

HOUSE BILL REPORT

HB 2872

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to DNA testing.

Brief Description: Revising DNA testing provision.

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

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/4/04, 2/6/04 [DPS].

Brief Summary of Substitute Bill

- Changes provisions governing post-conviction deoxyribonucleic acid (DNA) testing to allow convicted felons to petition the court directly rather than submit requests to the prosecutor and the Office of the Attorney General.
- Sets new standards for retaining biological material secured in connection with a crime.
- Removes the December 31, 2004 termination date.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Pearson and Veloria.

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 requested 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 Substitute 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 that the DNA evidence would demonstrate innocence on a more probable than not basis. 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 may,

in its discretion, appoint counsel to prepare and present a motion for post-conviction DNA testing.

Preservation of Biological Material

Upon motion by the defense counsel or the court's own motion, the sentencing court in a felony case may order the preservation of biological material secured in connection with a criminal case, or evidence samples sufficient for testing. The court must specify the samples to be maintained and the length of time the samples must be preserved.

Termination Date

The existing December 31, 2004 termination date is eliminated and not replaced.

Substitute Bill Compared to Original Bill:

The substitute bill changes the standard for granting a motion for post-conviction DNA testing to a more probable than not likelihood that the DNA evidence would demonstrate innocence. In addition, the substitute changes the procedures for preservation of biological material to require a motion by the defense counsel or the court. The sentencing court may determine whether to preserve the material and specify the length of time samples are to be maintained.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (In support of substitute bill) This legislation is necessary because current provisions governing post-conviction DNA testing terminate at the end of this year. Although it is best if DNA evidence is presented at trial, due to cost, DNA testing is not always done. This legislation helps ensure that a process remains in place for cases where DNA tests could provide evidence of a person's innocence. Although the prosecutor's office has been reviewing these cases for the past three years, decisions about DNA testing should be determined by the court. There have only been 35 requests state-wide for post-conviction DNA testing over the past two years. By keeping the high "proof of innocence" standard in the bill, the number of requests will remain low and testing will only be ordered in cases where there is a credible showing that it likely could benefit an innocent person.

Testimony Against: None.

Persons Testifying: (In support) Representative Darneille, prime sponsor; Joanne Moore, Russ Aoki, and Mary Jane Ferguson, Office of Public Defense.

(In support of substitute bill) Tom McBride, Washington Association of Prosecuting Attorneys; and Tim Schellberg, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.