

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1395 (as introduced 9-28-00)
Sponsor: Senator Bill Schuette
Committee: Judiciary

Date Completed: 11-14-00

CONTENT

The bill would amend the Code of Criminal Procedure to do the following:

- 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 within 180 days after the bill's effective date.
- Permit a court to order DNA testing if the defendant established certain factors by clear and convincing evidence (e.g., that only the perpetrator could be the source of the genetic material, and that the genetic material was collected and preserved in such a manner that it was not contaminated or degraded).
- 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 genetic material.
- Provide that, if the testing results showed that the defendant was not the source of the genetic material, the court would have to hold a hearing to determine whether that fact alone justified a new trial, and require the court to order retesting upon the prosecutor's motion.
- Provide for notice to the felony victim of the petition and a hearing.
- Allow a party to apply for leave to appeal to the Court of Appeals.

The bill would take effect on January 1, 2001. It is described in more detail below.

A defendant who was convicted of a felony at trial before the bill's effective date and who was serving a prison sentence for the felony conviction could petition the circuit court to order DNA testing of genetic material identified during the investigation leading to the conviction, and for a new trial based on the results of that testing. The petition would have to be filed within 180 days after the bill's effective date.

The petition would have to be filed in the circuit court in which the defendant was sentenced, and assigned to the sentencing judge or his or her successor. The petition would have to be served on the prosecuting attorney of the county where the defendant was convicted.

The court would be permitted to order DNA testing if the defendant established all of the following by clear and convincing evidence:

- A sample of genetic material identified during the investigation was available for DNA testing.
- The genetic material was not previously subject to DNA testing.
- The identity of the defendant as the perpetrator of the crime was at issue during his or her trial.
- Only the perpetrator of the crime or crimes for which the defendant was convicted could be the source of the genetic material for which DNA testing was being sought.
- The genetic material was collected, handled, and preserved by procedures such that it was not contaminated or so degraded that the DNA profile of the current sample of the genetic material could not be determined to be identical to the DNA profile of the sample initially collected during the investigation leading to the conviction.

If the court granted the petition for DNA testing, the genetic material and a genetic sample obtained from

the defendant would have to be subjected to DNA testing by a laboratory approved by the court. The results of the testing would have to be provided to the court, the defendant, and the prosecutor. Upon motion by either party, the court could order that the testing protocols, laboratory results, laboratory notes, and other relevant records compiled by the testing laboratory be provided to the court and to all parties.

If the testing results were inconclusive or showed that the defendant was the source of the genetic material, the court would have to deny the motion for a new trial. If the results showed that the defendant was the source of the genetic material, his or her DNA profile would have to be given to the Michigan State Police for inclusion under the DNA Identification Profiling System Act.

If the testing results showed that the defendant was not the source of the genetic material, the court would have to hold a hearing to determine by clear and convincing evidence if that lone fact, balanced against the other evidence in the case, was sufficient to justify granting a new trial. Upon the prosecutor's motion, the court would have to order retesting of the genetic material and stay the defendant's motion for a new trial pending the results of the retesting.

If the name of the felony victim were known, the prosecuting attorney would have to give written notice of the petition to the victim, and forward a copy of the petition to him or her. The notice would have to be by first-class mail to the victim's last known address. Upon the victim's request, the prosecutor would have to give the victim notice of the time and place of any hearing on the petition and inform the victim of the court's grant or denial of a new trial to the defendant.

The court would have to state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the petition for DNA testing or to grant or deny the defendant a new trial. An aggrieved party could appeal the court's decision by application for leave granted by the Court of Appeals.

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 based on the results of DNA evidence, 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 would be additional, more immediate costs for the Department of Corrections 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.

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

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.