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Senate Bill 151 (as passed by the Senate)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 10-14-15

RATIONALE

In 2000, legislation amended the Code of Criminal Procedure to enact procedures allowing a person convicted of a felony to petition the court for DNA testing and a new trial, under certain circumstances. Those provisions took effect on January 1, 2001, and included a filing deadline of January 1, 2006. Amendments to the Code have delayed that deadline several times and, currently, petitions must be filed by January 1, 2016. Some people believe that the ability to file petitions for postconviction DNA testing should continue beyond that date without a sunset on provisions of the Code allowing this relief.

CONTENT

The bill would amend the Code of Criminal Procedure to eliminate the deadline for a defendant convicted of a felony at trial, who is serving a prison sentence for that felony, to petition the circuit court to order DNA testing of biological material identified during the investigation that led to his or her conviction, and for a new trial based on the results of that testing. Currently, such a petition must be filed by January 1, 2016.

MCL 770.16

BACKGROUND

Public Act 402 of 2000 amended the Code of Criminal Procedure to establish procedures under which a person who was convicted of a felony at trial may petition for DNA testing and a new trial.

The petition must be filed in the circuit court for the county in which the defendant was sentenced, and assigned to the sentencing judge or his or her successor. The petition must be served on the prosecuting attorney of that county. The court must order DNA testing if the defendant does both of the following: 1) presents prima facie proof that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction; and 2) establishes all of the following by clear and convincing evidence:

- A sample of biological material identified during the investigation is available for DNA testing.
- The identified biological material was not previously subject to DNA testing or, if previously tested, will be subject to DNA testing technology that was not available when the defendant was convicted.
- The identity of the defendant as the perpetrator of the crime was at issue during his or her trial.

If the testing results show that the defendant is not the source of the biological material, the court must appoint counsel and hold a hearing to determine by clear and convincing evidence that only the perpetrator could be the source of the biological material; that the material was properly collected, handled, and preserved; and that the defendant's exclusion as the source of the biological material, balanced against the other evidence, is sufficient to justify granting a new trial.

The original deadline for filing a petition was January 1, 2006. Public Act 4 of 2005 delayed the deadline to January 1, 2009, Public Act 410 of 2008 moved it to January 1, 2012, and Public Act 212 of 2011 extended the period for filing to January 1, 2016.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Postconviction DNA-testing provisions added to the Code of Criminal Procedure in 2000 have proven to be useful and effective in identifying a number of people who were wrongly convicted of felonies and making their release possible. Through the matching of DNA evidence in those cases with DNA profiles in the Combined DNA Index System (CODIS), a national database of profiles maintained by the FBI, postconviction DNA testing also can identify the true perpetrator.

According to testimony from the director of Cooley Law School's Innocence Project, all 50 states now have postconviction DNA testing laws. Although Michigan was one of the earlier states to enact these provisions, it is one of only two states that have a sunset provision. Reportedly, 12 states once had filing deadlines, but 10 of them have removed that sunset. Eliminating the sunset provision from Michigan law would help ensure that wrongfully convicted people would continue to have meaningful access to DNA testing and that the actual perpetrators could be identified and prosecuted.

Supporting Argument

There have been significant advancements in DNA testing since Michigan's postconviction DNA testing provision was enacted, and DNA-testing technology continues to improve. Newer testing methods are more sensitive and may render results from small samples from which DNA profiles previously could not be adequately acquired. Improved DNA collection practices and testing technology, together with the continued growth of CODIS, mean that law enforcement agencies and their forensic laboratories can increasingly identify criminal perpetrators with greater precision. Postconviction testing can ensure that the right person is held accountable for the most serious offenses. The prospect of better, more accurate identification of criminal offenders suggests that there should not be a sunset on filing for postconviction DNA testing.

Supporting Argument

Eliminating the deadline to file for postconviction DNA testing would be cost-effective because wrongful incarceration is a financial burden on the State. In the long-term, the average annual cost of incarcerating a prisoner is about \$38,000. That cost is avoided when DNA testing exonerates a wrongfully convicted person and he or she is released from prison. If the sunset takes effect, people who have been wrongly convicted will find it much more difficult, or impossible, to prove their innocence and likely will remain incarcerated at great cost to the State.

In addition, the program of petitioning the court for postconviction DNA testing has proven not to be a burden on Michigan's court system. After the postconviction testing provisions were enacted, Cooley Law School established an Innocence Project to review cases for strong claims of actual innocence under the statute. According to written testimony that the director of the Cooley Innocence Project submitted to the Senate Judiciary Committee, the Innocence Project had screened more than 5,000 cases since 2001 but had filed only 27 petitions for DNA testing as of March 2015. While some prisoners had filed petitions on their own, the majority of postconviction DNA testing cases have been carefully screened and vetted by the Cooley Innocence Project and there is no evidence that petitions for DNA testing have burdened the courts.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government based on the extent to which it would increase the number of petitions for DNA tests and the number of new

trials resulting from those tests. The cost per DNA test is variable based on the underlying sample of biological material that is being tested. For reference, the Michigan State Police forensic lab has a minimum cost of approximately \$500 per test for basic sexual assault kit testing. Additionally, the bill would potentially increase both court costs and DNA testing costs but also potentially decrease corrections costs as a result of overturned convictions and the release of prisoners.

Fiscal Analyst: John Maxwell

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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.