
**Criminal Justice & Corrections
Committee**

HB 2872

Brief Description: Revising DNA testing provision.

Sponsors: Representatives Darneille, Pettigrew, O'Brien, Kagi, Simpson, G., Dickerson and Wallace.

Brief Summary of Bill

- Changes provisions governing post-conviction DNA testing to allow convicted felons to directly petition the court rather than submit requests to the prosecutor and attorney general's offices.
- Sets new standards for retaining biological material secured in connection with a crime.
- Removes the December 31, 2004 termination date.

Hearing Date: 2/4/04

Staff: Sarah Shirey (Jim Morishima 786-7191).

Background:

Post-Conviction DNA Testing

Until January 1, 2005, incarcerated felons who have been denied post-conviction DNA testing may request DNA testing if the DNA evidence was not admitted at his or her trial because: (1) the court ruled that DNA testing did not meet acceptable scientific standards, or (2) DNA testing technology was not sufficiently developed to test the DNA evidence in the case.

The state Office of Public Defense will make the request on behalf of the felon to the prosecutor's office in the county where the conviction was obtained. The prosecutor must determine whether the evidence still exists, and whether it is "more probable than not" that the DNA evidence would demonstrate innocence. The prosecutor must submit its decision to the requestor and the state Office of Public Defense.

If the prosecutor determines that testing should occur, the prosecutor must request DNA testing by the Washington State Patrol Crime Laboratory (WSPCL). In the case of an adverse decision, the prosecutor must advise the requestor about his or her appeal rights. Any denial for post-conviction DNA testing, may be appealed within 30 days of the denial. The appeal is to the

Office of the Attorney General. If that office determines that DNA testing is likely to demonstrate innocence on a more probable than not basis, it must request DNA testing by the WSPCL.

On or after January 1, 2005, a person must raise DNA issues at trial or on appeal.

Preservation of Biological Material

Biological material secured in connection with a criminal case prior to July 22, 2001, may not be destroyed before January 1, 2005.

Summary of Bill:

Post-Conviction DNA Testing

The existing post-conviction DNA testing request process is eliminated. The new process allows incarcerated felons to submit a motion to the court where he or she was convicted for post-conviction DNA testing. The motion must: (1) state that DNA testing did not meet acceptable scientific standards or was not sufficiently developed to test the DNA evidence in the case, or that the DNA testing now requested would be significantly more accurate than prior DNA testing or would provide significant new information; (2) explain why the DNA evidence is material to the identity of the perpetrator of, or accomplice to, the crime, or to sentence enhancement; and (3) comply with all other procedural requirements established by court rule.

The court must grant the motion for DNA testing if it determines on a more probable than not basis that the proposed DNA testing would provide substantial new evidence related to the identity of the perpetrator of, or accomplice to the crime, or to sentence enhancement. If ordered by the court, DNA testing will be performed by the WSPCL. Contact with witnesses must be handled through victim/witness divisions.

If a convicted person demonstrates to the court that he or she is indigent, the court will, in its discretion, appoint counsel to prepare and present a motion for post-conviction DNA testing.

Preservation of Biological Material

Biological material secured in connection with a criminal case, or evidence samples sufficient for testing, may not be destroyed before the date of the convicted person's release from custody or 20 years from the date of conviction, whichever occurs first.

Termination Date

The existing December 31, 2004 termination date is eliminated.

Appropriation: None.

Fiscal Note: Requested on January 28, 2004.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.