SENATE BILL REPORT
SB 6447

As Reported By Senate Committee On:
Children & Family Services & Corrections, February 6, 2004

Title: An act relating to DNA testing.

Brief Description: Revising DNA testing provision.

Sponsors: Senators Stevens and Haugen.

Brief History:
Committee Activity: Children & Family Services & Corrections: 1/28/04, 2/6/04 [DPS].

SENATE COMMITTEE ON CHILDREN & FAMILY SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 6447 be substituted therefor, and the substitute bill do pass.
Signed by Senators Stevens, Chair; Carlson, Hargrove, McAuliffe and Regala.

Staff: Lilah Amos (786-7429)

Background: At any time before December 31, 2004, a convicted felon who is in prison can request postconviction DNA testing on any evidence which is still available if DNA test results were not admitted at trial because they did not meet acceptable scientific standards or if DNA technology was not sufficiently developed to provide results. Testing is to be provided if there is a likelihood, on a more probable than not basis, that the DNA test results will demonstrate innocence. After January 1, 2005, the offender must raise the issue at trial or on appeal.

In 2003, the Legislature changed the procedure for requesting postconviction DNA testing by allowing the request to be made to the state Office of Public Defense, which must transmit that request to the county prosecutor and transmit the prosecutor's decision on testing back to the offender. If testing is denied, the offender can appeal the decision within 30 days to the Attorney General's Office.

Summary of Substitute Bill: Any convicted felon who requests DNA testing can submit the request to the court that entered the judgment of conviction. The requirement that the request be made before December 31, 2004, is eliminated. The basis for the DNA testing request is expanded to allow the testing if it is significantly more accurate than prior testing or would provide significant new information.

The court must grant the test if the results would, more probably than not, demonstrate innocence. The court is authorized to appoint counsel for the offender to make the testing motion.

The court at sentencing can order that biological material be preserved, and must identify which samples must be maintained and the length of time they must be preserved.

Substitute Bill Compared to Original Bill: The standard for ordering the testing is the likelihood that innocence will be demonstrated. The court at sentencing may order that biological samples be preserved.

Appropriation: None.

Fiscal Note: Requested on January 23, 2004.

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

Testimony For: The bill will allow DNA testing in the future if DNA technology improves. Inmates should be able to have legal assistance in making the request, and have a judge decide whether the test is warranted. Approximately two dozen requests for testing have been received since 2000, so the burden on the court and public defender system is not expected to be substantial. Since the requirements for granting a new trial are difficult to meet, an easing of the standard for doing additional testing is warranted.

Testimony Against: The standard for testing should be actual innocence of the inmate. Any lowering of the standard could adversely impact more victims whose DNA samples were needed years after the crime. Mandatory preservation of all evidence in a criminal case for 20 years would place an unreasonable burden on counties.

Testified: PRO: Mary Jane Ferguson, OPD; George Finkle, retired judge; Jackie McMutrie, Innocence Project NW; CON: Tom McBride, WAPA; CONCERNS: Suzanne McBride, WA Coalition of Sexual Assault Programs; Sophia Byrd, Association of Counties.