



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 824

H.P. 620

House of Representatives, March 3, 2011

**An Act To Amend Certain Provisions Regarding Evidence under
the Law Concerning Post-judgment DNA Analysis**

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MARTIN of Eagle Lake.
Cosponsored by Senator JACKSON of Aroostook and
Representative: THERIAULT of Madawaska, Senator: GERZOFSKY of Cumberland.

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

2 **Sec. 1. 15 MRSA §2138, sub-§2**, as enacted by PL 2001, c. 469, §1, is amended
3 to read:

4 **2. Preservation of evidence.** If a motion is filed under this chapter, the court shall
5 order the State to preserve during the pendency of the proceeding all evidence in the
6 State's possession or control that could be subjected to DNA analysis. The State shall
7 prepare an inventory of the evidence and submit a copy of the inventory to the defense
8 and the court. ¶ For evidence gathered prior to January 1, 1988, if evidence is
9 intentionally destroyed after the court orders its preservation, the court may impose
10 appropriate sanctions. For evidence gathered on or after January 1, 1988, if the State fails
11 to preserve evidence subject to the court's order under this subsection, it is prima facie
12 evidence that the DNA testing is favorable to the person filing the motion under
13 subsection 1.

14 **Sec. 2. 15 MRSA §2138, sub-§8, ¶B**, as amended by PL 2005, c. 659, §4 and
15 affected by §6, is further amended to read:

16 B. ¶ For evidence gathered prior to January 1, 1988, if the results of the DNA
17 analysis show that the person is not the source of the evidence and the person does
18 not have counsel, the court shall appoint counsel if the court finds that the person is
19 indigent. The court shall then hold a hearing pursuant to subsection 10.

20 **Sec. 3. 15 MRSA §2138, sub-§8, ¶C** is enacted to read:

21 C. For evidence gathered on or after January 1, 1988, if the results of the DNA
22 analysis show that the person is not the source of the evidence and the DNA analysis
23 is evidence material to the crime, there is a rebuttable presumption that the DNA
24 subject to the analysis is from the perpetrator of the crime and the DNA analysis is
25 admissible at a hearing on the person's motion for new trial under subsection 10.

26 **Sec. 4. 15 MRSA §2138, sub-§10**, as repealed and replaced by PL 2005, c. 659,
27 §5 and affected by §6, is amended to read:

28 **10. Standard for granting new trial; court's findings; new trial granted or**
29 **denied.** If the results of the DNA testing under this section show that the person is not
30 the source of the evidence, at the hearing on the motion filed under subsection 1 the
31 person authorized in section 2137 must show by clear and convincing evidence that:

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

38 B. Only the perpetrator of the crime or crimes for which the person was convicted
39 could be the source of the evidence, and that the DNA test results, when considered
40 with all the other evidence in the case, old and new, admitted in the hearing

1 conducted under this section on behalf of the person would make it probable that a
2 different verdict would result upon a new trial; or

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

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

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

11 (3) The preferred DNA test results could not have been obtained by the person
12 prior to trial by the exercise of due diligence;

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

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

20 In a hearing in a motion for new trial under this subsection, if the results of the DNA
21 analysis is material evidence in the underlying crime, that court shall consider this
22 evidence together with all the other evidence in the case, old and new, admitted in the
23 hearing, likely to influence a conclusion regarding the person's guilt or innocence, when
24 granting or denying the motion.

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

29 For purposes of this subsection, "all the other evidence in the case, old and new," means
30 the evidence admitted at trial; evidence admitted in any hearing on a motion for new trial
31 pursuant to Rule 33 of the Maine Rules of Criminal Procedure; evidence admitted at any
32 collateral proceeding, state or federal; evidence admitted at the hearing conducted under
33 this section relevant to the DNA testing and analysis conducted on the sample; and
34 evidence relevant to the identity of the source of the DNA sample.

35 **Sec. 5. 15 MRSA §2138, sub-§14**, as enacted by PL 2001, c. 469, §1, is amended
36 to read:

37 **14. Preservation of biological evidence.** Effective October 15, 2001, the
38 investigating law enforcement agency shall preserve any biological evidence identified
39 during the investigation of a crime or crimes for which any person may file a
40 postjudgment of conviction motion for DNA analysis under this section. The evidence
41 must be preserved for the period of time that any person is incarcerated in connection
42 with that case. For evidence gathered on or after January 1, 1988, if the State fails to

1 preserve evidence subject to the court's order under this subsection, it is prima facie
2 evidence that the DNA testing is favorable to the person filing the motion under
3 subsection 1.

4 **SUMMARY**

5 This bill requires, in a post-judgment conviction motion for DNA analysis, that:

6 1. If the State fails to preserve biological evidence or evidence of a DNA analysis
7 gathered on or after January 1, 1988 that is subject to a court order for new trial, then it is
8 considered prima facie evidence favorable to the person bringing the motion;

9 2. For evidence gathered on or after January 1, 1988, if the results of the DNA
10 analysis show that the person is not the source of the evidence and the DNA analysis is
11 evidence material to the crime, there is a rebuttable presumption that the DNA subject to
12 the analysis is from the perpetrator of the crime and the DNA analysis is admissible at a
13 hearing on the person's motion for new trial; and

14 3. In a hearing in a motion for new trial, if the results of the DNA analysis is material
15 evidence in the underlying crime, the court shall consider this evidence together with all
16 the other evidence in the case, old and new, admitted in the hearing, likely to influence a
17 conclusion regarding the person's guilt or innocence, when granting or denying the
18 motion.