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BILL



ANALYSIS

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Senate Bill 361 (as reported without amendment)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

(as enacted)

Date Completed: 5-26-11

### **RATIONALE**

Public Act 402 of 2000 amended the Code of Criminal Procedure to establish procedures under which a person convicted of a felony may petition for DNA testing and a new trial. Originally, these provisions applied only to a person convicted before the Act's effective date (January 8, 2001), but legislation enacted in 2008 extended the law to someone convicted on or after that date if DNA testing was previously done and the results were inconclusive. Also, the original law required a petition to be filed by January 1, 2006, but the deadline was pushed back twice and currently is January 1, 2012.

Most of the claims under this law are handled by the Cooley Innocence Project, a law clinic operated by the Thomas M. Cooley Law School in Lansing. According to representatives of the Cooley Innocence Project, the clinic currently is investigating 73 cases, an additional 66 cases are waiting to be assigned to a student intern, and new requests for assistance arrive every day. Evidently, it is not possible for the existing caseload to be screened and petitions to be filed by January 1, 2012. Thus, it has been suggested that the deadline be extended again.

### **CONTENT**

The bill would amend the Code of Criminal Procedure to extend the deadline for a defendant who was convicted of a felony at trial, 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.

The bill would change the deadline to file a petition from January 1, 2012, to January 1, 2016.

Currently, if the DNA test results show that the defendant is the source of the identified biological material, his or her DNA profile must be provided to the Department of State Police for inclusion under the DNA Identification Profiling System Act. The bill also would require the defendant's DNA profile to be provided to the State Police if the test results were inconclusive.

MCL 770.16

### **BACKGROUND**

Under the Code of Criminal Procedure, a petition for postconviction DNA testing and a new trial must be filed in the circuit court for the county in which the defendant was sentenced, and must be assigned to the sentencing judge or his or her successor. A defendant who was convicted on or after January 8, 2001, may file a petition if he or she establishes all of the following:

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

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 his or her 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 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.

If the results of the testing are inconclusive or show that the defendant is the source of the biological material, the court must deny the motion for a new trial.

## **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**

Many current inmates were convicted before DNA testing was generally available or before sophisticated DNA testing was developed. Public Act 402 of 2000 was enacted after it became apparent that there was no clear authority or procedure for prisoners to request postconviction DNA testing or to request a new trial if testing results provided evidence of their innocence. The Cooley Innocence Project was initiated shortly after the law went into effect, and is one of 30-some Innocence Projects in the nation. Although the clinic has received thousands of requests for assistance, it has filed fewer than 20 petitions under the statute. The demand for case review has increased, however, since the 2008 amendment extended the law to defendants who were convicted after the effective date of Public Act 402. The Cooley Innocence Project has just begun to review many of these cases and the first couple of petitions for those meeting the criteria will be filed

soon. Locating the biological evidence, especially in older cases, can take considerable time and effort, and the Cooley Innocence Project cannot screen the caseload and file petitions in eligible cases by the end of this year. The bill would give the clinic four more years to accomplish this.

The filing deadline also should be delayed because DNA testing is rapidly evolving, increasing the number of cases in which results can be obtained. New testing technology can provide conclusive results where traditional methods yielded no or inconclusive results, and can provide results on samples of poor quality or small size that could not have been tested before.

By extending the deadline to file a petition for DNA testing and a new trial, the bill would help ensure that individuals who were wrongly convicted and imprisoned and met the statutory criteria would continue to have reasonable access to the courts in attempting to prove their innocence. The current law has not placed a burden on Michigan's court system, and the bill would not do so by giving inmates four more years to file petitions. Although the deadline was designed to create finality with respect to the cases that can be brought under the statute, it is clear from those still coming in and from the still-evolving technology that there has not yet been adequate time to investigate the claims. Finality should not take precedence over exonerating wrongfully convicted defendants and prosecuting the actual perpetrators.

Legislative Analyst: Suzanne Lowe

## **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 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: Matthew Grabowski

### **A1112\s361a.**

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.