

POST-CONVICTION DNA TESTING

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House Bill 5271 as introduced
Sponsor: Rep. Kara Hope
1st Committee: Judiciary
2nd Committee: Criminal Justice
Complete to 3-4-24

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5271 would amend section 16 of Chapter X of the Code of Criminal Procedure, which provides guidelines under which a person convicted of a felony may petition the circuit court to order DNA testing of biological material identified during the investigation leading to the person's conviction, and for a new trial based on the DNA testing results. The bill would define biological material, modify who can file such a petition, what the petition has to establish, when the court has to order DNA testing, what the results of the testing might mean, and how long any material that might one day be subject to testing has to be preserved.

Biological material

Both the act and the bill address DNA testing of *biological material* identified during the investigation leading to a person's conviction. The bill would add language to specifically provide that *biological material* includes any evidence that has a reasonable probability of containing quantities of DNA from any human body product.

Who can file

Currently, a petition for post-conviction DNA testing may be filed by a defendant convicted of a felony at trial before January 8, 2001, who is serving a prison sentence for the felony conviction.¹ In addition, a defendant convicted of a felony at trial on or after January 8, 2001, can file a petition if they establish that certain specified criteria apply. (Those criteria are described below.)

The bill would eliminate the distinction between those convicted before January 8, 2001, and those convicted on or after that date. The bill also would remove the requirement that the person be convicted *at trial* (that is, the bill would allow access to testing in guilty plea cases) and remove the requirement that a person convicted before January 8, 2001, must be incarcerated to obtain testing.

Under the bill, a defendant convicted of a felony could file a petition for post-conviction DNA testing, and the petition would have to establish that certain circumstances (described below) apply.

What the petition must establish

Currently, a person convicted of a felony at trial on or after January 8, 2001, must establish that all of the following apply before they can file a petition for post-conviction DNA testing:

- That DNA testing was done in the case or under the act.
- That the results of the testing were inconclusive.
- That testing with current DNA technology is likely to result in conclusive results.

¹ January 8, 2001, is the date these post-conviction DNA testing provisions first went into effect.

Under the bill, a petition for post-conviction DNA testing filed by a defendant convicted of a felony would have to establish that either of the of the following circumstances apply:

- The biological material *was not* subjected to DNA testing.
- The biological material *was* subjected to DNA testing, and at least one of the following applies:
 - The defendant is requesting DNA testing that uses a method or technology that provides a reasonable likelihood of results that are more accurate and able to demonstrate or prove something than the results of the previous test.
 - The court determines that granting the petition is in the interest of justice.

When the court must order testing

Currently, the court must order DNA testing if the defendant does all of the following:

- Presents prima facie (valid on its face) proof that the evidence sought to be tested is material (relevant) to the issue of their identity as the perpetrator of, or accomplice to, the crime that resulted in their conviction.
- Establishes all of the following by clear and convincing evidence:
 - That a sample of identified biological material is available for DNA testing.
 - That the identified biological material was not previously subjected to DNA testing or, if it was previously tested, that it will be subject to DNA testing technology that was not available when the defendant was convicted.
 - That the identity of the defendant as the perpetrator of the crime was at issue during the trial.

Under the bill, the court would have to order DNA testing if the defendant presents prima facie evidence of both of the following:

- That the biological material sought to be tested is material to the issue of their identity as the perpetrator of, or accomplice to, the crime that resulted in their conviction.
- That a sample of identified biological material is available for DNA testing.

DNA testing results

Currently, if the results of the DNA testing show that the defendant is not the source of the identified biological material,² the court must appoint counsel (a lawyer) under the Michigan Court Rules and hold a hearing to determine by clear and convincing evidence all of the following:

- That the only person who could be the source of the identified biological material is the perpetrator of the crime the defendant was convicted for.
- That the identified biological material was collected, handled, and preserved in a way that allows the court to find that it is not contaminated or so degraded that the DNA profile of the tested sample cannot be determined to be identical to the DNA profile of the sample initially collected during the investigation.
- That the defendant's purported exclusion as the source of the identified biological material, balanced against the other evidence in the case, is enough to justify granting a new trial.

² Under both the act and the bill, if the results of the testing are inconclusive or show that the defendant is the source of the identified biological material, the court must deny the motion for new trial and the defendant's DNA profile must be provided to the Department of State Police for inclusion under the DNA Identification Profiling System Act.

Under the bill, if the results of the DNA testing call into question the defendant's identity as the perpetrator, the court would have to appoint counsel under the Michigan Court Rules and hold a hearing to determine whether the results of the testing, along with any other new evidence, make a different result probable upon retrial.

Preservation of material

Under both the act and the bill, an investigating law enforcement agency must preserve any *biological material* identified during investigation of a crime that may be subject to these post-conviction DNA testing provisions.

Currently, the identified biological material must be preserved for as long as any person is incarcerated in connection with that case.

Under the bill, the identified biological material would have to be preserved for as long as any person is in the custody of the state, under the jurisdiction of the state (including while serving a term of probation or parole), or required to register under the Sex Offenders Registration Act.

MCL 770.16

FISCAL IMPACT:

House Bill 5271 would have an indeterminate fiscal impact on local court funding units. To the extent that there is an increase in the number of petitions filed in courts and a corresponding increase in the number of petitions granted by courts, costs would be incurred as a result of increased court caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.