HOUSE BILL REPORT
HB 2491

As Reported By House Committee On:
Criminal Justice & Corrections

Title: An act relating to DNA testing of evidence.

Brief Description: Providing a procedure to conduct DNA testing of evidence for persons sentenced to death or life imprisonment.

Sponsors: Representatives Schindler, Ballasiotes, Koster, Sullivan, Esser, Wood, Crouse, Cairnes, Rockefeller, Edmonds, Mulliken, Clements, Ruderman, McDonald and Dunn.

Brief History:
Committee Activity:
Criminal Justice & Corrections: 1/26/00 [DP].

Brief Summary of Bill

- Provides a procedure for persons sentenced to death or life without the possibility of release to request DNA testing of evidence in certain circumstances.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Jean Ann Quinn (786-7310).

Background:

DNA evidence was first introduced into evidence in a United States court in 1986 and, after numerous court challenges, is now admitted in all United States jurisdictions. It has rapidly become an important forensic technique both for identifying perpetrators and for eliminating suspects when biological tissues such as saliva, skin, blood, hair, or semen are left at a crime scene.

Two states, New York and Illinois, specifically authorize postconviction DNA testing. These statutes permit an indigent inmate to obtain postconviction DNA testing at state expense when certain evidentiary thresholds are met.

The constitution, statutes, and court rules currently provide a framework for convicted defendants who have exhausted the appeals process to challenge a conviction by collateral attack. One mechanism of collateral attack is the writ of habeas corpus which a defendant may pursue in Washington courts by filing a Personal Restraint Petition (PRP). Court rules establish the grounds for filing a PRP, including the following: (1) the convicting court lacked jurisdiction; (2) the conviction was obtained in violation of state law or the state or federal constitution; (3) material facts, not disclosed at trial, exist that in the interest of justice require the petitioner's release; (4) sufficient reasons exist to retroactively apply a post conviction change in the law; (5) there are "other grounds" for a collateral attack on the conviction; (6) the conditions or manner of the petitioner's restraint violates the state or federal constitution; or (7) "other grounds" exist to challenge the legality of the confinement.

A prisoner under sentence of death who files a PRP is not entitled to discovery and/or investigative, expert, or other services as a matter of course, but must show good cause to believe that it will produce information that would support granting a PRP. Further, according to court rule (RAP 16.27), the supreme court may only grant a motion for investigative, expert, or other services if the Legislature has authorized and approved funding for such services.

In Washington, the crime of aggravated murder in the first degree carries a sentence of death or life without the possibility of release. In addition, persistent offenders (those committing three "most serious offenses" or two sex offenses as specified) are subject to life without the possibility of release.

Summary of Bill:

A person sentenced to death or to life without the possibility of release may request the Department of Corrections to issue an order for testing of "any appropriate evidence available for testing which may be a reasonable basis for proving the person's innocence" if DNA test results were either not available when the person was convicted or not allowed in the court where the conviction occurred.

The department must adopt rules to establish procedures for evaluating these requests, determining whether testing is appropriate, sharing the results of the tests with the offender's counsel, and determining when the department will pay for testing.

If a request for DNA testing is determined appropriate under the rules, the order for testing must be served on the law enforcement agency holding the evidence in

question, who then has 20 days to petition in superior court to bar or postpone the testing. The order must inform the agency of this ability to petition and also notify the agency that if no petition is filed, the department will schedule the DNA testing and notify them, by regular mail, of the time and place where it will occur.

Appropriation: None.

Fiscal Note: Received on January 26, 2000.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: When you take away someone's life either by putting them in prison for life or by executing them, you better be absolutely positive that you have the right person. This bill helps achieve that certainty. There have been many recent cases, several involving people on death row, where people have been exonerated on the basis of DNA evidence.

Testimony Against: None.

Testified: Representative Schindler; and Kevin Glackin-Coley, Washington State Catholic Conference.