

Strickland, Cordray: Test DNA in 7 cases

Prosecutors urged to OK inmates' requests

By Mike Wagner and Alan Johnson

THE COLUMBUS DISPATCH When Arthur Swanson died in 2006, he left behind a faded box on the floor of his prison cell that contained paperwork showing how long he had begged for a DNA test to try to prove he didn't rob an Amish family.

The 54-year-old Mansfield man was never granted that test, but he might get his wish from the grave.

Gov. Ted Strickland and Attorney General Richard Cordray wrote yesterday to prosecutors in seven criminal cases, including Swanson's, urging them to allow DNA testing that could confirm guilt or prove innocence. In each of those cases, DNA testing has been opposed by prosecutors and ultimately refused by judges.

The other six cases involve one man on Death Row, two inmates serving long sentences and three men who no longer are in prison but want to clear their names.

"I really think it's irrational not to take advantage of methods that could establish either guilt or innocence when those technologies are available to us," Strickland told The Dispatch. "I can think of no good argument why anyone would be denied DNA testing if, in fact, there is a reasonable or relevant opportunity to bring clarity to whether or not someone is guilty of a crime."

Strickland said that neither he nor Cordray has the legal authority to require local prosecutors or judges to grant DNA testing. The letters simply ask the prosecutors to voluntarily make the evidence available for testing "as a matter of public policy."

Cordray said there was a lengthy review of the cases before the letters were crafted. Prosecutors were notified that they would be receiving the letters yesterday. The Dispatch could not reach prosecutors for comment last night.

"We think certainty and accuracy are something we want in our justice system," Cordray said. "We are urging them to allow testing, but we have told (prosecutors) that we will work to make sure the results are not taken the wrong way. Testing could be conclusive with guilt or innocence, but many results can be inconclusive as well."

The letters follow a Dispatch investigation, "Test of Convictions," that has led to the exonerations of three men in the past two years after DNA testing.

The 2008 series exposed flaws in Ohio's post-conviction DNA-testing system, reviewed more than 300 cases with the Ohio Innocence Project and then highlighted 30 prisoners as prime candidates for testing.

Results have been mixed for 18 inmates who have either completed or hit dead ends in the

testing process.

Testing exonerated Robert McClendon and Joseph Fears, both of Columbus, and Ray Towler, of Cleveland, who served a combined 72 years for rapes they didn't commit. Testing also has confirmed the guilt of four others. Five could not be tested because their evidence had been lost or destroyed. Some inmates were tested but the results were inconclusive.

Others continue to wait for test results or for judges to rule on various appeals.

Five of the men represented in the letters were a part of the original Dispatch series. They are Doug Prade, convicted of murder in Summit County; Robert Blackburn, convicted of rape in Fairfield County; Anthony Constant, convicted of rape in Cuyahoga County; Eric Brunner, convicted of rape in Stark County; and Swanson, convicted of the robbery in Ashland County.

The other two cases, added to the project by the Innocence Project, are Tyrone Noling, who is on Death Row for a murder in Portage County, and Martin Hatton, convicted of rape in Pickaway County.

If testing is granted in the cases, it would be of no cost to taxpayers. As a public service, DDC Diagnostics, a Cincinnati-based lab, continues to offer free testing to inmates in the project.

When asked if he anticipated that some prosecutors might resent the letters, Strickland said: "I want to assume there will be a cooperative attitude and spirit."

Mark Godsey, director of the Innocence Project, thinks the letters might help spur testing in the seven cases.

"Hopefully, this move will help prosecutors who still cling to outdated customs to rethink their positions," Godsey said. "If the prisoner is guilty, the testing will prove it and will shut him up. If he's innocent, it will not only set him free but will help us get the real murderer or rapist off the street."

mwagner@dispatch.com ?

ajohnson@dispatch.com ?