

# SENATE BILL REPORT

## SHB 1014

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As Passed Senate, February 16, 2005

**Title:** An act relating to DNA testing.

**Brief Description:** Revising DNA testing provision.

**Sponsors:** House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Darneille, O'Brien, Cody, Morrell, Chase and Schual-Berke).

**Brief History:** Passed House: 1/26/05, 96-0.

**Committee Activity:** Human Services & Corrections: 2/1/05 [DPA].

Passed Senate: 2/16/05, 47-0.

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Brandland, Carrell, McAuliffe, Stevens and Thibaudeau.

**Staff:** Edith Rice (786-7444)

**Background:** Current law permits a convicted felon, who is in prison, to request postconviction DNA testing on any evidence still available, if the DNA test results were not admitted at trial because they failed to meet acceptable scientific standards, or if DNA technology was not sufficiently developed in order to provide results. However, the request must have been made on or before December 31, 2004. Testing is to be provided if there is a likelihood, on a more probable than not basis, that the DNA test results will demonstrate innocence. On January 1, 2005, and thereafter, the offender must raise the issue at trial or on appeal.

The request is to be submitted to the state Office of Public Defense, which must transmit that request to the county prosecutor and transmit the prosecutor's decision on testing back to the offender. If testing is denied, the offender can appeal the decision within 30 days to the Attorney General's Office.

Advocates for the accused have raised concerns that if an offender did not make this request by the December 31, 2004 deadline, evidence might be destroyed.

**Summary of Bill:** The requirement that the request for postconviction DNA testing be made by the December 31, 2004 deadline, is eliminated. Any convicted felon who requests DNA testing can submit the request to the court that entered the judgment of conviction. A copy of the request will be provided to the State Office of Public Defense. The basis for the DNA testing request is expanded to allow for the testing if it would be significantly more accurate than prior DNA testing or would provide significant new information. This is in addition to the current requirements for making the request.

The court must grant the request for the test if the proper motions are made and the results would, more probably than not, demonstrate innocence. The court is authorized to appoint counsel for the offender to make the testing motion.

The sentencing court may order the preservation of any biological material and evidence samples in criminal cases, consistent with any court rule adopted for the preservation of evidence.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** We support the bill's concepts and agree that the striking amendment will improve the bill.

**Testimony Against:** None

**Who Testified:** PRO: Representative Darneille, prime sponsor; Mary Jane Ferguson, Office of Public Defense; Tom McBride, Washington Association of Prosecuting Attorneys.