HOUSE BILL REPORT
HB 1889

As Reported by House Committee On:
Criminal Justice & Corrections

Title: An act relating to DNA testing of evidence.

Brief Description: Providing for DNA testing of evidence.

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

Brief History:
Committee Activity:
Criminal Justice & Corrections: 2/23/01, 2/26/01 [DPS].

Brief Summary of Substitute Bill

- Permits incarcerated felons to request post-conviction forensic DNA testing under certain circumstances.
- Creates the right to appeal a prosecutor's decision regarding DNA testing to the trial court in which the conviction was obtained.
- Prohibits destruction, until January 1, 2005, of biological material that has been secured in connection with a criminal case before the effective date of the act.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill 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: 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 Substitute Bill:

Post-Conviction 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 the court ruled that DNA testing did not meet acceptable scientific standards or DNA testing technology was not sufficiently advanced to test the DNA evidence in the case.

The request is made to the prosecutor's office in the county where the conviction was obtained. The request is granted if the prosecutor determines that the evidence still exists and there is a likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. The prosecutor's decision may be appealed to the trial court that entered the judgment of conviction in the case. If the trial court determines that it is likely that the DNA testing would demonstrate innocence on a more probable than not basis, the court shall order DNA testing. Testing, if ordered, is to be conducted by the

WSPCL.

There is no appeal from the trial court's decision, except through a writ of mandate or prohibition filed by the person seeking DNA testing, the prosecuting attorney, or the attorney general. In capital cases, the writ is to be filed in the state supreme court. In noncapital cases, the writ is to be filed in the state court of appeals.

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

Substitute Bill Compared to Original Bill:

The substitute bill directs a request for DNA testing to the prosecutor and allows for appeal of the prosecutor's decision to the trial court where the conviction was obtained. The substitute bill removes the original bill's provision for a discretionary hearing, its requirement that the court provide counsel for the convict, and its requirement that notice of a motion for DNA testing be given to relevant parties. The substitute bill requires that biological material be preserved until January 1, 2005, and does not require that it be stored in testable condition. The substitute bill is silent on who must pay for the testing. All provisions of the substitute bill expire January 1, 2005.

Appropriation: None.

Fiscal Note: Requested on February 15, 2001.

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

Testimony For: Seventy people have been exonerated based on post-conviction DNA evidence, but the vast majority of those were not people on death row, and that is why this bill is needed to expand Washington's law to include all felons. It is estimated that 10 percent of prisoners in this country are wrongfully imprisoned. This testing is valuable.

(With concerns) The costs for the counties in preserving biological material in condition to allow testing will be substantial. It will require a substantive change from current practice. Locating the motions in the superior court will lead to increased costs for hearings. There will be high costs for local government in providing counsel and storage of evidence.

The bill does not make it clear how courts are to be reimbursed by the state for costs. It also is unclear how the appropriate government entity for keeping biological evidence is

to be determined. The disclosure requirement might force defense attorneys to disclose client work product, including negative or inconclusive test results. The standard the judge should follow should be changed to a reasonable probability that the verdict or sentence would have been different if a favorable DNA test had been obtained.–

Testimony Against: The main problem is costs. If appeal is to the courts it will be more costly than the current system of appealing to the attorney general. Prosecutors have interest in discovering the innocence of people who may be wrongfully incarcerated. Prosecutors have sought post-conviction testing on their own in the past, so having the request go to the prosecutors is proper. If the standard is innocence, the costs should be paid by the state.

Testified: (In support) Representative Lovick, prime sponsor; and Jerry Sheehan, American Civil Liberties Union.

(With concerns) Heather Lechner, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Martha Harden, Superior Court Judges Association; and Sophia Byrd.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.