
HOUSE BILL 2872

State of Washington

58th Legislature

2004 Regular Session

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

Read first time 01/21/2004. Referred to Committee on Criminal
Justice & Corrections.

1 AN ACT Relating to DNA testing; and amending RCW 10.73.170.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

3 **Sec. 1.** RCW 10.73.170 and 2003 c 100 s 1 are each amended to read
4 as follows:

5 (1) ~~((On or before December 31, 2004, a person in this state who~~
6 ~~has been convicted of a felony and is currently serving a term of~~
7 ~~imprisonment and who has been denied postconviction DNA testing may~~
8 ~~submit a request to the state Office of Public Defense, which will~~
9 ~~transmit the request to the county prosecutor in the county where the~~
10 ~~conviction was obtained for postconviction DNA testing, if DNA evidence~~
11 ~~was not admitted because the court ruled DNA testing did not meet~~
12 ~~acceptable scientific standards or DNA testing technology was not~~
13 ~~sufficiently developed to test the DNA evidence in the case. On and~~
14 ~~after January 1, 2005, a person must raise the DNA issues at trial or~~
15 ~~on appeal.~~

16 (2) ~~The prosecutor shall screen the request. The request shall be~~
17 ~~reviewed based upon the likelihood that the DNA evidence would~~
18 ~~demonstrate innocence on a more probable than not basis. The~~
19 ~~prosecutor shall inform the requestor and the state Office of Public~~

1 ~~Defense of the decision, and shall, in the case of an adverse decision,~~
2 ~~advise the requestor of appeals rights. Upon determining that testing~~
3 ~~should occur and the evidence still exists, the prosecutor shall~~
4 ~~request DNA testing by the Washington state patrol crime laboratory.~~
5 ~~Contact with victims shall be handled through victim/witness divisions.~~

6 ~~(3) A person denied a request made pursuant to subsections (1) and~~
7 ~~(2) of this section has a right to appeal his or her request within~~
8 ~~thirty days of denial of the request by the prosecutor. The appeal~~
9 ~~shall be to the attorney general's office. If the attorney general's~~
10 ~~office determines that it is likely that the DNA testing would~~
11 ~~demonstrate innocence on a more probable than not basis, then the~~
12 ~~attorney general's office shall request DNA testing by the Washington~~
13 ~~state patrol crime laboratory.~~

14 ~~(4) Notwithstanding any other provision of law, any biological~~
15 ~~material that has been secured in connection with a criminal case prior~~
16 ~~to July 22, 2001, may not be destroyed before January 1, 2005.))~~ A
17 person convicted of a felony in a Washington state court who currently
18 is serving a term of imprisonment may submit to the court that entered
19 the judgment of conviction a verified written motion requesting DNA
20 testing.

21 (2) The motion shall:

22 (a) State that:

23 (i) The court ruled that DNA testing did not meet acceptable
24 scientific standards; or

25 (ii) DNA testing technology was not sufficiently developed to test
26 the DNA evidence in the case; or

27 (iii) The DNA testing now requested would be significantly more
28 accurate than prior DNA testing or would provide significant new
29 information;

30 (b) Explain why DNA evidence is material to the identity of the
31 perpetrator of, or accomplice to, the crime, or to sentence
32 enhancement; and

33 (c) Comply with all other procedural requirements established by
34 court rule.

35 (3) The court shall grant a motion requesting DNA testing under
36 this section if such motion is in the form required by subsection (2)
37 of this section, and the convicted person has demonstrated on a more

1 probable than not basis that the proposed DNA testing would provide
2 substantial new evidence related to the identity of the perpetrator of,
3 or accomplice to, the crime, or to sentence enhancement.

4 (4) Upon written request to the court that entered a judgment of
5 conviction, a convicted person who demonstrates that he or she is
6 indigent under RCW 10.101.010 may request appointment of counsel solely
7 to prepare and present a motion under this section, and the court, in
8 its discretion, may grant the request. Such motion for appointment of
9 counsel shall comply with all procedural requirements established by
10 court rule.

11 (5) DNA testing ordered under this section shall be performed by
12 the Washington state patrol crime laboratory. Contact with victims
13 shall be handled through victim/witness divisions.

14 (6) Notwithstanding any other provision of law, any biological
15 material that has been secured in connection with a criminal case, or
16 evidence samples sufficient for testing, shall not be destroyed before
17 the date of the convicted person's release from custody or twenty years
18 from the date of conviction, whichever occurs first.

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