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**SUBSTITUTE SENATE BILL 6447**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

**By** Senate Committee on Children & Family Services & Corrections  
(originally sponsored by Senators Stevens and Haugen)

READ FIRST TIME 02/09/04.

1 AN ACT Relating to DNA testing; and amending RCW 10.73.170.

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

3 **Sec. 1.** RCW 10.73.170 and 2003 c 100 s 1 are each amended to read  
4 as follows:

5 (1) ~~((On or before December 31, 2004, a person in this state who~~  
6 ~~has been convicted of a felony and is currently serving a term of~~  
7 ~~imprisonment and who has been denied postconviction DNA testing may~~  
8 ~~submit a request to the state Office of Public Defense, which will~~  
9 ~~transmit the request to the county prosecutor in the county where the~~  
10 ~~conviction was obtained for postconviction DNA testing, if DNA evidence~~  
11 ~~was not admitted because the court ruled DNA testing did not meet~~  
12 ~~acceptable scientific standards or DNA testing technology was not~~  
13 ~~sufficiently developed to test the DNA evidence in the case. On and~~  
14 ~~after January 1, 2005, a person must raise the DNA issues at trial or~~  
15 ~~on appeal.~~

16 (2) ~~The prosecutor shall screen the request. The request shall be~~  
17 ~~reviewed based upon the likelihood that the DNA evidence would~~  
18 ~~demonstrate innocence on a more probable than not basis. The~~  
19 ~~prosecutor shall inform the requestor and the state Office of Public~~

1 ~~Defense of the decision, and shall, in the case of an adverse decision,~~  
2 ~~advise the requestor of appeals rights. Upon determining that testing~~  
3 ~~should occur and the evidence still exists, the prosecutor shall~~  
4 ~~request DNA testing by the Washington state patrol crime laboratory.~~  
5 ~~Contact with victims shall be handled through victim/witness divisions.~~

6 ~~(3) A person denied a request made pursuant to subsections (1) and~~  
7 ~~(2) of this section has a right to appeal his or her request within~~  
8 ~~thirty days of denial of the request by the prosecutor. The appeal~~  
9 ~~shall be to the attorney general's office. If the attorney general's~~  
10 ~~office determines that it is likely that the DNA testing would~~  
11 ~~demonstrate innocence on a more probable than not basis, then the~~  
12 ~~attorney general's office shall request DNA testing by the Washington~~  
13 ~~state patrol crime laboratory.~~

14 ~~(4) Notwithstanding any other provision of law, any biological~~  
15 ~~material that has been secured in connection with a criminal case prior~~  
16 ~~to July 22, 2001, may not be destroyed before January 1, 2005.))~~ A  
17 person convicted of a felony in a Washington state court who currently  
18 is serving a term of imprisonment may submit to the court that entered  
19 the judgment of conviction a verified written motion requesting DNA  
20 testing.

21 (2) The motion shall:

22 (a) State that:

23 (i) The court ruled that DNA testing did not meet acceptable  
24 scientific standards; or

25 (ii) DNA testing technology was not sufficiently developed to test  
26 the DNA evidence in the case; or

27 (iii) The DNA testing now requested would be significantly more  
28 accurate than prior DNA testing or would provide significant new  
29 information;

30 (b) Explain why DNA evidence is material to the identity of the  
31 perpetrator of, or accomplice to, the crime, or to sentence  
32 enhancement; and

33 (c) Comply with all other procedural requirements established by  
34 court rule.

35 (3) The court shall grant a motion requesting DNA testing under  
36 this section if such motion is in the form required by subsection (2)  
37 of this section, and the convicted person has shown the likelihood that

1 the DNA evidence would demonstrate innocence on a more probable than  
2 not basis.

3 (4) Upon written request to the court that entered a judgment of  
4 conviction, a convicted person who demonstrates that he or she is  
5 indigent under RCW 10.101.010 may request appointment of counsel solely  
6 to prepare and present a motion under this section, and the court, in  
7 its discretion, may grant the request. Such motion for appointment of  
8 counsel shall comply with all procedural requirements established by  
9 court rule.

10 (5) DNA testing ordered under this section shall be performed by  
11 the Washington state patrol crime laboratory. Contact with victims  
12 shall be handled through victim/witness divisions.

13 (6) Notwithstanding any other provision of law, upon motion of  
14 defense counsel or the court's own motion, a sentencing court in a  
15 felony case may order the preservation of any biological material that  
16 has been secured in connection with a criminal case, or evidence  
17 samples sufficient for testing. The court must specify the samples to  
18 be maintained and the length of time the samples must be preserved.

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