

Legislative Analysis



EXTEND DEADLINE FOR POST-CONVICTION DNA TESTING

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Senate Bill 361 as passed by the Senate
Sponsor: Sen. Steven Bieda
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (9-28-11)

BRIEF SUMMARY: The bill would extend by four years – to January 1, 2016 – the deadline for a defendant convicted of a felony prior to January 8, 2001, to file a petition for a DNA test of evidence that led to the conviction and to file for a new trial based on those results.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on state and local government, as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

Public Act 402 of 2000 allowed a prisoner convicted at trial of a felony prior to January 8, 2001, to petition a court to require the DNA testing of evidence that had led to the conviction and – based on the results of that DNA testing – petition for a new trial. However, the provisions were sunsetted, meaning that a prisoner only had until January 1, 2006, to file a petition for DNA testing and a new trial. Subsequent acts were enacted to extend the sunset until January 1, 2009, and then again to January 1, 2012.

According to staff of the Cooley Law School Innocence Project, it can be a time-consuming endeavor to research a prisoner's request for assistance, search for existing evidence, file the necessary petitions for DNA testing, obtain the test results, and file for a new trial if warranted. The process is slow and methodical. Indeed, some cases have taken five to six years just to find the evidence so that testing could be done. With several dozen cases currently being investigated, it is apparent that the sunset needs to be extended once again.

THE CONTENT OF THE BILL:

A defendant who had been convicted of a felony at trial before January 8, 2001, and who is serving a prison sentence for that felony conviction is allowed under statute to petition the circuit court to order DNA testing of any biological material that was identified during the investigation leading to the conviction. The defendant is also allowed to petition for a new trial based on the results of the testing. However, the deadline to file these petitions is January 1, 2012.

Senate Bill 361 would amend the Code of Criminal Procedure to extend by four years the deadline to file a petition for DNA testing of evidence and for a new trial based on the

results of the testing. The new deadline would be January 1, 2016 (instead of January 1, 2012). This applies only to defendants currently incarcerated who had been convicted at trial before January 8, 2001.

The bill would also require that if the results of the DNA testing were inconclusive, or if the results show the defendant to be the source of the identified biological material, the defendant's DNA profile would have to be provided to the Department of State Police for inclusion under the DNA Identification Profiling System Act. Currently, the DNA profile is provided to the department for inclusion in the database only if the test results showed the defendant to be the source of the DNA evidence.

Note: Public Act 410 of 2008 (enrolled House Bill 5089) amended the code to expand the scope of who could petition for DNA testing of evidence and for a new trial based on the results. Under that act, a defendant convicted of a felony at trial on or after January 8, 2001 (not necessarily still incarcerated) who establishes all of the following may petition the circuit court to order the retesting of DNA evidence identified during the investigation that led to the conviction as well as petition the court for a new trial based on the results of the retesting:

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

The deadline to petition for DNA testing or for a new trial based on the results does not apply to these defendants.

MCL 770.16

HOUSE COMMITTEE ACTION:

The committee reported the Senate-passed version with no amendments.

FISCAL INFORMATION:

Judiciary: Senate Bill 361 will have an indeterminate fiscal impact on state and local government. To the extent that it increased the number of petitions for DNA tests and trials associated with those tests, local courts would realize an increase in costs associated with a new trial or hearing. Moreover, the state may realize increased costs associated with DNA testing if it is determined that the defendant is indigent.

Corrections: Conversely, the bill could reduce corrections costs within state prisons and county jails to the extent that new testing results overturn previous convictions and lead to the release of prisoners.

ARGUMENTS:

For:

There are many compelling reasons to extend the deadline by which prisoners convicted of a felony prior to January 8, 2001, may petition to have any evidence collected in the criminal investigations that led to their convictions tested for DNA evidence. First, DNA testing was not as widely used in criminal investigations before that date. Secondly, the tests in use back then were not as sensitive as currently available tests, often leading to no results or inconclusive results. Tests in use today are very sensitive, accurately providing identifications on even tiny samples, including what is known as "touch samples."

In addition, it can be very time consuming for the evidence collected in these older cases to be found – according to representatives of the Cooley Law School Innocence Project, some cases have taken five to six years just to locate the evidence before a petition could be filed. Also, some of the older prisoners are still just learning about DNA testing and the existence of groups like the Innocence Project that work with prisoners who believe they were wrongly convicted. Further, most states do not sunset similar provisions.

Perhaps the most compelling argument for the extension, if not for a total repeal of the sunset, is that testing or retesting old evidence with the newer technology fulfills the goal of providing justice to the victim. Justice is not served if the wrong person is incarcerated and the guilty free to victimize again. An arbitrary deadline should not stop the truth from being exposed?

For:

The bill only impacts those prisoners whose crimes predate 2001. Defendants convicted after that time do not have to be incarcerated for eligibility to petition a court to order DNA testing of evidence used to convict them, but instead must meet other, more stringent criteria – for instance, that the evidence in their cases was tested for DNA but with inconclusive results. In addition, they do not appear to be subject to the deadline imposed in the act.

Since the original law took effect a decade ago, only 20 cases of thousands screened have been taken up and petitions filed by the Cooley Law School Innocence Project. Of those cases, two men have already been exonerated, with the real perpetrator being identified in one of those cases. Thus, extension of the deadline would not open the floodgates for all incarcerated prisoners to demand DNA testing of old evidence. However, the extension may mean that the 10 or so inmates whose cases have been accepted by the Innocence Project and that are waiting to be assigned to law school student interns will be able to prove that the wrong person was convicted. Or that the right individual was convicted.

Regardless, allowing adequate time to investigate and test for DNA evidence in old cases is the humane thing to do. It is time that Michigan join with the majority of states that do not place a sunset on DNA testing provisions.

POSITIONS:

Representatives of the Cooley Law School Innocence Project testified in support of the bill. (9-8-11)

The Office of Attorney General indicated support for the bill. (9-8-11)

The Criminal Defense Attorneys of Michigan indicated support for the bill. (9-8-11)

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (9-8-11)

The State Bar of Michigan indicated support for the bill. (9-8-11)

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