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FORENSIC LAB FUND

House Bill 4245 as enrolled
Second Analysis (8-16-94)

Sponsor: Rep. Jerry Vorva
House Committee: Judiciary
Senate Committee: Judiciary

THE APPARENT PROBLEM:

The seven state police forensic laboratories, which are scattered throughout the state, perform tests and analyses that are vital to criminal investigations. State crime lab technicians not only perform drug analyses, which constitute much of their work; they also analyze paint, ink, fingerprints, blood samples, fibers, and other substances, and they analyze handwriting and conduct polygraph tests. In addition to their laboratory work, technicians often are called upon to testify about their results.

Despite its important function, the forensic science division, like many units in state government, has had to make do with reduced staffing in recent years. A recent survey of law enforcement agencies, prosecutors and judges indicates that most in the criminal justice community believe that forensic science services should be provided by the state police and that staffing and funding for forensic laboratories should be increased. At the same time, many reported that the service provided is inadequate for the needs of the criminal justice system and society in general. As the director of the division put it, the need of the criminal justice system for forensic services has outdistanced the division's ability to deliver.

What is needed, many say, is additional funding for forensic laboratories. Given budgetary realities, it is felt that what is needed is a new source of revenue that does not rely on state budgetary priorities.

THE CONTENT OF THE BILL:

The bill would create the "Forensic Laboratory Funding Act," which would provide a means of funding forensic laboratory costs incurred by the state and local units of government. A forensic laboratory fund would be created in the state treasury, funded at least in part through \$150 assessments on defendants convicted of criminal

sexual conduct and defendants convicted in cases where state or municipal forensic services had been used. The fund also could receive gifts and grants from other sources, both public and private. Municipalities (defined to include counties, as well as other municipalities) that maintain forensic laboratories could receive proportionate reimbursement based on the number of criminal investigations in which they had performed tests, compared to the total number reported statewide. (Municipalities seeking reimbursement and the state police would be required to report the number of investigations to the state treasurer.) Courts would be allowed to retain five percent of all assessments collected. The bill would take effect 90 days after enactment, and would remain in effect for four years, at which time it would be repealed. The assessment would apply to prosecutions for offenses committed on or after the bill's effective date. Further details follow.

Criminal assessment. When a person was convicted of criminal sexual conduct (or its attempt), and when a person was convicted in a case where a forensic laboratory had conducted a forensic test, the court would order the convicted defendant to pay an assessment of \$150. The assessment would be in addition to any fine, costs, or other assessment; however, upon verified petition from the defendant, the court could suspend all or part of the assessment if it determined that the defendant was unable to pay.

Notifications. The investigating officer of each criminal case being adjudicated would inform the prosecutor if a forensic analysis had been done, and the prosecutor would notify the court.

Assessment distribution. A court could retain as costs five percent of an assessment collected under the bill. The court clerk would transmit the remainder to the state forensic laboratory fund.

House Bill 4245 (8-16-94)

Municipalities that had forensic laboratories and incurred expenses for forensic tests could apply to the state treasurer for reimbursement from the state forensic laboratory fund. Municipal applicants would have to report to the state treasurer the number of criminal investigations for which the municipality's forensic laboratory had performed tests. Distributions would be made from the fund annually. Each eligible municipality would receive a proportionate amount based on the number of criminal investigations it had assisted compared to the statewide total of investigations and DNA profilings reported by municipalities and the state police.

The balance of the fund remaining after municipal distributions would be appropriated to the state police for forensic science services, including costs of forensic tests, equipment costs, continuing education and training, and expenses of implementing and performing DNA identification profiling under the DNA Identification and Profiling System Act. Funds credited to the state police for fiscal year 1993-94 would be appropriated to the department.

Funding protection. Money appropriated from the fund for the state police laboratory division would be in addition to any other allocations made according to existing law, and would be intended to enhance general fund appropriations, not supplant them.

Annual reports. The Department of State Police or the Department of Treasury would report annually to the governor and the House and Senate appropriations committees on the amount received and appropriated, the amount expended, and the balance in the fund.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has said that the bill would have an indeterminate fiscal impact on state and local law enforcement forensic laboratories. The proposed \$150 assessment would provide additional operating funds to those laboratories, but it is difficult to estimate the actual level of revenue that would be generated.

The Department of State Police performs forensic work on approximately 50,000 cases per year, and the City of Detroit on approximately 17,300. With allowances made for conviction rates, the frequent

inability of a convicted person to pay the assessment, and the retention by courts of five percent of all assessments, the amount of revenue generated under the bill could range from \$750,000 to \$1 million for the state police labs and from \$200,000 to \$400,000 for the City of Detroit.

The bill also provides that any funds gathered under the bill's provisions that were earmarked for the state police would be appropriated for the current fiscal year, fiscal year 1993-94. Should the bill take effect in time for the beginning of the final quarter of the fiscal year, it likely would provide very little in appropriated funds. Since the bill provides for an assessment on only those convictions that evolve from an offense committed on or after the effective date of the bill, the several months between most arrests and sentencing would limit the amount of assessments that could be made in this year.

In addition, Public Act 343 of 1993, effective May 1, 1994, also would limit collections of these assessments by its requirement that collections of assessments from convicted persons apply only after collections have been made for victim payments, payment of costs, payment of fines, and payment of probation or parole supervision fees.

The five percent assessment fee to the courts potentially could raise a total of \$94,000 for all courts and an additional \$32,500 for the state courts in Wayne County. (2-7-94)

ARGUMENTS:

For:

The bill would establish a much-needed new source of funding for the financially-strapped forensic science division of the Department of State Police, as well as provide additional money for local laboratory expenses. In doing so, the bill would turn to a particularly appropriate source for those funds: the criminals whose illegal acts give rise to crime lab expenses. While there doubtless will be many from whom the fee cannot be collected, those who can pay should pay; the bill would hold convicted criminals responsible for one more element of the costs that they create.

Against:

The bill would impose onerous burdens on courts in exchange for very uncertain benefits. In the first place, the bill is likely to produce little revenue; collection rates for various costs imposed on

criminal defendants have historically been very low. Collections under the bill are likely to be low as well, particularly since Public Act 343 of 1993 gives higher priority to a number of other assessments, including victim payments, costs, fines, and probation or parole oversight fees.

Amounts generated for labs would be further reduced by the portions retained by courts as costs. And, those amounts likely would be insufficient to meet court administrative expenses of collecting and apportioning forensic lab fee revenue, especially in hardship cases where the court set a fee lower than the \$150 assumed by the bill. Judges have repeatedly pointed out that if courts are to be required to act as collection agents, the money collected should at least be for court purposes; the state court administrative office, the administrative arm of the supreme court, concurs. If courts are to collect fees for others nonetheless, they should at least be entitled to retain the same percentage that the treasury department retains when filling the same role--namely, 15 percent, not the five percent proposed by the bill.

To meet the reasonable needs of courts, the bill would have to further reduce the amount of revenue generated for lab expenses. To generate significant revenue for lab expenses, the bill would have to ignore not only the administrative burdens on courts, but also the collection experience and competing interests of other criminal assessments.

Response:

It makes sense to collect certain fees and assessments from the criminal at the court level. By allowing a court to retain five percent of amounts collected under the bill, the bill would balance the need to address court administrative interests against the broader interest of having adequately funded forensic services. To increase the percentage to be retained by courts would be to reduce the amount so desperately needed for forensic services.

Against:

The state police crime labs have suffered from underfunding in recent years. By establishing a new but unreliable funding source, the bill could serve to worsen the lab funding situation by encouraging the further erosion of funding support from other sources. Although the bill says that money from the fund is to enhance, not supplant, general fund appropriations, any protection for existing funding would be minimal. It would be all too easy for

succeeding legislatures or the governor to reduce or even eliminate funding for public forensic laboratories.

Against:

Given the many problems of collection and attendant expenses, it may be better to allow courts to impose a crime lab assessment, rather than require that an assessment be imposed, and eliminate provision for a portion to be retained by the assessing court. Thus issues of collectibility and collection expense can be avoided; where appropriate, a court could impose the assessment upon a defendant who clearly would have the means to pay. Such matters are best left to the discretion of the court, which will be in the best position to evaluate the individual case at hand, as well as the capabilities of court clerical staffing.

Response:

To make the bill permissive would undermine its intent. The bill already would allow a court to reduce or suspend an assessment when a defendant was unable to pay. To eliminate the requirement for an assessment in conjunction with eliminating the five percent portion for courts would increase the uncertainty for laboratory funding while worsening expenses for courts.

Against:

The bill would apply the assessment to any criminal conviction where a state or municipal laboratory had conducted tests in the course of the investigation. In doing so, the bill would open the way for unnecessary lab work to be ordered as a means of generating additional work or funds for a lab or as a means of inconveniencing an uncooperative suspect. To protect against abuses, the bills should require that the lab work in question be necessary for the conviction.

Response:

To do as an earlier version of the bill proposed and link the assessment to a judicial determination of whether the lab work was necessary would be to necessitate an evidentiary hearing, thereby increasing expenses for courts and making implementation of the bill more cumbersome. The bill is better as it is, imposing the assessment on all convictions where forensic laboratory work had been done in the course of the criminal investigation.