



LB 659 provides that if an applicant is indigent, counsel will be appointed, and the cost of DNA testing will be paid by the State.

LB 659 also prohibits the state from destroying any biological material in a criminal case while any person remains incarcerated in connection with such case unless such person is:

- Notified of the state's intent to destroy the material;
- Notified of the provisions of the DNA Testing Act; and
- Afforded at least 90 days to request DNA testing.

LB 659 also provides that if the results of DNA testing "are favorable" to the prisoner in custody, the court shall grant any of the following relief:

- Vacating and setting aside the judgment;
- Discharging the person if he or she is in custody;
- Resentencing the person, or;
- Granting a new trial.

#### **Explanation of amendments, if any:**

The committee amendments provide that upon consideration of affidavits or after a hearing, the court shall order DNA testing upon determining that the testing was not available at the time of trial, the biological material has been retained in a way likely to protect the integrity of its original physical composition, the proposed testing is agreed upon by the parties or the court determines it to be competent to conduct such examination, and the testing may produce noncumulative, exculpatory evidence relevant to the claim that the person was wrongfully convicted or sentenced.

Clarifications are made with regard to the cost of DNA testing. The cost of DNA testing shall be paid by the person filing the motion for such testing, unless the court determines the person to be indigent. If indigent, the costs shall be paid by the state and the court shall determine the approved testing facility where such tests shall be conducted.

Counsel shall be appointed for an indigent person upon a showing by the person that DNA testing may be relevant to the person's claim of wrongful conviction.

The committee amendments modify the procedural process in dealing with the results of the ordered DNA testing. Specifically:

- The results of the DNA testing shall be disclosed to the person filing the motion, the person's attorney, and the county attorney.

- Any party may then request a hearing before the court when such results exonerate or exculpate the person. Following the hearing, the court may vacate, set aside the conviction and release the person from custody based upon the final testing results.
- If such relief is not granted, a motion for new trial may be filed.

A subsection is added under the provisions to dispose of the biological material. It provides that if the required party receives notice that biological material is to be disposed of, instead of filing a motion to test the material, the party may request in writing to take possession of the biological material for any future discovery of scientific or forensic techniques. The costs of acquiring, preserving and storing such material shall be at the expense of the person requesting possession.

Finally, the committee amendments modify the statutes pertaining to a motion for a new trial. The amendments:

- Add newly discovered exculpatory DNA testing evidence obtained under the DNA Testing Act as a ground for which a new trial may be granted;
- Provide that a motion for a new trial on the basis of DNA testing results must be supported by affidavits;
- Grant an exception to the 3-year limitation on a motion for new trial when there is new evidence and such evidence claims actual innocence and is supported by clear and convincing evidence of such innocence.

Require a motion for a new trial based on DNA testing be filed within 90 days after a final order is issued pursuant to a hearing requesting a setting aside of a conviction under the DNA Testing Act, or within 90 days after such hearing if no final order is entered, whichever is first to occur.

---

**Senator Kermit A. Brashear, Chairperson**