

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1395 (Substitute S-3 as reported by the Committee of the Whole)

Sponsor: Senator Bill Schuette

Committee: Judiciary

CONTENT

The bill would amend the Code of Criminal Procedure, effective January 1, 2001, to:

- Allow defendants serving a sentence for a felony to petition for DNA testing and a new trial.
- Provide that a petition would have to be filed by January 1, 2006.
- Require a court to order DNA testing if the defendant 1) presented proof that the evidence sought to be tested was material to the issue of his or her identity as the perpetrator or accomplice; and 2) established by clear and convincing evidence that: a sample of biological material collected during the investigation was available for testing; the material either had not been previously tested or would be subjected to new testing technology; and the identity of the defendant as the perpetrator had been at issue during the trial.
- Require the court to deny the motion for a new trial if the testing results were inconclusive or showed that the defendant was the source of the identified biological material.
- Provide that, if the testing results showed that the defendant was not the source of the biological material, the court would have to hold a hearing to determine by clear and convincing evidence that: only the perpetrator could be the source of the biological material; the material was not contaminated or degraded; and the defendant's purported exclusion as the source of the biological material justified a new trial.
- Allow a party to apply for leave to appeal to the Court of Appeals.
- Provide for notice to the felony victim of the petition and a hearing.
- Require the appropriate law enforcement agency, beginning January 1, 2001, to preserve any biological material identified during the investigation of a crime for which a person could petition for DNA testing under the bill; and require the material to be preserved for the period of time the person was incarcerated in connection with that case.

MCL 770.2 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. The impact that the bill would have on the number of petitions for DNA tests and potential new trials resulting from the tests is not determinable. The bill does not address the issue of who would pay for DNA testing that would be ordered by the circuit court.

The bill also would have an indeterminate fiscal impact on the Department of Corrections. To the extent that offenders incorrectly convicted of crimes could be found not guilty upon a new trial, the prison population could be reduced. However, there are no data to indicate whether this would result in a reduction in the prison population or the magnitude of a reduction. There also would be more immediate costs for the Department including the costs of obtaining DNA samples from prisoners, transport of prisoners for retrial, and payments to counties for retention of prisoners during retrial. However, there is no basis for estimating these costs.

The bill would have no fiscal impact on the Department of State Police.

Date Completed: 11-28-00

Fiscal Analyst: B. Bowerman/K. Firestone/B. Baker