SENATE BILL REPORT
SSB 5896

As Passed Senate, March 13, 2001

Title: An act relating to DNA testing of evidence.

Brief Description: Providing for additional DNA testing of evidence.

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

Brief History:
Committee Activity: Judiciary: 2/22/01, 2/26/01 [DP].
Ways & Means: 3/8/01 [DPS].
Passed Senate: 3/13/01, 48-0.

SENATE COMMITTEE ON JUDICIARY

Majority Report: Do pass.
Signed by Senators Kline, Chair; Constantine, Vice Chair; Costa, Hargrove, Kastama, McCaslin and Thibaudeau.

Staff: Lilah Amos (786-7421)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5896 be substituted therefor, and the substitute bill do pass.
Signed by Senators Brown, Chair; Constantine, Vice Chair; Fairley, Vice Chair; Fraser, Hewitt, Honeyford, Kline, Kohl-Welles, Rasmussen, Regala, Rossi, B. Sheldon, Snyder, Spanel, Thibaudeau, Winsley and Zarelli.

Staff: Bryon Moore (786-7726)

Background: DNA testing is a reliable forensic technique for identifying criminals when biological material is left at a crime scene. Advances in DNA technology now allow successful testing of very small and degraded samples which would not have been possible a few years ago. These advances produce much more informative and accurate results than was yielded by earlier DNA testing. Groups studying this issue report that at least 65 persons who were convicted in the U.S. and Canada have been exonerated by DNA evidence during the past decade, including eight persons who were sentenced to death. The Department of Justice and a number of legal scholars advocate that postconviction testing be available in those limited cases where biological evidence is still available and where use of new DNA methods might provide useful information regarding the identity of the perpetrator. There is also concern that biological material which is collected as evidence is preserved for postconviction DNA testing.

Summary of Bill: A convicted felon, who is currently imprisoned, on or before December 31, 2004, may submit a request for post-conviction DNA testing to the prosecutor of the county where the conviction was obtained. The request may only be made if the DNA evidence was not admitted in court because it did not meet acceptable scientific standards or the testing technology was not sufficiently developed to test the DNA evidence in the case. After January 1, 2005, DNA issues must be raised at trial or on appeal. The prosecutor must review requests for DNA testing based on the likelihood that the DNA evidence would demonstrate innocence on a more probable than not basis. If it is determined that testing should occur, and the evidence still exists, the prosecutor must request testing by the Washington State Patrol crime lab. A person denied a request for DNA testing may appeal the denial to the Office of the Attorney General.

Any biological material that was secured before the effective date of this act may not be destroyed before January 1, 2005.

The act does not create a legal right or cause of action, nor does it deny or alter any existing legal right.

Appropriation: None.

Fiscal Note: Requested on February 14, 2001.

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

Testimony For (Judiciary): Innocent persons are presently incarcerated for crimes they did not commit. Their innocence can be proven by DNA testing which was not available at the time of trial or could not produce useful results. Advances in DNA technology make testing of biological samples possible even if the evidence is old or degraded. This proposal gives defendants the ability to obtain court review of their request and identifies payment responsibility. Retention of evidence during the period of defendants' incarceration is necessary so testing can be done if appropriate.

Testimony Against (Judiciary): While some tests are necessary, the procedure creates a new class of motions and will be too costly. The requirement that evidence be retained lacks specificity about the identity and procedure for evidence retention. Testing should be available for a limited time and should be patterned after existing DNA testing provisions for death penalty cases and cases involving life without parole.

Testified (Judiciary): Senator Dow Constantine; Jerry Sheehan, ACLU; Roger Hunko, WCDL; Joanne Moore, Wash. Office of Public Defense; Martha Harden, Superior Ct. Judges' Assn.; Tom McBride, WAPA.

Testimony For (Ways & Means): The substitute provides the appropriate mechanism to ensure that DNA testing can take place to determine if innocent persons are presently incarcerated for crimes they did not commit. This is limited in scope to control the costs. This will only apply to a very limited number of people.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Jerry Sheehan, ACLU; Tom McBride, WAPA.

House Amendment(s): Post-conviction DNA testing is available only for persons convicted of Class B felonies which are crimes against persons as defined in RCW 9.94A.440. These offenses include assault of a child in the second degree, child molestation in the second degree, assault in the second degree, robbery in the second degree, and indecent liberties.

Persons convicted of Class A felonies which are crimes against persons are not eligible for post-conviction DNA testing. Those Class A felonies include rape in the first and second degree, murder in the first and second degree, assault in the first degree, and robbery in the first degree.