

***Criminal Justice & Corrections  
Committee***

***HB 1889***

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

***Sponsors:*** *Representatives Lovick, Cairnes, Dunshee, Lantz, Dickerson, Hurst, Kenney, Wood and Ruderman.*

***Brief Summary of Bill***

- *Extends limited availability of motions for post-conviction forensic DNA testing to all convicts serving a term of imprisonment for a felony.*
- *Requires motions for post-conviction DNA testing to be made in trial court where conviction was entered.*
- *Requires generally that biological material secured in connection with a criminal case be preserved during term of imprisonment of the person convicted.*

***Hearing Date:*** *2/23/01*

***Staff:*** *Christopher Waraksa (786-5793).*

***Background:***

***Post-Conviction DNA Testing***

*On or before December 31, 2002, a person sentenced to death or life imprisonment without possibility of release or parole who has been denied post-conviction deoxyribonucleic acid (DNA) testing may seek post-conviction DNA testing if the DNA evidence was not admitted 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 motion is submitted to the county prosecutor in the county where the conviction was obtained.*

*The prosecutor reviews the request to determine whether the DNA evidence would*

*demonstrate innocence on a more probable than not basis. Upon determining that testing should occur, and if the evidence still exists, the prosecutor must request DNA testing by the Washington State Patrol Crime Laboratory (WSPCL).*

*If the prosecutor denies the request for post-conviction DNA testing, the person may appeal 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.*

*After December 31, 2002, a person must raise DNA issues at trial or on appeal.*

#### **Preservation of Biological Material**

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

#### **Summary of Bill:**

##### **Post-Conviction DNA Testing**

*A person convicted of a felony and currently serving a term of imprisonment may make a motion, under certain conditions, for post-conviction DNA testing before the trial court that entered the judgment of conviction. The motion must: (1) explain how the DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of the DNA testing had been available at the time of conviction; (2) make a reasonable attempt to identify the evidence to be tested and the specific type of the DNA testing sought; (3) reveal any previous DNA testing results, if known, from tests conducted by either the defense or the prosecution.*

*Notice of the motion is to be served on the attorney general, the prosecuting attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, must be made within 60 days of service. The court must appoint counsel for the convicted person who brings a motion under this provision if that person is indigent.*

*The court must grant the motion for DNA testing if it determines that all of the following have been established: (a) the evidence is available and suitable for testing; (b) the evidence is not likely to have been tampered with; (c) the identity of the perpetrator was or should have been a significant issue in the case; (d) the convicted person has made a sufficient showing that the evidence sought to be tested is material to the issue of the convicted person's identity; (e) the DNA test results would have impacted the sentence of the person seeking the test favorably; (f) the evidence in question was not tested previously or, if tested, a new test would provide results more discriminating and probative of the identity of the perpetrator or accomplice or would have a reasonable probability of contradicting the prior test results; (g) the testing requested is accepted within the relevant scientific community; and (h) the motion was not made solely for the purpose of delay.*

*If the court grants the motion for DNA testing, the test results must be fully disclosed to*

*the person filing the motion, the prosecuting attorney, and the attorney general. The underlying laboratory data is available upon request to the court. The grant or denial of the motion is not subject to appeal, and is only subject to review through a petition for a writ of mandate or prohibition.*

*The costs of testing are paid by the state or, if the court so decides and the applicant is not indigent or unable to pay, by the applicant. Any additional testing ordered by the prosecuting attorney or attorney general is not to be paid by the convicted person.*

**Preservation of Biological Material**

*The appropriate government entity must retain biological material secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with the case. The material must be maintained in a condition suitable for DNA testing. However, such material may be disposed of before this time if notification is made to relevant persons, and those so notified do not give return notice (within 90 days) that they have made a motion for DNA testing pursuant to this act or that they intend to file such a motion within 180 days. Disposal is only allowed if no other provision of law requires that the biological material be retained. This provision of law expires January 1, 2006.*

***Appropriation:*** None.

***Fiscal Note:*** Requested on February 15, 2001.

***Effective Date:*** Ninety days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.