Strengthening Montana's Post-Conviction DNA Testing Law

Nationally, 325 wrongful convictions have been proven with DNA evidence. Meaningful access to DNA testing for the wrongfully convicted is a matter of justice and public safety. The real perpetrator has been identified in 161 of those cases, and while the innocent person was behind bars these real criminals went on to commit and be convicted of 145 additional crimes—including 77 rapes and 34 murders.

In 2003 Montana passed a law to provide a clear legal avenue for wrongfully convicted individuals to prove their innocence with DNA technology. However, courts have not granted a single request for DNA testing since the law was enacted. House Bill 516 would enable the law to fulfill its potential of exonerating the innocent and helping law enforcement bring real criminals to justice. The proposed legislation would:

- **Create a more reasonable standard for a petitioner to be granted testing.**
  The current law essentially requiring the defendant to prove his or her before testing is conducted.
  House Bill 516 legislation would allow a court to grant testing if "there is a reasonable probability that the petitioner would not have been convicted" had favorable results been obtained at trial, which is the standard in 23 other states.

- **Enhance the use of the DNA database.**
  Taxpayers have invested millions of dollars in the DNA database, and Montana has an interest in ensuring that it is being used to its full potential. This crime-solving tool has the ability to reveal real criminals and help the wrongfully convicted prove their innocence. The DNA database has helped to identify 104 real perpetrators in the nation's 325 DNA exoneration cases.
  Our legislation would allow a court to order a DNA profile to be submitted to the DNA database to possibly identify the real criminal. Similar provisions are included in nine other state laws— Colorado, Georgia, Illinois, Maryland, Mississippi, New York, North Carolina, Ohio and Texas.

> ***Case in Point: Michael Morton, Texas.*** **Morton was wrongfully convicted of murdering his wife in Texas. After 25 years in prison, Mr. Morton was only able to prove his innocence after DNA testing on a bandanna found near the crime scene excluded him and matched to the profile of Mark Alan Norwood in the state's DNA database. Norwood has since been convicted of the crime and is on trial for the murder of another woman that occurred while Mr. Morton was behind bars.**

- **Remove the incarceration requirement.**
  An innocent person on parole or probation must still live with severe restrictions on his freedom and the collateral consequences of having a conviction on his record. These individuals should be able to access DNA testing to help clear their names and rebuild their lives. Nationwide, 23 people have been exonerated by DNA testing after their release from prison. Montana is one of only 13 states with an "incarceration requirement" that restricts eligibility for DNA testing to defendants who are currently behind bars and several states are revisiting the restriction in their laws.

> ***Case in Point: James Waller, Texas***
> **Fourteen years after his release from prison, DNA testing helped exonerate James Waller of a rape he did not commit. After serving 10 years behind bars, Waller was required to register as a sex offender and live with the indignities of this label although he was innocent. For example, he was not allowed to interact with children at the soup kitchen where he regularly volunteered with his church group. Although he was no longer incarcerated, DNA testing allowed James Waller to finally truly feel free. On the day of his exoneration he said, "It's been a long, horrible road. This is one of the happiest weeks of my life - I am finally having my day in court, and I will be able to clear my name at long last."**

- **Reactivate victims' services if a wrongful conviction is revealed.**
  A wrongful conviction can have a devastating emotional and psychological impact on the crime victim. This legislation would allow victims to access counseling and other services that can help them cope with a wrongful conviction.

EXHIBIT 12
DATE 2/19/15
HB 516

No Flood of Litigation or Additional Costs

This legislation would not strain court resources, as shown by the experience of other states that have laws similar to what we are proposing. Defendants are not required to be incarcerated to be eligible for testing in 37 other states, including Nebraska, where the Commission on Public Advocacy reports a total of 25 petitions filed since the law was enacted in 2001. Laws in 23 states have a reasonable probability standard to access testing including California, Arizona and South Carolina. California has the highest prison population in the country, and it is estimated that, on average, there are only 1-2 petitions per month for post-conviction DNA testing. In Arizona a total of 43 petitions were filed from 2000 to 2009, according to the Arizona Justice Project. There have been less than five petitions filed in South Carolina since the law took effect in 2008.

There should be no additional costs associate with this legislation. The statute already makes it clear that defendants must pay for testing and that would not change. The fiscal note for the original law in 2003 estimated no fiscal impact, and this legislation would make testing available to an even smaller number of individuals.