

---

HOUSE BILL 1889

---

State of Washington

57th Legislature

2001 Regular Session

By Representatives Lovick, Cairnes, Dunshee, Lantz, Dickerson, Hurst, Kenney, Wood and Ruderman

Read first time 02/07/2001. Referred to Committee on Criminal Justice & Corrections.

1 AN ACT Relating to DNA testing of evidence; adding new sections to  
2 chapter 10.73 RCW; creating new sections; and providing an expiration  
3 date.

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

5 NEW SECTION. **Sec. 1.** (1) Over the past decade, deoxyribonucleic  
6 acid (DNA) testing has emerged as the most reliable forensic technique  
7 for identifying criminals when biological material is left at a crime  
8 scene.

9 (2) Because of its scientific precision, DNA testing can, in some  
10 cases, conclusively establish the guilt or innocence of a criminal  
11 defendant. In other cases, DNA testing may not conclusively establish  
12 guilt or innocence, but may have significant probative value to a  
13 finder of fact.

14 (3) While DNA testing is increasingly commonplace in pretrial  
15 investigations today, it was not widely available in cases tried prior  
16 to 1994. Moreover, new forensic DNA testing procedures have made it  
17 possible to get results from minute samples that could not previously  
18 be tested, and to obtain more informative and accurate results than  
19 earlier forms of forensic DNA testing could produce. Consequently, in

1 some cases convicted inmates have been exonerated by new DNA tests  
2 after earlier tests had failed to produce definitive results.

3 (4) Since DNA testing is often feasible on relevant biological  
4 material that is decades old, it can, in some circumstances, prove that  
5 a conviction that predated the development of DNA testing was based  
6 upon incorrect factual findings. Uniquely, DNA evidence showing  
7 innocence, produced decades after a conviction, provides a more  
8 reliable basis for establishing a correct verdict than any evidence  
9 proffered at the original trial. DNA testing, therefore, can and has  
10 resulted in the postconviction exoneration of innocent men and women.

11 (5) In the past decade, there have been more than sixty-five  
12 postconviction exonerations in the United States and Canada based upon  
13 DNA testing. At least eight individuals sentenced to death have been  
14 exonerated through postconviction DNA testing, some of whom came within  
15 days of being executed.

16 (6) The two states that have established statutory processes for  
17 postconviction DNA testing not just for death penalty cases, Illinois  
18 and New York, have the most postconviction DNA exonerations, fourteen  
19 and seven, respectively.

20 (7) The advent of DNA testing raises serious concerns regarding the  
21 prevalence of wrongful convictions, especially wrongful convictions  
22 arising out of mistaken eyewitness identification testimony. According  
23 to a 1996 department of justice study entitled "Convicted by Juries,  
24 Exonerated by Science: Case Studies of Postconviction DNA  
25 Exonerations", in approximately twenty to thirty percent of the cases  
26 referred for DNA testing, the results excluded the primary suspect.  
27 Without DNA testing, many of these individuals might have been  
28 wrongfully convicted.

29 (8) Even when DNA testing has been done and has persuasively  
30 demonstrated the actual innocence of an inmate, some states have  
31 sometimes relied on time limits and other procedural barriers to deny  
32 release.

33 (9) The national commission on the future of DNA evidence, a  
34 federal panel established by the department of justice and comprised of  
35 law enforcement, judicial, and scientific experts, has issued a report  
36 entitled "Recommendations For Handling Postconviction DNA Applications"  
37 that urges postconviction DNA testing in at least certain categories of  
38 cases, notwithstanding procedural rules that could be invoked to

1 preclude such testing, and notwithstanding the inability of the inmate  
2 to pay for the testing.

3 (10) The number of cases in which postconviction DNA testing is  
4 appropriate is relatively small and will decrease as pretrial testing  
5 becomes more common and accessible.

6 (11) The cost of DNA testing has also decreased in recent years.

7 (12) In 1994, congress authorized funding to improve the quality  
8 and availability of DNA analysis for law enforcement identification  
9 purposes. Since then, states have been awarded over fifty million  
10 dollars in DNA-related grants.

11 (13) If biological material is not subjected to DNA testing in  
12 appropriate cases, there is a significant risk that persuasive evidence  
13 of innocence will not be detected and, accordingly, that innocent  
14 persons will be unconstitutionally incarcerated or executed.

15 (14) There is also a compelling need to ensure the preservation of  
16 biological material for postconviction DNA testing. Since 1992, the  
17 Innocence Project at the Benjamin N. Cardozo School of Law has received  
18 thousands of letters from inmates who claim that DNA testing could  
19 prove them innocent. In over seventy percent of those cases in which  
20 DNA testing could have been dispositive of guilt or innocence if the  
21 biological material were available, the material had been destroyed or  
22 lost. In two-thirds of the cases in which the evidence was found, and  
23 DNA testing conducted, the results have exonerated the inmate.

24 (15) In at least fourteen cases, postconviction DNA testing that  
25 has exonerated a wrongly convicted person has also provided evidence  
26 leading to the apprehension of the actual perpetrator, thereby  
27 enhancing public safety. This would not have been possible if the  
28 biological evidence had been destroyed.

29 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.73 RCW  
30 to read as follows:

31 (1) A person who was convicted of a felony and is currently serving  
32 a term of imprisonment may make a written motion before the trial court  
33 that entered the judgment of conviction in his or her case for  
34 performance of forensic deoxyribonucleic acid (DNA) testing.

35 (a) The motion shall be verified by the convicted person under  
36 penalty of perjury and shall do all of the following:

37 (i) Explain why the identity of the perpetrator was, or should have  
38 been, a significant issue in the case;

1 (ii) Explain in light of all the evidence, how the requested DNA  
2 testing would raise a reasonable probability that the convicted  
3 person's verdict or sentence would be more favorable if the results of  
4 DNA testing had been available at the time of conviction;

5 (iii) Make every reasonable attempt to identify both the evidence  
6 that should be tested and the specific type of DNA testing sought.

7 (b) Notice of the motion shall be served on the attorney general,  
8 the prosecuting attorney in the county of conviction, and, if known,  
9 the governmental agency or laboratory holding the evidence sought to be  
10 tested. Responses, if any, shall be filed within sixty days of the  
11 date on which the attorney general and the prosecuting attorney are  
12 served with the motion, unless a continuance is granted.

13 (c) If any DNA or other biological evidence testing was conducted  
14 previously by either the prosecution or defense, the results of that  
15 testing shall be revealed in the motion for testing, if known. If  
16 evidence was subjected to DNA or other forensic testing previously by  
17 either the prosecution or defense, the court shall order the  
18 prosecution or defense to provide all parties and the court with access  
19 to the laboratory reports, underlying data, and laboratory notes  
20 prepared in connection with the DNA testing.

21 (2) The court, in its discretion, may order a hearing on the  
22 motion. The motion shall be heard by the judge who conducted the trial  
23 unless the presiding judge determines that judge is unavailable. Upon  
24 request of either party, the court may order, in the interest of  
25 justice, that the convicted person be present at the hearing of the  
26 motion.

27 (3) The court shall appoint counsel for the convicted person who  
28 brings a motion under this section if that person is indigent.

29 (4) The court shall grant the motion for DNA testing if it  
30 determines all of the following have been established:

31 (a) The evidence to be tested is available and in a condition that  
32 would permit the DNA testing that is requested in the motion;

33 (b) The evidence to be tested has been subject to a chain of  
34 custody sufficient to establish it has not been substituted, tampered  
35 with, replaced, or altered in any material aspect;

36 (c) The identity of the perpetrator of the crime was, or should  
37 have been, a significant issue in the case;

38 (d) The convicted person has made a prima facie showing that the  
39 evidence sought to be tested is material to the issue of the convicted

1 person's identity as the perpetrator of, or accomplice to, the crime,  
2 special circumstance, or enhancement allegation that resulted in the  
3 conviction or sentence;

4 (e) The requested DNA testing results would raise a reasonable  
5 probability that, in light of all the evidence, the convicted person's  
6 verdict or sentence would have been more favorable if the results of  
7 DNA testing had been available at the time of conviction. The court in  
8 its discretion may consider any evidence whether or not it was  
9 introduced at trial;

10 (f) The evidence sought to be tested meets either of the following  
11 conditions:

12 (i) It was not tested previously;

13 (ii) It was tested previously, but the requested DNA test would  
14 provide results that are reasonably more discriminating and probative  
15 of the identity of the perpetrator or accomplice or have a reasonable  
16 probability of contradicting prior test results;

17 (g) The testing requested employs a method generally accepted  
18 within the relevant scientific community;

19 (h) The motion is not made solely for the purpose of delay.

20 (5) If the court grants the motion for DNA testing, the court order  
21 shall identify the specific evidence to be tested and the DNA  
22 technology to be used. The testing shall be conducted by a laboratory  
23 mutually agreed upon by the prosecuting attorney in a noncapital case,  
24 or the attorney general in a capital case, and the person filing the  
25 motion. If the parties cannot agree, the court's order shall designate  
26 the laboratory to conduct the testing and shall consider designating a  
27 laboratory accredited by the American society of crime laboratory  
28 directors laboratory accreditation board.

29 (6) The result of any testing ordered under this section shall be  
30 fully disclosed to the person filing the motion, the prosecuting  
31 attorney, and the attorney general. If requested by any party, the  
32 court shall order production of the underlying laboratory data and  
33 notes.

34 (7)(a) The cost of DNA testing ordered under this section shall be  
35 borne by the state or the applicant, as the court may order in the  
36 interests of justice, if it is shown that the applicant is not indigent  
37 and possesses the ability to pay. However, the cost of any additional  
38 testing to be conducted by the prosecuting attorney or the attorney  
39 general shall not be borne by the convicted person.

1 (b) In order to pay the state's share of any testing costs, the  
2 laboratory designated in subsection (5) of this section shall present  
3 its bill for services to the superior court for approval and payment.

4 (8) An order granting or denying a motion for DNA testing under  
5 this section shall not be appealable, and shall be subject to review  
6 only through petition for writ of mandate or prohibition filed by the  
7 person seeking DNA testing, the prosecuting attorney, or the attorney  
8 general. Any such petition shall be filed within twenty days after the  
9 court's order granting or denying the motion for DNA testing. In a  
10 noncapital case, the petition for writ of mandate or prohibition shall  
11 be filed in the court of appeals. In a capital case, the petition  
12 shall be filed in the supreme court. The court of appeals or supreme  
13 court shall expedite its review of a petition for writ of mandate or  
14 prohibition filed under this subsection.

15 (9) DNA testing ordered by the court pursuant to this section shall  
16 be done as soon as practicable. However, if the court finds that a  
17 miscarriage of justice will otherwise occur and that it is necessary in  
18 the interests of justice to give priority to the DNA testing, a DNA  
19 laboratory shall be required to give priority to the DNA testing  
20 ordered pursuant to this section over the laboratory's other pending  
21 casework.

22 (10) DNA profile information from biological samples taken from a  
23 convicted person pursuant to a motion for postconviction DNA testing is  
24 exempt from any law requiring disclosure of information to the public.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.73 RCW  
26 to read as follows:

27 (1) Notwithstanding any other provision of law and subject to  
28 subsection (2) of this section, the appropriate governmental entity  
29 shall retain any biological material secured in connection with a  
30 criminal case for the period of time that any person remains  
31 incarcerated in connection with that case. The governmental entity  
32 shall have the discretion to determine how the evidence is retained  
33 pursuant to this section, provided that the evidence is retained in a  
34 condition suitable for DNA testing.

35 (2) A governmental entity may dispose of biological material before  
36 the expiration of the period of time described in subsection (1) of  
37 this section if all of the conditions set forth in this subsection are  
38 met:

1 (a) The governmental entity notifies all of the following persons  
2 of the provisions of this section and of the intention of the  
3 governmental entity to dispose of the material: Any person, who as a  
4 result of a felony conviction in the case is currently serving a term  
5 of imprisonment and who remains incarcerated in connection with the  
6 case, any counsel of record, the public defender in the county of  
7 conviction, the prosecuting attorney in the county of conviction, and  
8 the attorney general.

9 (b) The notifying entity does not receive, within ninety days of  
10 sending the notification, any of the following:

11 (i) A motion filed pursuant to section 2 of this act, however, upon  
12 filing of that application, the governmental entity shall retain the  
13 material only until the time that the court's denial of the motion is  
14 final.

15 (ii) A request under penalty of perjury that the material not be  
16 destroyed or disposed of because the declarant will file within one  
17 hundred eighty days a motion for DNA testing pursuant to section 2 of  
18 this act that is followed within one hundred eighty days by a motion  
19 for DNA testing pursuant to section 2 of this act, unless a request for  
20 an extension is requested by the convicted person and agreed to by the  
21 governmental entity in possession of the evidence.

22 (c) No other provision of law requires that biological evidence be  
23 preserved or retained.

24 (3) This section expires January 1, 2006.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.73 RCW  
26 to read as follows:

27 Nothing in this act may be construed to create a new or additional  
28 cause of action in any court. Nothing in this act shall be construed  
29 to limit any rights offenders might otherwise have to court access  
30 under any other statutory or constitutional provision.

31 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this  
32 act, referencing this act by bill or chapter number, is not provided by  
33 June 30, 2001, in the omnibus appropriations act, this act is null and  
34 void.

--- END ---