

# HOUSE BILL REPORT

## SHB 2491

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### As Amended by the Senate

**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:** By House Committee on Appropriations (originally sponsored by 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];  
Appropriations: 2/2/00, 2/8/00 [DPS].

**Floor Activity:**

Passed House: 2/11/00, 96-0.  
Senate Amended.  
Passed Senate: 3/2/00, 47-0.

**Brief Summary of Substitute 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.
- Requires the Department of Corrections to adopt rules to govern the procedures used to request and, if appropriate, provide testing.

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### 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).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Boldt; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Regala; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

**Staff:** Dave Johnson (786-7154).

### **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 states permit an indigent inmate to obtain postconviction DNA testing at state expense when certain evidentiary thresholds are met.

In Washington, the Constitution, statutes, and court rules 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.

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.

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**Summary of Bill:**

A person sentenced to death or to life without the possibility of release may request the Department of Corrections (DOC) 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 DOC must adopt rules to define the terms "appropriate evidence available for testing" and "reasonable basis for proving the person's innocence" and to establish the procedures to be used for requesting testing, evaluating the requests, and appealing requests that have been denied. The rules also must establish who is to be responsible for the costs of testing. The DOC may limit the number of requests that may be made, or the amount of public funds that may be expended, for DNA 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 bill does not create a new cause of action in any court, nor does it limit any cause of action an offender may otherwise have under statutory or constitutional provisions.

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**EFFECT OF SENATE AMENDMENT(S):** The request for postconviction DNA testing is to be submitted to the county prosecutor in the county where the conviction was obtained. The request may only be made if the DNA evidence was not admitted into evidence because it did not meet acceptable scientific standards or the testing technology was not sufficiently developed to test DNA in the case. After January 1, 2003, this procedure is not available and DNA issues must be raised at trial or on appeal. The prosecutor must review requests for DNA testing based on the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. If it is determined that testing should occur, the prosecutor must request testing by the Washington State Patrol crime lab. A person denied a request for DNA testing may appeal the denial to the Office of the Attorney General. The Office of Public Defense must provide a report by December 1, 2001, on the postconviction DNA testing process established under the bill.

An indictment or information that meets statutory requirements will toll any statute of limitations. An indictment or information may describe the defendant by reference to the defendant's DNA if his or her name is unknown.

The null and void clause is deleted.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed except for Section 1 which takes effect September 1, 2000. However, this bill is null and void unless funded in the budget.

**Testimony For:** (Criminal Justice & Corrections) 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.

(Appropriations) When the state takes away someone's life either by putting them in prison for life or by executing them, it should be as positive as anyone can be that it has the right person. This bill helps achieve that certainty.

**Testimony Against:** (Criminal Justice & Corrections) None.

(Appropriations) None.

**Testified:** (Criminal Justice & Corrections) Representative Schindler; and Kevin Glackin-Coley, Washington State Catholic Conference.

(Appropriations) Representative Schindler, prime sponsor.