

# HOUSE BILL REPORT

## SSB 5896

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**As Reported by House Committee On:**  
Criminal Justice & Corrections

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

**Brief Description:** Providing for additional DNA testing of evidence.

**Sponsors:** By Senate Committee on Ways & Means (originally sponsored by Senators Constantine, Kline, Hargrove, Costa, Thibaudeau, Kohl-Welles and Regala).

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 3/30/01 [DP].

**Brief Summary of Substitute Bill**

- Permits incarcerated felons to request postconviction deoxyribonucleic acid (DNA) testing under certain circumstances.
- Prohibits destruction, until January 1, 2005, of biological material that has been secured in connection with a criminal case prior to the effective date of this act.

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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; Ahern, Republican Vice Chair; Lovick, Democratic Vice Chair; Cairnes, Kagi, Kirby and Morell.

**Staff:** Katy Freeman (786-7386).

**Background:**

Postconviction DNA Testing

Until January 1, 2003, a person sentenced to death or to life imprisonment without the possibility of release or parole, who has been denied postconviction DNA testing, may request postconviction 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 request for the postconviction DNA testing may be made to the prosecutor's office in the county where the conviction was obtained. The request must be granted if the prosecutor determines that: (1) the evidence still exists, and (2) there is a likelihood that the DNA evidence would demonstrate innocence on a more probable-than-not basis.

If the prosecutor denies the request for postconviction DNA testing, the decision may be appealed to the attorney general's office. The request must be granted if the attorney general's office determines that it is likely that the DNA testing would demonstrate innocence on a more probable-than-not basis.

The DNA testing, if ordered, must be conducted by the Washington State Patrol Crime Laboratory.

On or after January 1, 2003, a person must raise the DNA issues at trial or on appeal.

#### Preservation of Biological Material

There is no law specifically addressing the preservation of biological material for DNA testing. Generally, property held as evidence may be sold at a public auction or destroyed 60 days after the case has finally been disposed of and the property has been released by order of the court.

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### **Summary of Bill:**

#### Postconviction DNA Testing

Until January 1, 2005, incarcerated felons who have been denied postconviction 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.

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

#### Preservation of Biological Material

Biological material secured in connection with a criminal case prior to the effective date of this act may not be destroyed before January 1, 2005.

#### No Creation of a Cause of Action and No Limitations on Offenders' Rights

This act does not create a cause of action in any court, nor does it limit offenders' existing legal rights to court access.

**Appropriation:** None.

**Fiscal Note:** Preliminary available.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill expands current law to include incarcerated felons. This bill also maintains the current request and appeal processes which controls costs. In many of these cases it is unlikely that a DNA sample is still in existence. There is a very small number of cases that DNA evidence will potentially be tested. The DNA testing should be conducted if a mistake may be found. This testing may exonerate the system. The preservation of evidence provision has been narrowed down so that it merely speaks to evidence that is already in a police evidence room or maintained by the court. This bill says that if evidence is currently secured, it must not be destroyed until there is an opportunity to determine whether it will be tested. This is a window bill that will allow old cases to be addressed. From this day forward a person will be expected to address these issues at trial.

**Testimony Against:** None.

**Testified:** Tom McBride, Washington Association of Prosecuting Attorneys; and Jerry Sheehan, American Civil Liberties Union of Washington.