall order DNA testing 1) upon a determination that such testing was effectively not available at the time of trial; 2) that the biological material has been retained under circumstances likely to safeguard the integrity of its original physical composition; and 3) that **such testing may produce noncumulative, exculpatory evidence relevant to the claim** that the person was *wrongfully* convicted or sentenced	A new trial, after a verdict of conviction, may be granted, on the application of the defendant, for any of the following grounds affecting materially his or her substantial rights: (1) Irregularity in the proceedings of the court, of the prosecuting attorney, or of the witnesses for the state or in any order of the court or abuse of discretion by which the defendant was prevented from having a fair trial; (2) misconduct of the jury, of the prosecuting attorney, or of the witnesses for the state; (3) accident or surprise which ordinary prudence could not have guarded against; (4) the verdict is not sustained by sufficient evidence or is contrary to law; **(5) newly discovered evidence material for the defendant which he or she could not with reasonable diligence have discovered and produced at the trial;** **(6) newly discovered exculpatory DNA or similar forensic testing evidence obtained under the DNA Testing Act, or** (7) error of law occurring at the trial (29-2101)
Nev. Rev. Stat. § 176.0918	The district court for the county in which the petitioner was convicted	The court shall order a genetic marker analysis if the court finds that (1) **A reasonable possibility** exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis of the evidence identified in the petition; and (2) The evident any criteria have been met	Not available
RSA 651-D:2 & D:3	The sentencing court	The court may order DNA testing upon finding that the petitioner has established, **by clear and convincing evidence, that** 1) DNA results of the evidence sought to be tested would be material to the issue of the petitioner's identity as the perpetrator of or accomplice to the crime that resulted in his or her conviction or sentence; and 2) If the requested DNA testing produces exculpatory results, the testing will constitute new, noncumulative material evidence that will exonerate the petitioner by establishing that he or she was misidentified as the perpetrator or accomplice to the crime	Not available
N.J. Stat. Ann. § 2A:84A-32a	The trial court that entered the judgment of conviction	The court shall not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following have been established: 1) The evidentiary criteria have been met; 2) The identity of the defendant was a significant issue in the case; 3) The convicted person has made a prima facie showing that the evidence sought to be tested **is material** to the issue of the convicted person's identity as the offender; 4) The requested DNA testing results would raise a **reasonable probability** that, if the results were favorable to the defendant, a motion for a new trial based upon newly discovered evidence would be granted	Not available
N.M. Stat. Ann. § 31-1A-2	The district court of the judicial district in which the petitioner was convicted	The petitioner shall show by a **preponderance of the evidence** that: 1) he was convicted of a felony; 2) the evidentiary criteria have been met; 3) the DNA testing he is requesting will be likely to produce exculpatory evidence; and 4) [he] was unable to have the same DNA testing he is requesting had been performed prior to his conviction and the results had been exculpatory. There is a **reasonable probability** that the petitioner would not have been found guilty	If the results of the DNA testing are exculpatory, the district court may set aside the petitioner's judgment and sentence, may dismiss the charges against the petitioner with prejudice, may grant the petitioner a new trial or may grant other appropriate relief

N.Y. Crim. Pro. § 440.30	(not specified)	The court shall grant the application for forensic DNA testing of the evidence upon its determination that if a DNA test had been conducted on such evidence, and if the results had been admitted in the trial resulting in the judgment, there exists a **reasonable probability** that the verdict would have been more favorable to the defendant	(Not available)
N.C. Gen. Stat. § 15A-269	The trial court that entered the judgment of conviction	The court shall grant the motion for DNA testing of the evidence upon its determination that: (1) The evidentiary criteria have been met, and (2) If the DNA testing being requested had been conducted on the evidence, there exists a **reasonable probability** that the verdict would have been more favorable to the defendant	(Not available)
725 ILCS 5/116-3	The trial court	The court shall order that the testing be performed if: - A prima facie case has been established - The testing has the scientific potential to produce new, noncumulative evidence **materially relevant** to the defendant's assertion of actual innocence, and - The testing requested employs a scientific method generally accepted within the relevant scientific community	(Not available)
138.798 Oregon Laws 2005 (replacing ORS Chapter 14 CH. 138 Effective 1/1/2006)	The circuit court in which the judgment of conviction was entered	The court shall order the requested DNA testing if it finds: **A reasonable possibility** that the testing will produce exculpatory evidence that would establish the innocence of the person of the offense for which the person was convicted or conduct, if the presentation of the conduct would result in a mandatory reduction in the person's sentence; or	(Not available)
Va. Stat. Ann. 19.2-327.1	The sentencing court	The court **shall block requested testing**. After review of the record of the applicant's trial, the court determines that there is **no reasonable possibility** that the testing would produce exculpatory evidence that: would establish the applicant's actual innocence of the offense for which the applicant was convicted	(Not available)
R.I. Gen. Laws 10-9.1-11 Effective 1/1/2001	The sentencing court	Mandatory testing: After notice to the prosecution and a hearing, a justice of the superior court shall order testing after finding that: **A reasonable probability** exists that petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing; Discretionary testing: After notice to the prosecution and a hearing, a justice of the superior court may order testing after finding that: **A reasonable probability** exists that the requested testing will produce DNA results which would have altered the verdict or indictment if the petitioner or a member of the results had been available at the post-conviction proceedings leading to the judgment of conviction	(Not available)
Tex. Code Ann. §§ 64.01 - 64.05 Effective 9/1/2001	(not specified)	After notice to the prosecution and an opportunity to respond, the court shall order DNA analysis if it finds that: **A reasonable probability** exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing; After notice to the prosecution and an opportunity to respond, the court may order DNA analysis if it finds that: **A reasonable probability** exists that analysis of the evidence using DNA results which did not exist at the time of trial would establish the petitioner's innocence by a preponderance of the evidence if the results had been available at the post-conviction hearing leading to the judgment of conviction	(Not available)

Tex. Crim. Proc. Ann. 65 Art. 64.01 to 64.05	The convicting court	A convicting court may order forensic DNA testing under this chapter only if [and shall order if] (1) The court finds that the evidentiary criteria have been met and that identity was or is at issue in the case, and (2) The convicted person **establishes by a preponderance of the evidence** that (a) the person would not have been convicted if exculpatory results had been obtained through DNA testing, and (b) the request for the proposed DNA testing was not made to unreasonably delay the execution of sentence or administration of justice	(Not available)
Utah Code Ann. §§ 78-35a-301 thru 304	The trial court that entered the judgment of conviction	The court shall order DNA testing if it finds by **a preponderance of the evidence** that all the petition criteria have been met (The court may not order DNA testing in cases in which DNA testing was available at the time of trial and the person did not request DNA testing or present DNA evidence for tactical reasons.) (U.C.A. 1953 § 78-35a-301)	(b) If the court, after considering all the evidence, determines that the DNA test result demonstrates by clear and convincing evidence that the person is actually innocent of one or more offenses of which the person was convicted and all lesser included offenses relating to those offenses, the court shall order that those convictions be vacated with prejudice and those convictions be expunged from the person's record (U.C.A. 1953 § 78-35a-301)
Va. Code Ann. § 19.2-327.1	The circuit court that entered the original conviction	The court shall, after a hearing on the motion, can order that testing be done by the Division of Forensic Science based on a finding that **clear and convincing evidence** will show (a) that the evidentiary criteria have been met, (b) that the testing is materially relevant, noncumulative, and necessary and may prove the convicted person's actual innocence, (c) the testing requested involves a scientific method employed by the Division of Forensic Science, and (d) the convicted person has not unreasonably delayed the filing of the petition after the evidence or the test for the evidence became available at the Division of Forensic Science (e) The reason or reasons that the newly discovered or untested evidence may prove the actual innocence of the convicted	(Not available)
Wash. Rev. Code Ann. § 10.73.170	A petition submits the request to the state Office of Public Defense, which will transmit the request to the county prosecutor in the county where the conviction was obtained	The prosecutor shall screen the request The request shall be reviewed based upon the test that the DNA evidence would demonstrate innocence on **a more probable than not basis**	not applicable
W. Va. Code Ann. § 15-2B-14	The trial court that entered the judgment of conviction	The court shall grant the motion for DNA testing if it determines all of the following have been established: 1) The evidentiary criteria have been met 2) The identity of the perpetrator of the crime was or should have been a significant issue in the case 3) The convicted person has made a prima facie showing that the evidence sought for testing is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, specific circumstances, or enhancement allegation resulting in the more severe sentence 4) The requested DNA testing results would raise a **reasonable probability** that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if DNA testing results had been available at the time of conviction	not applicable

	Wis. Stat. Ann. §§ 974.07, 974.06 & 974.07	The court in which the person was convicted, adjudicated delinquent, or found not guilty by reason of a mental disease or defect	A court in which a motion is filed shall order forensic DNA testing if all of the following apply (1) The movant claims that he or she is innocent of the offense at issue. (2) It is **reasonably probable** that the movant would not have been prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense at issue, if exculpatory DNA results had been available before the prosecution, conviction, finding of not guilty, or adjudication for the offense, and (3) The evidentiary criteria have been met A court in which a motion is filed may order forensic DNA testing if all of the following apply (1) It is **reasonably probable** that the outcome of the proceedings would have been more favorable to the movant if the results of DNA testing had been available before he or she was prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense, and (2) The evidentiary criteria have been met	If the results of DNA testing support the movant's claim, the court shall schedule a hearing to determine the appropriate relief to be granted to the movant After the hearing, and based on the results of the testing and any evidence or other matter presented at the hearing, the court shall enter any order that serves the interests of justice, including any of the following **1. An order setting aside or vacating the movant's judgment of conviction, judgment of not guilty by reason of mental disease or defect, or adjudication of delinquency** **2. An order granting the movant a new trial or fact-finding hearing**

Comparison of State Post Conviction DNA Laws

STATE	Who Can Apply For Testing?	Who Pays?	Preservation Required?	Fiscal Analysis of Preservation
Arizona	Convicted felons may request testing at any time	State, but court can order the petitioner to pay	Required during the pendency of the proceeding, allows court to order the state keep a sample for re-testing and requires that blood samples be preserved for 35 years	N/A
California	Incarcerated felons	State, but court can order the petitioner if able to pay	For time that offender remains incarcerated; entity has discretion to determine how to retain evidence; preservation portion of law is automatically repealed on 1/1/03	Quoted from fiscal note: "Potentially significant reimbursable local costs for evidence storage. Sheriff's offices and police departments differ in how long they store evidence, but most do not store evidence after appeals have been exhausted. By mandating storage, this bill creates annual costs that could be in the range of $1 million. For example, if Los Angeles City and County each have to purchase refrigeration units for biological evidence and rent additional storage facilities, the annual cost could exceed $200,000.

				Extrapolating statewide, the cost could reach $1 million since individual departments maintain their own facilities."
Connecticut	All offenders seeking a new trial based on newly discovered DNA evidence	N/A	N/A	N/A
Delaware	Anyone convicted of a crime may make motion within three years after judgement is final or, if judgment was final before 9/1/00, petitioner must file by 1/1/02	State, but court can order the petitioner if able to pay	N/A	N/A
Florida	Anyone tried and convicted of a crime may petition for testing if within two years of date of final judgment or date judgment is affirmed on appeal or by 10/1/03, whichever occurs later	State, but court can order the petitioner if able to pay	For non-capital cases, two years following date of final judgment or date judgment is affirmed on appeal; for capital cases, 60 days after execution of sentence	N/A
Idaho	Anyone convicted of a crime may request testing at any time; however, in capital cases, petition must be filed within 42 days of judgment or by 7/1/01 whichever is later	Petitioner, unless unable to pay	N/A	N/A
Illinois	Anyone convicted of a crime	N/A	At least seven years	N/A
Indiana	Certain convicted	Court will order	Retain during	N/A

	felons	payment responsibility	pendency of proceeding; court can order to keep a sample for re-testing	
Louisiana	Convicted felons currently in custody may request testing by 8/30/05	Creates fund for indigent petitioners	In non-capital cases, preserve until 2005; for capital cases, preserve until execution of sentence	N/A
Maine	Anyone convicted of a crime; requires prosecutor to reopen case if test indicates innocence	N/A	N/A	N/A
Maryland	Certain felons incarcerated on or after effective date	Petitioner pays unless results are favorable to petitioner	In most cases, three years after imposition of sentence	Quoted from fiscal note: "It is expected that for most or all jurisdictions, the bill would require additional storage space, including refrigeration facilities for evidence such as DNA and blood samples. The expenses that would be incurred by law enforcement agencies for the additional storage facilities required by the bill cannot be reliably estimated, but it is expected that such expenses would be significant over time."
Michigan	Incarcerated felons convicted before the effective date may request testing by 1/1/06	Petitioner, unless unable to pay	Preserve during entire incarceration period	N/A
Minnesota	Anyone convicted of	N/A	N/A	N/A

	a crime			
Missouri	Anyone in custody of DOC	N/A	N/A	N/A
Nebraska	Anyone in custody of DOC may request testing at any time	Petitioner unless unable to pay	Preserve during entire incarceration period	N/A
New Mexico	Anyone convicted of a crime may request testing prior to 7/1/02	Court may order petitioner to pay	N/A	N/A
New York	Anyone convicted of a crime before 1/1/96	N/A	N/A	N/A
North Carolina	Anyone convicted of a crime	Petitioner, unless unable to pay	Preserve sample of evidence for entire felony incarceration period; entity has discretion in how to store evidence; law applies to evidence in possession on or after 10/1/01	N/A
Oklahoma	Incarcerated, indigent felons can seek the assistance of the DNA Forensic Testing Program until 7/1/05	Indigent felons can take advantage of DNA Forensic Testing Program	Preserve evidence or representative sample of evidence from violent felonies for incarceration period	N/A
Oregon	Incarcerated for aggravated murder. A person not presently incarcerated for aggravated murder, murder or a sex offense must file motion within 48 months of the effective date	By petitioner if not incarcerated; if incarcerated, the petitioner pays if able	N/A	N/A
Tennessee	Anyone convicted of 1st or 2nd degree murder, aggravated rape, rape,	State or the criminal injuries compensation fund on behalf of the	Preserve during pendency of proceeding	N/A

	aggravated sexual battery or at trial judge's discretion, any other offense, may petition at any time	petitioner		
Texas	Anyone convicted of a crime	The state, unless a private lab not under contract is used	For non-capital cases, until the offender dies, completes the sentence or is released on parole; for capital cases, until the offender is executed, dies or is released on parole	Quoted from fiscal note: "The Texas Department of Criminal Justice would have costs related to staff time needed to reproduce, distribute, and store the required information. However, TDCJ estimates that this activity will not have any significant fiscal impact on agency operations."
Utah	Convicted felon may request testing at any time	Petitioner pays unless indigent, incarcerated or results are favorable to petitioner	After petition filed, agencies must cooperate to preserve evidence	N/A
Virginia	Convicted felons may motion to get testing for newly discovered evidence; incarcerated felons who plead not guilty or for any other person sentenced to death or convicted of certain felonies no matter the plea, may petition for a writ of actual innocence	N/A	In non-capital cases, offender must motion for preservation of evidence or representative sample of evidence; evidence is preserved for 15 years after conviction; in capital cases, evidence preserved until sentence is executed	N/A
Washington	Incarcerated felons may request testing by 12/3/04	N/A	Biological evidence can not be destroyed until 2005	N/A

For more information contact: Blake Harrison blake.harrison@ncsl.org at (303) 364-7700

Note: Illinois and North Carolina say that a "defendant" may motion for testing. Neither statute defines "defendant." For purposes of this chart, defendant means anyone convicted of a crime.

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Representative Gabrielle LeDoux

SPONSOR STATEMENT FOR HB 325

An Act relating to post-conviction DNA testing; and amending Rule 35.1, Alaska Rules of Criminal Procedure.

DNA testing is a new technology that has enabled criminal justice systems worldwide to prove the guilt or innocence of many people who claim they were mistakenly convicted. This Act would enable Alaska criminal law to keep up with new technology, joining 40 other states in providing a statutory right to DNA testing where meaningful claims of innocence have been made by those convicted. In cases where the DNA would be probative of guilt or innocence, this Act will enable Alaska to quell any lingering doubts where such claims of innocence have been made. Providing access to such testing so will serve victims, police, prosecutors, the public, and public faith in our criminal justice system.

This Act would help enable Alaska to receive funds under the Congressional Justice for All Act of 2004 (H.R. 5107), which, under the leadership of Senator Frist, Speaker Hastert and President Bush, provides financial incentives for states to allow post-conviction DNA testing, and provides funds for qualifying states to pay for such tests.

Specifically, this act establishes a procedure for application for DNA test and the appointment of counsel. A person who has been convicted of a crime may petition the court for testing. If the court determines that the facts warrant testing, the court will appoint a public defender if the petitioner is indigent and that agency will pay for the testing. Law enforcement agencies will retain any collected biological evidence pertaining to the offense.

In this way, a person has an opportunity for testing in order to prove actual innocence. The court will determine whether the case merits this extra step so not every person who requests such testing will automatically receive it. In some states this is only done in death sentence situations, but only 14 of the nation's 175 DNA exonerations involved innocent people facing execution. The other 161 innocent people were simply being forced to endure large parts of their lives behind bars for crimes they did not commit. It therefore makes more sense to simply expand this right to all deserving people. This legislation can help free an innocent person and let law enforcement and the public know that a guilty and dangerous person is still at large.

Representative_Gabrielle_LeDoux@legis.state.ak.us

LEGAL SERVICES

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MEMORANDUM

February 27, 2006

SUBJECT: HB 325 - Sectional Summary (Work Order No. 24-LS1222\A)

TO: Representative Gabrielle LeDoux

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Creates a new procedure in statute for convicted persons to request DNA testing of biological evidence from the conviction and sentence the person is serving.

Section 2. Provides notice that a portion of sec. 1 has the effect of amending Rule 35.1, A.R.Cr.P.

GPL:med
06-169.med

INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

ACCESS TO POST-CONVICTION DNA EVIDENCE

Despite its ability to prove innocence, some courts will not consider newly discovered DNA evidence after trial.

- The traditional appeals process is often insufficient for proving a wrongful conviction. It is not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in his case.
- Sometimes it comes to light that DNA evidence available at the time of the defendant's trial was never tested.
- Often the methods of DNA testing used at the time of the trial were not exact and yielded unreliable results. Today's more sophisticated technology provides irrefutable results.
- The only way a person can access the DNA evidence associated with his criminal case, absent a protracted legal battle, is through post-conviction DNA testing access statutes.

Do all states have post-conviction DNA access statutes?

States Without Statutes Allowing for Access to DNA Evidence:

At present, the following ten states do not have any DNA access statutes incorporated into their state laws: Alabama, Alaska, Massachusetts, Mississippi, Ohio, Oklahoma, South Carolina, South Dakota, Vermont, & Wyoming.

Although forty states have post-conviction DNA testing access statutes, many of these testing laws are limited in scope and substance*

What are the common shortcomings of existing DNA access laws?

- Some laws present insurmountable hurdles to the individual seeking access, putting the burden on the defense to effectively solve the crime and prove that the DNA evidence promises to implicate another individual.
- Certain laws do not permit access to DNA when the defendant originally pled guilty.
- Many laws fail to include adequate safeguards for the preservation of DNA evidence.
- Several laws do not allow individuals to appeal denied petitions for testing.
- A number of states fail to require full, fair and prompt proceedings once a DNA testing petition has been filed, allowing the potentially innocent to languish interminably in prison.

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INNOCENCE PROJECT

What key elements should be included in a good DNA access law?

Most states have post-conviction DNA testing access statutes. For those that do not, or for those state statutes with deadlines for individuals seeking access, a federal law, the Justice For All Act (JFAA) of 2004 (H.R. 5107), provides financial incentives for states to allow permanent post-conviction DNA testing access to qualified defendants.

The Innocence Project recommends the following elements be contained in new statutes or existing statutes in need of amending:

- Include a reasonable standard to establish of proof of innocence at the stage where an individual is petitioning for post-conviction DNA testing;
- Allow access to post-conviction DNA testing wherever it can establish innocence, including cases where the defendant pled guilty;
- Exclude "sunset provisions," or absolute deadlines, for when access to post-conviction DNA evidence will expire;
- Require state officials to account for evidence in their custody;
- Require state officials to preserve biological evidence properly and for a reasonable period of time;
- Disallow procedural hurdles that stymie DNA testing petitions and proceedings that govern other forms of post-conviction relief;
- Allow convicted persons to appeal from orders denying DNA testing;
- Require a full, fair and prompt response to DNA testing petitions, including the avoidance of debate around whether currently available DNA technology was available at the time of the trial;
- Avoid unfunded mandates by providing funding to DNA testing statutes; and
- Provide flexibility in where, and how, DNA testing is conducted.

Case in Point: Pennsylvania Man Originally Denied Access to DNA

In May of 1987, Bruce Godschalk was convicted of rape and burglary in Pennsylvania. The conviction was based primarily on eyewitness identification and a confession later proven to be false. Forensics techniques available at the time of the trial and used to test the semen from the crimes could not exclude Mr. Godschalk as the perpetrator. Following his conviction, Mr. Godschalk petitioned for access to DNA testing and was denied. After contacting the Innocence Project in 1995, which sought testing on his behalf, the District Attorney refused to allow access to the DNA evidence. It was not until November of 2000 that a Federal District Court granted access to the DNA testing. Delays in setting a testing protocol and delivering the evidence, in addition to some legal hurdles, deferred testing of the evidence until January of 2002. Mr. Godschalk was eventually excluded as the donor of the semen in the crimes and released from prison. Mr. Godschalk had spent seven of his fifteen years of incarceration fighting for access to DNA evidence. As a result of Mr. Godschalk's case, Pennsylvania introduced and later passed a law creating access to DNA evidence.

adn.com
Anchorage Daily News

Case tests Alaska's post-conviction DNA policies

LEGAL BATTLE: An inmate's claim of innocence has led to lawsuits against the state.

By TATABOLINE BRANT
Anchorage Daily News

(Published: August 21, 2005)

For 12 years, William Osborne has been sitting in a prison cell for a crime he says he didn't commit.

Osborne, 32, has maintained since his arrest in 1993 that he was not involved in the brutal rape and beating of an Anchorage prostitute that year near Earthquake Park. He says that the state convicted the wrong man and that he can prove it, if they would just let him retest hair and semen found at the crime scene using DNA technology more advanced than what was available at the time.

But the state says no. It insists that even if the DNA came back as someone else's, the results still would not prove Osborne innocent. He was identified by the victim, prosecutors say, and fingered by co-defendant Dexter Jackson, who also went to prison. So what's the point?

The state's refusal to allow the testing has provoked the first legal battle in Alaska over post-conviction DNA testing -- an issue most states have already wrestled with and made laws about. The New York-based Innocence Project, whose intervention on DNA issues has helped free more than 80 wrongly convicted people across the country, has sued the state on Osborne's behalf.

"We want the state of Alaska to get with the rest of the country in allowing post-conviction DNA testing," said Colin Starger, staff attorney for the Innocence Project.

Prosecutors leaned heavily on the biological evidence to sway jurors during Osborne's 1993 trial, his lawyers say. Eyewitness identification is notoriously unreliable and the co-defendant may have had his own reasons for lying, they say. Retesting the hair and semen -- at Osborne's expense -- could help determine if what he's saying is true: that it wasn't him.

If it turns out the hair and semen belong to someone else, Osborne wouldn't automatically be freed, the lawyers said. It might just mean a new trial, where the state could convict him again without using it.

Two separate civil suits -- one in federal court and one in state court -- are now working their way through the system, demanding that the state hand over the evidence for testing. The federal suit, filed by the Innocence Project, went before three judges of the 9th U.S. Circuit Court of Appeals last month.

It was not the state's best day.

The short presentation at the Federal Building in downtown Anchorage started with local attorney Bob Bundy, a former state and federal prosecutor, arguing on behalf of Osborne and the Innocence Project.

The judges had been briefed on the background of the case. Press accounts and court records stemming from the 1993 attack laid it out this way:

DENIAL FROM THE START

The victim, a prostitute and drug addict, told authorities she was trolling for customers near Chilkoot Charlie's on March 22 of that year when two men in a red Nissan picked her up and agreed to pay her $100 to have sex with them.

The men refused to take the woman to her usual transaction site in Spenard, instead driving her to a cul-de-sac at Earthquake Park. From the witness stand at Osborne's trial, she said the pair refused to pay for sex, raped her, beat her with a club, grazed her with a shot, buried her in the snow and left her for dead.

Jackson and Osborne were charged. A Swiss Army knife taken from the victim was found on Jackson, who initially denied any involvement but then claimed he and Osborne had consensual sex with the woman. From the get-go, Osborne denied any part in the attack, but he and Jackson were tried together so Jackson's version undercut Osborne's denial with jurors. The victim said a blue condom was used and police tested one found at the scene.

The results, using an early type of testing, matched the DNA to 16 percent of the African American population, a group that included Osborne.

Osborne asked his attorney to do more advanced testing, but she refused, strategizing that the first results actually helped him ---- they showed the semen could have come from any number of people. Further testing might narrow it to Osborne, she reasoned. Clients often lie to their lawyers.

It is unclear how much weight jurors put on the biological evidence, but in the end they convicted both men. Osborne is "currently incarcerated serving a 26-year sentence for horrendous crimes -- kidnapping, sex assault and assault," Bundy told the 9th Circuit judges last month. "Mr. Osborne has steadfastly maintained from the beginning that he is innocent of these crimes."

There are now tests, Bundy said, that could identify the source of the DNA "virtually to elimination of everybody else on the planet."

For at least four years, state prosecutors have flatly refused to allow this test, court records show.

Although the legal issue before the appeals court was essentially whether Osborne can file in federal court without first exhausting his options in state court, the judges quickly zeroed in on the real question: Why is the state refusing to allow the test?

"There's nothing preventing you from simply giving him this evidence," Judge William Fletcher said to assistant attorney general Nancy Simel. "Why don't you do it?"

"Well, there's a number of reasons for it," Simel responded, "but we're not here to argue the merits of that today."

"Well, but I asked you a question," Fletcher said, more firmly.

Simel stonewalled. The judges seemed puzzled. The courtroom spectators, mostly other lawyers, shuffled in their seats and eyed each other during the unusual and tense exchange.

"It's a really simple question," Fletcher pressed. "And as a practical matter, we have this evidence

sitting there that may or may not clear this man ..."

"Correct."

"And you have it in your custody and you're refusing to hand it over -- how come?"

"Because we don't think that Mr. Osborne satisfies the requirements for handing over evidence in this case. ... It has to do with complicated issues of fact and --"

"You know it's a simple question, and I don't think the answer has to be that complicated," Fletcher said. "... I don't get it yet."

"Well, be that as it may, that has not been litigated yet," Simel said. "And I am not willing or able in the sense of answering the question in the context of this case."

The argument continued, and at one point, Simel even told the judge, who was in mid-sentence, to hold on a second.

The exchange continued:

JUDGE: "... Pretty straightforward -- hand it over."

SIMEL: "I understand."

JUDGE: "And you don't want to do it."

SIMEL: "That is correct."

JUDGE: "And you're really not willing to tell me why. But, I guess you'll tell somebody sometime."

SIMEL: "Not in this instance. Not at this time, is the answer."

THE OTHER EVIDENCE

Dean Guaneli, Alaska's chief assistant attorney general in the criminal division, said in an interview after the oral argument that the state stands firm in its belief that the biological evidence in Osborne's case should not be retested. "We think the conviction was valid. ... We're confident in it. We feel there is no need to go back and revisit the case."

The victim identified Osborne as a perpetrator, he said. And so did Jackson. "This is why we are fighting this case."

If the DNA results -- broad as they were -- had been the only evidence in the case, Guaneli said, "it's hard to imagine the jury would have convicted."

And then there is the idea of finality. "There's a strong interest in saying a case is over," he said, "that the laws and Constitution were applied, and applied fairly and we need to move on. I think that needs to be carefully considered. We don't want innocent people convicted, but we don't think that this guy fits into that category."

Starger of the Innocence Project disagreed: "DNA can only help advance the cause of truth here," he said. "It doesn't hurt the cause of finality to have the test done."

Randall Cavanaugh, Osborne's attorney in the state suit, said the victim's identification of Osborne was uncertain from the beginning.

The woman, he said, was upset and stressed out at the time of the assault, Cavanaugh said. She had a crack pipe on her; she had bad eyesight and wasn't wearing her glasses or contacts; she initially lied to police about what happened; she had a head injury; it was dark out except for a dome light in the vehicle; and the initial description the woman gave police of the second man didn't quite fit Osborne, Cavanaugh said: It was 9 years off in age, 3 inches off in height, up to 45 pounds off in weight and said he didn't have facial hair when witnesses testified he had a mustache.

Also worrisome, he said, the victim did not seem certain when she picked Osborne from a photo lineup. She said that he was "most familiar, along with others," Cavanaugh said, and "most likely to have been the passenger."

"We think she was very wrong with her identification."

Guaneli noted that the jury had time to size up the victim's credibility during her testimony. "This wasn't a situation where she was just there for a few seconds," he said of the attack. "This was a long, drawn-out affair."

Osborne's attorneys can argue that victims are always under stress and therefore prone to mistakes, Guaneli said, "but what do they say about the other guy?"

Cavanaugh said Jackson could have had a lot of motives for lying; maybe he was covering up for someone. Efforts to interview Jackson about it have been unsuccessful, Cavanaugh said.

The bottom line is, the state used the blue condom and the crude DNA results to damn Osborne to the jury, Cavanaugh said, so they ought to let him re-test now.

"I think they're just afraid of the results."

OTHER STATES HAVE LAWS

The federal government and about 40 states have laws covering post-conviction DNA testing, said Starger, the Innocence Project lawyer. Alaska does not.

That may be because the issue doesn't come up here very often, Guaneli said. Alaska has no death penalty or record of miscarriages of justice, he said, two things likely to raise the issue.

The Attorney General's Office has no written opinion or guidelines on how to handle requests for post-conviction DNA testing, Guaneli said. Certainly prosecutors would consider re-testing biological evidence "if we believed that testing would be meaningful in determining someone's innocence," he said.

Until the testing is done, Starger said, no one knows "whether or not the results will support his efforts to get a new trial."

According to the Innocence Project, a significant number of post-conviction DNA tests requested by defendants end up further implicating them.

Why they demand DNA tests when they know they committed the crime "would be the subject for a great psychological study," an Innocence Project attorney told the Los Angeles Times in 2003.

"Maybe after 15 years of telling everyone you're innocent, you start to believe yourself."

As for the broader question of whether Alaska needs a law to spell out when post-conviction DNA testing should be allowed, Guaneli said he is not familiar with what other states do, but that he has reservations.

"We don't want to find ourselves in a situation where we have to preserve all this evidence and do all this retesting when it's not going to serve any purpose" he said. "We worry that it's a never-ending process. There are already ways defendants can string things along for years."

He added later: "If there was a state law to do so in a case like (Osborne's), we would object to that."

Osborne's lawyers say the "process" is not more important than the possibility that an innocent man is spending his youth in prison for a crime he didn't commit. If the state is so confident of Osborne's guilt, Bundy said, then the DNA test will prove they are right.

"Why would anybody be afraid of the truth?" he said.

Osborne's lawsuit against the state is already paving the way for other Alaskans seeking post-conviction DNA testing. In a recent decision in the case, the Alaska Court of Appeals gave the Superior Court guidelines for determining when post-conviction DNA testing should be allowed -- a precedent that attorneys can point to in the future.

The judge in Osborne's case has not yet ruled on whether he meets the criteria.

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Viewpoints

Criminal DNA Database Expansion Working In Alaska

by Rep. Tom Anderson

March 06, 2006
Monday PM

DNA testing, usually done through a simple mouth swab, is the fingerprinting of the 21st century. Through DNA analysis of blood, hair, fingernails, or skin left at crime scenes, investigators are able to connect perpetrators with their past crimes, or to exonerate those who are falsely accused. Three years ago, the State Legislature passed legislation to broadening Alaska's DNA collection laws. HB 49 required all persons, including adjudicated juveniles, convicted of felonies, crimes against a person, sexual misdemeanors, those who are required to register as sex offenders, and those currently incarcerated or on parole for these crimes will have their DNA entered into the statewide database. This change was followed in 2005 by HB 124, which gave the Department of Public Safety the tools to collect DNA, by reasonable force, when necessary, further increasing the samples submitted into the database.

The advantages of a forensic DNA database are undeniable. Assuming a database with a critical mass of data and a laboratory system capable of rapid crime scene sample analysis, the Combined DNA Index System (CODIS) has the potential to be one of law enforcement's most powerful tools. Importantly, the database is most significant when no suspect exists or when a case is likely to go unsolved because of a lack of other evidence. The expanded database allows police to eliminate innocent parties or people having legitimate access to a crime scene.

Alaska's successes continue to mount, with the aid of federal funding from the National Institute of Justice, the number of DNA profiles from convicted offenders now in the database has more than tripled. The total funding for Alaska under NIJ's Convicted Offender Backlog Reduction Program is $280,175.00. The total number of samples processed under this program

will be 8,500, and it is hoped Alaska will receive additional federal funds for this purpose under President Bush's National DNA Initiative.

Currently, Alaska's DNA database contains over 10,000 convicted offender DNA profiles. The expansion helps to increase the intelligence value of the database, thus making it a more powerful tool for solving crimes. This has had a tremendous impact on the number of cases being solved through the use of our DNA database. Last year alone, DNA profiles obtained from more than 90 different crime scenes around the state were matched back to known Alaskan convicted offenders. More than a third of these crimes involved sexual assault.

On a per capita basis, Alaska now has one of the most successful DNA databases in the nation and according to recent FBI statistics, has aided more investigations than 19 other states. One of Alaska's CODIS hits from last July involved matching an Alaskan convicted offender to a crime scene profile entered by the Oregon State Police from an attempted murder. The qualifying conviction for the Alaskan offender was a misdemeanor assault. This hit would not have happened if our database law had not been expanded to cover all crimes against a person.

I have made DNA database expansion my number one priority as a State Legislator. I am pleased to see these fruits coming to bear for the benefit of my constituents, fellow Alaskans and most importantly for the betterment of our children's future. As the State's database continues to grow, we can expect more cases to be solved through the use of DNA, making Alaska and Alaskans safer.

About: Rep. Tom Anderson (R) is a member of the 24th Alaska State Legislature representing District 19 - Anchorage.

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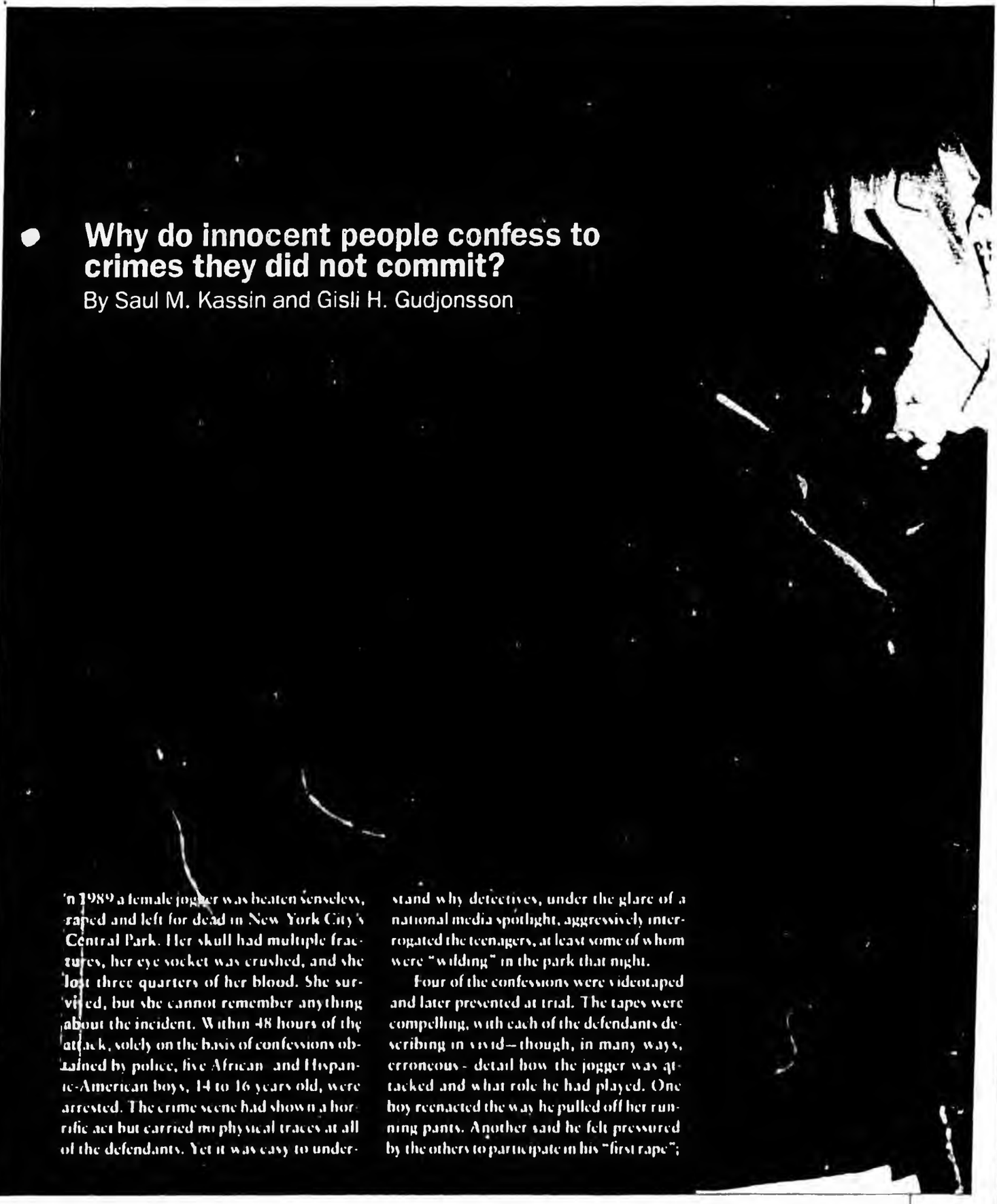
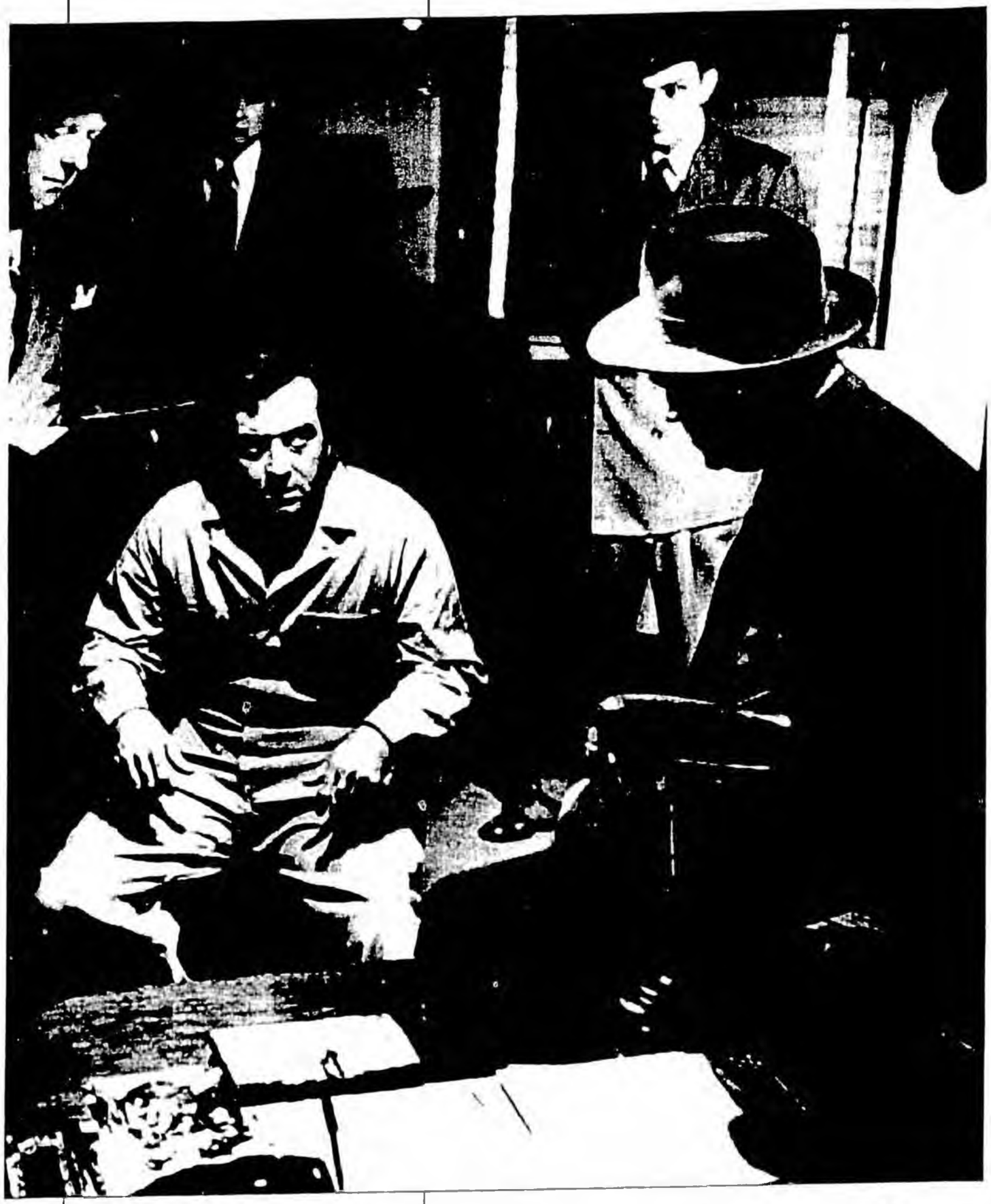
Why do innocent people confess to crimes they did not commit?

By Saul M. Kassin and Gisli H. Gudjonsson



In 1989 a female jogger was beaten senseless, raped and left for dead in New York City's Central Park. Her skull had multiple fractures, her eye socket was crushed, and she lost three quarters of her blood. She survived, but she cannot remember anything about the incident. Within 48 hours of the attack, solely on the basis of confessions obtained by police, five African- and Hispanic-American boys, 14 to 16 years old, were arrested. The crime scene had shown a horrific act but carried no physical traces at all of the defendants. Yet it was easy to understand why detectives, under the glare of a national media spotlight, aggressively interrogated the teenagers, at least some of whom were "wilding" in the park that night.

Four of the confessions were videotaped and later presented at trial. The tapes were compelling, with each of the defendants describing in vivid—though, in many ways, erroneous—detail how the jogger was attacked and what role he had played. One boy reenacted the way he pulled off her running pants. Another said he felt pressured by the others to participate in his "first rape";



he expressed remorse and promised that it would not happen again. After their arrest, the youths recanted these confessions, because they had believed that making a confession would have enabled them to go home. Regardless of the denials, the tapes collectively persuaded police, prosecutors, two trial juries, a city and a nation; the teenagers were convicted and sentenced to prison.

Thirteen years later Matias Reyes, who was in jail for three rapes and a murder committed after the jogger attack, stepped forward of his own initiative. He volunteered that he was the Central Park assailant and that he had acted alone. The Manhattan district attorney's office questioned Reyes and discovered that he had accurate, privileged and independently corroborated knowledge of the crime and crime scene. DNA testing further revealed that the semen samples recovered from the victim—which had conclusively excluded the boys as donors—belonged to Reyes. (Prosecutors had argued at trial that just because police did not capture *all* the alleged perpetrators did not mean they did not get *some* of them.) In December 2002 the five teenagers' convictions were vacated.

> A disturbing number of cases have involved defendants who were convicted based only on false confessions.

Despite its notoriety, the case illustrates a phenomenon that is not new or unique. The pages of legal history reveal many tragic miscarriages of justice involving innocent men and women who were prosecuted, wrongfully convicted, and sentenced to prison or to death. Opinions differ on prevalence rates, but it is clear that a disturbing number of cases have involved defendants who were convicted based only on false confessions that, at least in retrospect, could not have been true. Indeed, as in the case of the Central Park incident, disputed false confessions have convicted some people notwithstanding physical evidence to the contrary. As a result of technological advances in forensic DNA typing—which enables the review of past cases in which blood, hair, semen, skin, saliva or other biological material has been preserved—many new, high-profile wrongful convictions have surfaced in recent years, up to 157 in the U.S. alone at the time of this writing. Typically 20 to 25 percent of DNA exonerations had false confessions in evidence.

Why would an innocent person confess to a crime? A scan of the scientific literature reveals how a complex set of psychological factors comes into play. First, techniques commonly used by investigators during interviews make them prone to see deceit in suspects, a perception that tends to bias the outcome of the questioning. When the accused waive their constitutional rights to silence and to counsel during questioning by the police, they may also unwittingly lose procedural safeguards and put themselves at greater risk of making a false confession. Other contributors include a given person's tendencies toward compliance or suggestibility in the face of two common interrogation tactics—the presentation of false incriminating evidence and the impression that giving a confession might bring leniency. In short, sometimes people confess because it seems like the only way out of a terrible situation.

More troubling, confession evidence is inherently prejudicial, influencing juries even when they are shown evidence of coercion and even when there is no corroboration. Ultimately, we believe, society should discuss the urgent need to reform practices that contribute to false confessions and to require mandatory videotaping of all interviews and interrogations.

Discerning the Truth

A 2004 conference on police interviewing attended by the two of us illustrates the problem of bias during questioning. Joseph Buckley—president of John E. Reid and Associates (which has trained tens of thousands of law-enforcement professionals) and co-author of the manual *Criminal Interrogation and Confessions* (Aspen Publishers, 2001)—presented the influential Reid technique of interviewing and interrogation. Afterward, an audience member asked if the persuasive methods did not at times cause innocent people to confess. Buckley replied that they did not interrogate innocent people.

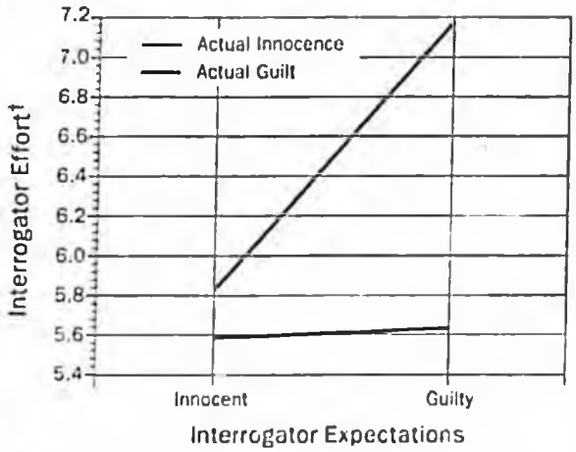
To understand the basis of this remark, it is important to know that the highly confrontational, accusatory process of interrogation is preceded by an information-gathering interview intended to determine whether the suspect is guilty or innocent. Sometimes this initial judgment is reasonably based on witnesses, informants or other ex-

COURTESY OF EVERETT COLLECTION (preceding pages)

True or False?

	Naive Students	Trained Students	Police Investigators
Total accuracy	56%	46%	50%
Confidence*	5.91	6.55	7.05

*Self-reported on a 10-point scale.



†Observer's ratings on a 10-point scale.

Training makes people more confident about their ability to distinguish truth from lies; however, it does not increase their accuracy (*table*). In the laboratory, interrogators tried hardest to extract a confession when they presumed guilt but the suspect was actually innocent (*graph*).

trinsic evidence. At other times, however, such judgments may be based on nothing more than a hunch, a clinical impression that investigators form during a preinterrogation interview.

The risk of error at this stage is clear, as in the 1986 Florida case involving Tom Sawyer, whom investigators accused of sexual assault and murder and interrogated for 16 hours, extracting a confession. His statement was later suppressed by the judge, and the charges were dropped. Sawyer had become a prime suspect because his face flushed and he appeared embarrassed during an initial interview, a reaction interpreted as a sign of deception. Investigators did not know that Sawyer was a recovering alcoholic with a social anxiety disorder that caused him to sweat profusely and blush in evaluative social situations. Many of the characteristics associated with acting "guilty" are also signs of a person under high stress.

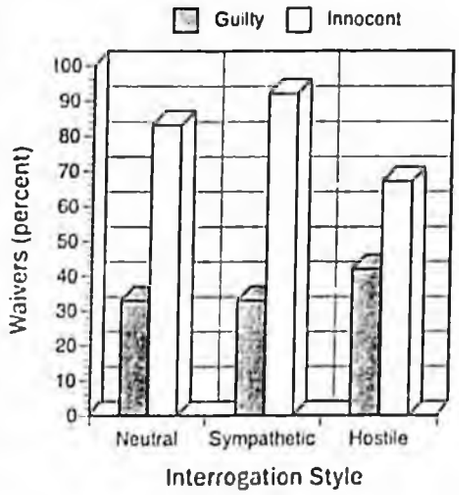
Separating truths from lies is tricky. In fact, most experiments have shown that people perform at no better than chance levels and that training programs produce, at best, small and inconsistent improvements compared with naive control groups. In general, professional lie catchers, such as police detectives, psychiatrists, customs inspectors and polygraph examiners, exhibit accuracy rates in the 45 to 60 percent range, with a mean of 54 percent.

Even with those statistics, trained investigators believe they are more accurate in determining guilt or innocence. In 2002 Christian Meissner of Florida International University and one of us (Kassin) conducted a meta-analysis to examine their performance. Across studies, investigators and educated participants, relative to naive controls, exhibited a proclivity to judge targets as deceptive—and to do so with confidence [*see table above*]. Expressing a particularly cynical but telling point of view, one detective is quoted as saying in a 1996 article by Richard A. Leo of the University of California at Irvine, "You can tell if a suspect is lying by whether he is moving his lips."

Protections Averted

With suspects judged deceptive from their interview behavior, the police shift into a highly confrontational process of interrogation. There is, however, an important procedural safeguard in place to protect the accused. In the landmark *Miranda v. Arizona* in 1966, the U.S. Supreme Court ruled that police must inform all suspects of their constitutional rights to silence ("You have the right to remain silent; anything you say can and will be held against you in a court of law") and to counsel ("You are entitled to consult with an attorney; if you cannot afford an attorney, one will be appointed for you"). Only if suspects waive these rights "voluntarily, knowingly and intelligently" as determined in law by consideration of "a totality of the circumstances" can the statements they produce be admitted into evidence.

Waiving Rights



Innocents are especially at risk for waiving rights to counsel and silence that were established by the U.S. Supreme Court in *Miranda*, believing they have nothing to hide (*left*). Yet longer exposure to questioning leaves them at greater risk for a false confession.

Miranda may not yield the protective effect for which it was designed for two reasons. First, a number of suspects—because of their youth, level of intelligence, lack of education or mental health status—do not have the capacity to understand and apply the rights they are given. Second, police use methods of presentation that elicit waivers. After observing live and videotaped police interrogations, Leo found that roughly four out of five suspects waive their rights and submit to questioning. He also observed that individuals who have no prior felony record are more likely to waive their rights than are those with a history of criminal justice "experience." In a 2004 study by one of us (Kassin) and Rebecca Norwick of Harvard University, subjects guilty or innocent of a mock crime (stealing $100) were confronted by a neutral, sympathetic, or hostile "Detective McCarthy" who asked if they would waive their rights and talk. Only 36 percent of guilty subjects agreed, but 81 percent of innocents waived these rights, saying later they had nothing to hide or fear [*see chart above*].

Interrogation Tactics

In the past, American police routinely practiced "third degree" methods of custodial interrogation—inflicting physical or mental pain and suffering to extract confessions and other types of information from crime suspects. Such tactics have mostly faded into the annals of criminal justice history, but modern police interrogations remain powerful enough to elicit confessions. At the most general level, it is clear that the two-step approach employed by Reid-trained investigators and others—in which an interview generates a judgment of truth or deception, which in turn determines whether or not to proceed to interrogation—is inherently biased.

For innocents who are initially misjudged, one would hope that interrogators would remain open-minded and reevaluate their beliefs over the course of questioning. A warehouse of psychology research suggests, however, that once people form a belief, they selectively seek, collect and interpret new data in ways that verify their opinion. This distorting cognitive confirmation bias makes such personal convictions resistant to change, even in the face of contradictory evidence. It also contributes to the errors committed by forensic examiners whose judgments of handwriting samples, bite marks, tire marks, ballistics, fingerprints and other "scientific" observations are often corrupted by a priori expectations, a problem uncovered in many DNA exoneration cases.

In one instance in 2002, Bruce Godschalk was exonerated of two rape convictions after 15 years in prison when laboratories for both the state and the defendant found from his DNA that he was not the rapist. Yet the district attorney whose office had convicted Godschalk—even though Godschalk disavowed his initial confession—argued that the DNA tests were flawed and refused at first to release him from prison. When the district attorney was asked what foundation he had for his decision, he asserted, "I have no scientific basis. I know because I trust my detective and his tape-recorded confession. Therefore, the results must be flawed until someone proves to me otherwise."

The presumption of guilt also influences the way police conduct interrogations, perhaps leading them to adopt an aggressive and confrontational questioning style. Demonstrating that interrogators can condition the behavior of suspects through an automatic process of social mimicry, Lucy Akehurst and Aldert Vrij of the University of Portsmouth in England found in 1999 that increased gestures and physical activity among police officers triggered movement among interviewees—fidgeting behavior that is then seen by others as suspicious.

It is important to scrutinize the specific practices of social influence that get people to confess. Proponents of the Reid technique advise interrogators to conduct the questioning in a small, barely furnished, soundproof room. The purpose is to isolate the suspect, increasing his or her anxiety and desire to escape. To further heighten discomfort, the interrogator may seat the suspect in a hard, armless, straight-backed chair; keep light switches, thermostats and other control devices out of reach; and encroach on the suspect's personal space over the course of interrogation.

Against this physical backdrop, the Reid operational nine-step process begins when an interrogator confronts the suspect with unwavering assertions of guilt (1); develops "themes" that psychologically justify or excuse the crime (2); interrupts all efforts at denial and defense (3); overcomes the suspect's factual, moral and emotional objections (4); ensures that the passive suspect does not withdraw (5); shows sympathy and understanding and urges the suspect to cooperate (6); offers a face-saving alternative construal of the alleged guilty act (7); gets the suspect to recount the details of his or her crime (8); and converts the latter statement into a full written or oral confession (9). Conceptually, this system is designed to get suspects to incriminate themselves by increasing the anxiety associated with denial, plunging the suspect into a state of despair and then minimizing the perceived consequences of confession.

Rates of confession vary in different countries, indicating the underlying role that institutional and cultural influences play. For example, suspects detained for questioning in the U.S. confess at a rate around 42 percent, whereas in England the figure is closer to 60 percent. In Japan, where few restraints are placed on police interrogations and where social norms favor confession as a response to the shame brought by transgression, more than 90 percent of suspects confess.

In so-called self-report studies, researchers ask why people confessed. In 1991 one of us (Gudjonsson) and Hannes Petursson of University Hospital in Reykjavik, Iceland, published the first work in this area carried out on Icelandic prison inmates, which was replicated in Northern Ireland and in a larger Icelandic prison population with an extended version of a 54-item self-report instrument, the Gudjonsson Confession Questionnaire.

Although most suspects confess for a combination of reasons, the most critical is their belief about the strength of the evidence against them. That is why the tactic of presenting false evidence—as when police lie to suspects about an eyewitness that does not exist; fingerprints, hair or blood that has not been found; or lie detector tests they did not really fail—can lead innocent people to confess. In a 1996 laboratory experiment that illustrates the point, Kassin and Katherine L. Kiechel of Williams College falsely accused college students of crashing a desktop computer by hitting a key that they were told was off-limits. When a fellow student who was present said she had witnessed the students hit the forbidden key, the number induced to sign a confession increased by 45 percent. Also increased were the numbers who internalized a belief in their own guilt and fabricated false memories to support that belief.

(Miranda may not yield the protective effect for which it was designed.)

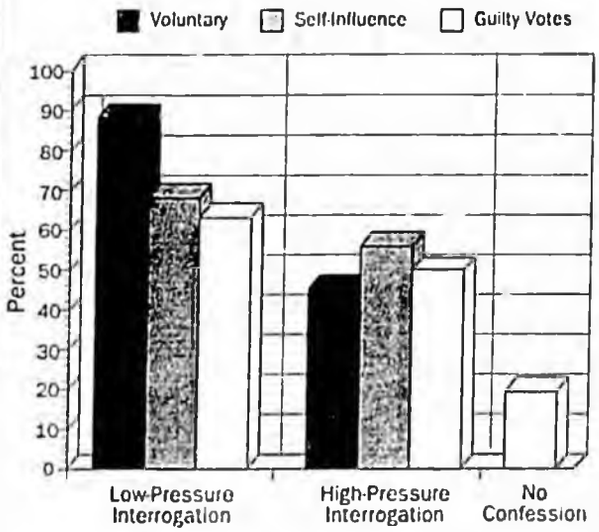
False Confessions

In 2004 Steven A. Drizin of Northwestern University School of Law and Leo analyzed 125 cases of proved false confessions in the U.S. from

(The Authors)

SAUL M. KASSIN and GISLI H. GUDJONSSON study the psychology of false confessions. Kassin is professor of psychology at Williams College. He has published many research articles on police interviewing, interrogations, and confessions—and the impact of this evidence on juries. Gudjonsson is professor of forensic psychology at King's College London. He pioneered work on the nature of suggestibility and has written extensively on the reliability of confessions, witness memories and other evidence.

Confessions and the Jury



The existence of a confession—true or false—predisposes juries toward reaching a guilty verdict. Mock jurors were asked whether they judged the confession to be voluntary, whether it influenced their verdict, and whether they voted for conviction.

SOURCE: KASSIN & SUKEL, 1997 (graph); COURTESY OF EVERETT COLLECTION (photograph)

between 1971 and 2002, the largest sample ever studied. Approximately two thirds were exonerated before the trial, and the rest came after conviction. Ninety-three percent of the false confessors were men. Overall, 81 percent occurred in murder cases, followed by rape (8 percent) and arson (3 percent). The most common bases for exoneration were that the real perpetrator was identified (74 percent) and that new scientific evidence was discovered (46 percent). The sample was disproportionately represented by persons who were young (63 percent were younger than 25; 32 percent were under 18), mentally retarded (22 percent) and diagnosed with mental illness (10 percent). Astonishingly, 30 percent of the cases contained more than one false confession to the same crime, as in the Central Park jogger case, typically indicating that one false confession was used to get others.

Recognizing that people confess in different ways and for different reasons, psychologists categorize false confessions into three groups:

Voluntary false confessions. When aviator Charles Lindbergh's baby was kidnapped in 1932, some 200 people stepped forward to confess. In the 1980s Henry Lee Lucas falsely admitted to hundreds of unsolved murders, making him the most prolific serial confessor in history. People might voluntarily give a false confession for reasons including a pathological desire for notoriety; a conscious or unconscious need to expiate feelings of guilt over prior transgressions; an inability to distinguish fact from fantasy; and a desire to aid and protect the real criminal.

Compliant false confessions. In these cases, the suspect confesses to achieve some end: to escape an aversive situation, to avoid an explicit or implied threat, or to gain a promised or implied reward. In *Brown v. Mississippi* in 1936, for example, three black tenant farmers admitted to murder after they were whipped with a steel-studded leather belt. And in the Central Park jogger case, each boy said he had confessed despite innocence because he was stressed and expected to go home if he cooperated.

Internalized false confessions. During interrogation, some suspects—particularly those who are young, tired, confused, suggestible and exposed to false information—come to believe that they committed the crime in question, even though they did not. In a classic case, 18-year-old Peter Reilly of Falls Village, Conn., returned home one night to find that his mother had been murdered. Reilly immediately called the police but was suspected of matricide. After gaining Reilly's trust, the police told him that he failed a lie detector test (which was not true), and which indicated that he was guilty even though he had no conscious memory of the event.

After hours of interrogation, the audiotape reveals that Reilly underwent a chilling transformation from denial to confusion, self-doubt, conversion ("Well, it really looks like I did it") and finally a full confession ("I remember slashing once at my mother's throat with a straight razor I used for model airplanes.... I also remember jumping on my mother's legs"). Two years later independent evidence revealed that Reilly

could not have possibly committed the murder.

Trial jurors, like others in the criminal justice system who precede them, can be overly influenced by confessions. Archival analyses of actual cases containing confessions later proved false tell a disturbing tale. In these cases, the jury conviction rates ranged from 73 percent (as found by Richard Ofshe of the University of California at Berkeley and Leo in 1998) to 81 percent (as found by Drizin and Leo in 2004)—about the same as cases in which the defendants had made true confessions.

Trial jurors, like others in the criminal justice system, can be overly influenced by confessions.

In light of such findings, the time is ripe for law-enforcement professionals, policymakers and the courts to reevaluate current methods of interrogation. Although more research is needed, certain practices clearly pose a risk to the innocent. One such factor concerns time in custody and interrogation. The 2004 study by Drizin and Leo found that in proved false confession cases, the interrogations lasted for an average of 16.3 hours. In the Central Park case, the five boys were in custody for 14 to 30 hours by the time they confessed. Following the Police and Criminal Evidence Act of 1986 (PACE) guidelines implemented in England and Wales, policy discussions should begin with a proposal for the imposition of time limits for detention and interrogation or at least flexible guidelines, as well as periodic breaks for rest and meals.

A second problem concerns the tactic of lying to suspects about the evidence. Research shows that people capitulate when they believe that the authorities have strong evidence against them. The practice of confronting suspects with real evidence, or even their own inconsistent statements, should increase the reliability of the confessions ultimately elicited. When police misrepresent the evidence, however, innocent suspects come to feel as trapped as the perpetrators—which increases the risk of false confession.

A third matter revolves around the use of minimization, as when police suggest to a suspect that the conduct in question was provoked, an accident or otherwise morally justified. Such tactics lead people to infer leniency in sentencing on confession, as if explicit promises had been made. In a study that is now in press, Melissa Russano of Roger Williams University and her colleagues found that such covert assurances can contribute to false confessions.

The Need for Reforms

To assess any given confession accurately, police, judges, lawyers and juries should have access to a videotaped record of the interrogation that produced it. In Great Britain, PACE mandated that all sessions be taped. In the U.S., four states—Minnesota, Alaska, Illinois and Maine—have mandatory videotaping, although the practice is often found elsewhere on a voluntary basis. Videotaping deters interrogators from using the most aggressive, psychologically coercive methods. It also will block frivolous defense claims of coercion where none existed. And it provides an objective and accurate record of all that transpired, avoiding disputes about how the confession came about.

A 1993 National Institute of Justice study revealed that many U.S. police departments already have videotaped interrogations—and the vast majority found the practice useful. More recently, in 2004, Thomas P. Sullivan of the law firm Jenner & Block interviewed officials from 238 police and sheriff's departments in 38 states who made such recordings voluntarily and found that they enthusiastically favored the practice, which increases accountability, provides an instant replay of the suspect's statement that reveals information initially overlooked and reduces the amount of time spent in court defending their interrogation conduct. As a counter to the most common criticisms, those interviewed found that videotaping is not costly and does not inhibit suspects from talking to police.

Such reforms are sorely needed. Only then can society trust the process of interrogation and the confessions that it produces—and help to promote justice for all.

(Further Reading)

- **The Psychology of Interrogations and Confessions: A Handbook.** Gisli Gudjonsson. John Wiley & Sons, 2003.
- **The Psychology of Confessions: A Review of the Literature and Issues.** Saul M. Kassin and Gisli H. Gudjonsson in *Psychological Science in the Public Interest*, Vol. 5, No. 2; November 2004. More information is available at www.psychologicalscience.org/journals/
- More on wrongful convictions is available at the Innocence Project Web site: www.innocenceproject.org

HB

326

IOUSE COMMITTEE REPO

(11)
Date Referred to Committee: January 30, 2006 FURTHER REFERRALS:

Date of Committee Action: 1/31/06

The FINANCE Committee considered: HB 326

HOUSE BILL NO. 326 POSTING LEWD MATERIAL AS HARASSMENT

"An Act relating to harassment."

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB 326 (Jud)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DEG
GOV
HSS
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Weyhrauch			X	
	FOSTER	X			
	MOSES	X			
	+Bertulo	X			
	STOLTZE			X	
	Hawker			A	
Chair:	Meyer	X			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected:

Title: Posting Lewd Material as Harassment
RDU: Alaska Court System
Component: Trial Courts

Sponsor: Representative Meyer
Requester:
Component No.:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 326.

Prepared by: Doug Wooliver, Administrative Attorney — Phone: 463-4750
Division: Alaska Court System — Date/Time: 1/13/06 at 11:00 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director — Date: 1/13/2006
Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected: LAW

Title "An Act relating to harassment."
RDU CRIMINAL
Component Criminal Justice Litigation

Sponsor Representatives Meyer and Lynn
Requester House Judciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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POSITIONS

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Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill amends AS 11.61.120 (Criminal Law - Offenses Against Public Order) by adding a new way to commit the crime of harassment - by, with intent to harass or annoy another person, publishing or distributing a photo of another person's genitals, etc. or the person engaged in a sex act. Harassment is a class B misdemeanor. Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughetee, Director
Phone: 465-3673
Division: Administrative Services Division
Date/Time: 1/26/06 12:31 PM
Approved by: Kathryn Daughetee for David Marquez, Attorney General
Date: 1/26/2006
Agency: Department of Law

(Revised 7/2005/OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: An Act relating to harassment.
RDU: Alaska State Troopers
Component: AST Detachments
Sponsor: Representative Meyer
Requester: House Judiciary Committee
Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ( )						

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POSITIONS

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Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation will have no fiscal impact on the Department of Public Safety. Even though there is a potential increase in the number of arrests for violations, the increase can be absorbed by the current assets of the department.

Prepared by: Lieutenant James Helgoe
Phone: 907-269-4532
Division: Alaska State Troopers
Date/Time: 1/17/06 10:19 AM
Approved by: Commissioner William Tandeske
Date: 1/17/2006
Agency: Department of Public Safety

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HB 326

"An Act relating to harassment."

The rapid evolution of technology often outpaces a statute's ability to protect Alaskans from offensive and criminal behavior. The invention and widespread adoption of digital cameras in all sorts of products ranging from pens to cellular phones has opened new avenues for those bent on harassing others to cause anguish, hurt and humiliation.

House Bill 326 An Act relating to harassment builds on my previous effort in the 23rd Legislature to cover harassment through e-mail and other electronic means. With camera phones and hidden digital cameras, individuals can take lewd and obscene pictures of others and post them electronically.

When this is done as part of a pattern of threats and intimidation it should be considered harassment. HB 326 changes the current statute to include the publishing or posting of lewd or obscene pictures in the definition of harassment.

Email: Representative.Kevin.Meyer@legis.state.ak.us • Toll Free: (860) 465-4943

Session: State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-4943 Fax: (907) 465-3476

Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0129 Fax: (907) 269-0197

January 9, 2008

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected:

Title: Posting Lewd Material as Harassment
RDU: Alaska Court System
Component: Trial Courts

Sponsor: Representative Meyer
Requester:
Component No.:

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Equipment						
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Miscellaneous						
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ANALYSIS: *(Attach a separate page if necessary)*

The court system does not anticipate any fiscal impact from the passage of HB 326.

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Phone 463-4750
Division: Alaska Court System
Date/Time 1/13/06 @ 11:00 AM
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
Date 1/13/2006
Agency: Alaska Court System

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected: LAW

Title "An Act relating to harassment."
RDU CRIMINAL
Component Criminal Justice Litigation

Sponsor Representatives Me[illegible]r and Lynn
Requester House Judciary
Component No.

Expenditures/Revenues (Thousands of Dollars)

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Prepared by: Kathryn Daughhet[illegible], Director
Phone 465-3673
Division Administrative Services Division
Date/Time 1/26/06 12:31 PM
Approved by: Kathryn Daughhetee for David Marquez, Attorney General
Date 1/26/2006
Agency Department of Law

(Revised 9/2005 OMB)

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

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Date 1/26/2006
Agency Department of Law

(Revised 9/7/2005 OMB)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSHB 326(JUD)
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: An Act relating to harassment.
RDU: Alaska State Troopers
Component: AST Detachments
Sponsor: Representative Meyer
Requester: House Judiciary Committee
Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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Prepared by: Lieutenant James Helgoe
Phone: 907-269-4532
Division: Alaska State Troopers
Date/Time: 1/17/06 10:19 AM
Approved by: Commissioner William Tandeske
Date: 1/17/2006
Agency: Department of Public Safety

(Revised 9/13/2004 OMB)

Durango Herald

Local man guilty of 26 felonies

Former Fort Lewis College student cited for criminal libel

Read related article

January 27, 2006

By Shane Benjamin / *Herald Staff Writer*

After seven days of trial and seven hours of jury deliberations, jurors found Davis Temple Stephenson guilty Thursday of 26 felonies, including criminal libel.

Stephenson

Stephenson, clean-cut in a conservative sports coat and tie, remained stone-faced as the jury foreman announced "guilty" 26 times. He remained silent throughout.

A deputy handcuffed him and escorted him to the La Plata County Jail.

Stephenson's defense attorney, Rae Dreves of Durango, said her client plans to appeal.

Meanwhile, Stephenson, 38, faces up to 1½ years for some felonies and up to three years for others. If added together, he faces up to 52½ years, but some penalties will be served concurrently, reducing the sentence. He also faces up to 10½ years for violating bail.

Sentencing for both cases is set for 1:30 p.m. March 2 in District Court.

Over the course of three years, while a student at Fort Lewis College, Stephenson brought fear to seven victims, jurors learned through prosecution witnesses.

Prosecutors identified his targets as jail guards, a police officer, a landlord, a college newspaper editor and several FLC professors, saying he chipped away at their reputations and sense of safety by spreading lies about their character.

Evidence outlined how Stephenson created Web sites identifying his victims as sexual deviants, guided victims' family and bosses to the sites, created posters identifying victims as sex offenders and even sending a fake obituary to a newspaper falsely stating that a jail guard died of AIDS.

After the verdict, Deputy District Attorney Todd Norvell thanked the jury and Rita Warfield, the Durango Police Department's lead investigator on the case.

Then he declined to comment before Stephenson's sentencing.

During trial, prosecutors portrayed Stephenson as an intellectual who hated feminists and challenged those in power.

"The defendant goes after the reputations of his victims," Assistant District Dondi Osborne told jurors during closing statements.

But Stephenson's lawyer offered a different viewpoint, saying his actions really amounted to only bad manners and opposing political opinion.

Jurors did a good job of paying attention, Dreves said, but some of the guilty verdicts were unfounded.

Stephenson's prosecution involved a Colorado criminal libel statute now under fire in a federal appeals court. A former student at the University of Northern Colorado was charged with criminal libel for posting articles on a satiric online publication that poked fun at a finance professor.

During Stephenson's trial, some 40 witnesses testified and more than 100 pieces of evidence went to the jury.

One FLC professor told jurors of letters sent to her home and on campus. They included compliments from unfamiliar men about a rape-me fantasy Web site started by Stephenson and disclosing her real address.

"I didn't want anybody coming into my house raping me,' the professor testified.

Scared, she removed her phone number from the public directory. And, she noted, "I began to take a lot more precautions. It has certainly affected my sense of safety."

Each day in court, Stephenson took extensive notes and whispered frequently to his lawyer.

Security was extraordinary during the trial supervised by District Judge David Dickinson.

Stephenson has "somewhat of a volatile personality," said sheriff's Capt. Doug Hanna, and he has a large build. So, La Plata County Sheriff Duke Schirard asked that Stephenson be shackled at the feet during trial - a security precaution not normally taken.

A black cloth covered the prosecution and defense tables so jurors would not see the ankle restraints.

Other security measures included:

• Only a 3-inch pencil for Stephenson to write with.

• Up to three deputies behind him at all times.

• A belt capable of delivering 50,000 volts of electricity, much like a Taser gun, and triggered by a remote control held by a courtroom deputy.

The jury included eight men and four women for deliberations.

After the verdict, Marilyn Wood, Stephenson's former landlord whom he depicted as a sex offender, reflected on a wasted life. As an American Indian, she said, Stephenson received free tuition at FLC. Instead of taking advantage of that, she noted, he became consumed by his anger.

"I look at this man as a person who had the opportunity of a lifetime," Wood said. "He squandered the whole thing."

shane@durangoherald.com

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Camera Phones In The Workplace: To Ban Or Not To Ban

By Andrea G. Chatfield

It is no secret that workers in the high tech industry love their electronic gadgets. The more advanced and powerful, the better. However, there is one personal technology gadget that can cause tremendous harm to high tech companies if abused. The use of camera phones, and other portable devices with embedded cameras or video capability, in the workplace is spreading like wildfire. The number of people with camera phones was estimated at 8 million last year but a report issued this summer by IT analyst firm iSupply estimated that number would jump to 488 million by 2008.

While incredibly useful (and cool!), camera phones also increase the risk of corporate espionage, employee harassment, invasion of privacy, and a litany of other offenses that can create liability for employers. The litigation over these types of problems is costly and time consuming, but can be minimized with proactive workplace policies.

The best way to address the issue of camera phones in the workplace is proactively rather than reactively. Currently, there are no laws that specifically address the use of camera phones. Employers generally have a wide latitude on regulating behavior in their own workplaces. Given the prevalence of these devices, employers must start to impose workplace policies that address the presence and/or the use of camera phones in the workplace. Such policies should also address personal cell phones. There are a number of ways a company can handle these issues, but basically it comes down to whether or not the use and/or presence of the phones should be banned in all or parts of an employer's place of work. This is becoming an ongoing debate.