

## OVERTURNED CONVICTIONS: CORRECT DATABASE

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4260**

**House Bill 5089**

**Sponsor: Rep. Paul Condino**

**Committee: Judiciary**

**Complete to 10-22-07**

## A SUMMARY OF HOUSE BILL 4260 AS INTRODUCED 2-13-07 AND HOUSE BILL 5089 AS INTRODUCED 8-8-07

The bills would extend the time period for a petition to retest DNA evidence in a felony conviction and request a new trial, expand the eligibility of convicted felons who could request the retest of DNA evidence and new trial, revise the criteria used by a court to justify a new trial, require the court to notify the Departments of State Police and Corrections of the final disposition of a case overturned based on DNA evidence, and require those departments to remove information pertaining to the conviction from their criminal databases.

### House Bill 5089

Currently, Chapter X of the Code of Criminal Procedure permits individuals convicted of a felony prior to January 8, 2001 who are currently serving a prison sentence for that felony to petition the circuit court for a DNA test of biological materials identified in the investigation that led to the conviction and for a new trial based on the results of that test. The code provides that the petition must be filed before January 1, 2009. House Bill 5089 would amend the code (MCL 770.16) to revise these provisions.

Eligibility to petition to test DNA and petition for a new trial. The bill would remove the 1/1/2009 sunset provision for filing a petition for a DNA test and a new trial based on the results. Also, the bill would allow any of the following to petition for DNA testing and a new trial:

- Any individual convicted of a felony as a result of a trial, a plea of guilty, or a plea of nolo contendere (no contest).
- An individual incarcerated, serving a sentence of probation, or released on parole.
- An individual who had completed serving his or her sentence.

The petition. In addition to current requirements, the bill would require that the petition be accompanied by a sworn affidavit, signed by the defendant, affirming that he or she was innocent of the crime for which he or she had been convicted. The affidavit would have to specify how the proposed testing of the biological material would establish his or her innocence.

An individual who had previously filed a petition could file a subsequent petition asserting new or different grounds for relief including, but not limited to, factual, scientific, or legal arguments not previously made or the availability of more advanced DNA technology. A

court could hear a subsequent petition under this provision if it determined doing so would be in the interests of justice.

New responsibility of county prosecutors. If the individual alleges in his or her petition that biological material had been collected during the investigation that led to the conviction, the prosecuting attorney would have to do one of the following within 28 days after the petition were filed or as otherwise agreed to by the individual and the prosecuting attorney and ordered by the court:

- Produce the identified biological material for testing under this provision; or,
- File a written response and supporting affidavit setting forth in detail why the biological material was unavailable for testing. The affidavit would have to include information regarding the specific locations searched, including police agencies, laboratories, and public and private hospitals; the time, place, and manner of destruction of the biological material, if applicable; and any documents relevant to the loss or destruction of the evidence.

New responsibility for a court. Before entering an order for taking a biological sample from a person other than the defendant, the court would have to conduct a hearing to determine the necessity of taking that sample. In making the determination, the court would have to take testimony and review evidence as necessary. The rules of evidence would apply.

Before ordering the sample, the court would have to find substantial and compelling reasons that the biological sample was necessary to the determination that the defendant did not commit the crime for which he or she had been convicted.

If the victim were required to testify at the hearing, the courtroom would have to be closed and the defendant could not be present. If the court determined the sample from the victim was necessary, the court would have to request the victim or his or her family or representative to appear at an in camera meeting with the court (in the judge's chamber). The victim could request the presence of the prosecuting attorney. If the prosecuting attorney appeared at the in camera meeting, the defense counsel (but not the defendant) would also be allowed to attend. The court would have to explain to the victim the necessity for taking the DNA sample and would have to answer any questions the victim had regarding the court's order that he or she provide a sample.

Miscellaneous revisions. Currently, the court is required to order DNA testing if the defendant presented prima facie proof that the evidence sought to be tested is material to the issue of his or her identity as the perpetrator of, or accomplice to, the crime that resulted in conviction and the defendant established certain circumstances by clear and convincing evidence. Instead, the bill would require the court to order DNA testing if it determined that those circumstances existed and would delete the requirement that those circumstances be established by clear and convincing evidence.

Currently, if the court grants a petition for DNA testing, the sample obtained from the defendant is subjected to DNA testing by a court-approved laboratory. The bill instead would subject a sample from the *individual or other relevant source* to testing by the *Department of State Police crime laboratory*. (The state is required to bear the cost of DNA

testing ordered under this provision if the applicant is indigent.) The bill would also allow the defendant to request the court to order the identified biological material and biological sample tested by another laboratory, if approved by the court and if the defendant was responsible for all costs of the testing. References to the "defendant" would be changed to instead refer to the "individual."

Currently, the court must deny the motion for a new trial if the results of the DNA testing are inconclusive or show that the defendant is the source of the identified biological material. Under the bill, the new trial could also be denied if the results were consistent with the state's theory of guilt.

Currently, if the testing showed that the defendant was not the source of the identified biological material, the court must appoint counsel under the court rules and hold a hearing to determine certain circumstances by clear and convincing evidence. The bill would specify that the court would have to appoint counsel and hold a hearing if the test results showed either the *individual* was not the source of the identified material *or* the results *otherwise supported the assertions of innocence in the individual's affidavit*. Moreover, the bill would make several revisions, some of an editorial nature, to the list of circumstances that the court is required to determine by clear and convincing evidence. The substantive changes are as follows:

- Currently, the court must determine that only the perpetrator of the crime or crimes for which the defendant was convicted could be the source of the identified biological material. The bill would limit this to *cases in which the individual asserted that he or she was not the source of the biological material*.
- In cases where alleged biological evidence from the victim or another person was relevant to the individual's innocence as asserted in his or her affidavit, the court must determine whether the purported exculpatory evidence, balanced against the other evidence in the case, was sufficient to justify granting a new trial.
- The court must also determine that the evidence was consistent with the individual's claim of innocence, balanced against the other evidence in the case, and was sufficient to justify granting a new trial.

Currently, upon motion of the prosecutor, the court must order retesting of the identified biological material and stay the defendant's motion for new trial pending the results of the DNA retesting. The bill would revise this provision to state *if there was a sufficient biological sample, upon motion by the prosecuting attorney or the individual*, the court would have to order retesting and stay the *individual's* motion for new trial pending the results of the DNA retesting. The bill would also add that if there were not sufficient biological material for additional testing, the parties must be notified of that fact before any test was conducted and must be provided the opportunity to have an expert present during any test that was conducted.

Currently, if the name of the victim of the felony conviction is known, the prosecuting attorney must give written notice of a petition under these provisions to the victim. The bill would specify that the notice would be given *when an order for testing had been entered*. Currently, upon the victim's request, the prosecuting attorney must also give the victim notice of the time and place of any hearing on the petition and must inform the victim of the court's

grant or denial of a new trial to the defendant. Instead, the bill would revise the provision to require the prosecuting attorney, at the victim's request, to give the victim notice of the time and place of *the motion for new trial hearing or any subsequent hearing related to the issue of the individual's release.*

#### House Bill 4260

The bill would amend the Code of Criminal Procedure (MCL 769.16a) to require a court to immediately notify the Department of State Police and the Department of Corrections when a conviction was overturned based on DNA evidence and then require those departments to remove the information pertaining to the conviction from their databases.

Specifically, if a conviction was overturned based on DNA evidence, whether on appeal or as a result of a new trial, the clerk of the court entering the disposition would have to immediately report the final disposition to the MSP and DOC on forms approved by the State Court Administrator. The MSP and DOC would then be required to immediately enter the disposition into each database they maintain concerning criminal convictions and also remove from those databases all information indicating that the person had been convicted of the offense.

#### **FISCAL IMPACT:**

House Bill 4260. The bill would have an indeterminate fiscal impact on the Judiciary, depending upon the number of convictions overturned based on new DNA analysis and any new trials granted. Under this bill, courts may experience an increase in administrative costs due to the additional reporting responsibilities assigned to court clerks. The bill would have an indeterminate fiscal impact for the Department of State Police. The State Police may experience some administrative costs for entering and maintaining the disposition information in various databases.

House Bill 5089. The bill would have an indeterminate fiscal impact on the Judiciary, depending upon the number of petitions, hearings, new trials, and indigent counsel assigned. The bill would have an indeterminate fiscal impact for the Department of State Police. Under this bill, it is unknown how many DNA tests would be performed by the State Police crime laboratory, how many applicants would be indigent and unable to pay the testing costs, and how many applicants would request that the tests be performed by another laboratory, thus requiring the applicant to pay for the testing.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Viola Bay Wild  
Jan Wisniewski

---

■ 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.