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FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 03/01/01 HB 637

SHORT TITLE: Procedures for Consideration of DNA Evidence SB _____

ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Indeterminate		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)
- Attorney General's Office (AGO)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

This Procedures for Consideration of DNA Evidence bill would permit a person convicted of a criminal offense to petition the district court to set aside the judgment and sentence, or grant a new trial based upon DNA evidence that was not available at the petitioner's trial.

Petitioners must comply with the following conditions in order for the district court to accept the petition:

- Submit to DNA testing as ordered by the district court.
- Allow the district attorney to investigate all aspects of the case the petitioner seeks to reopen.
- Allow the district attorney's (DA) office to use the DNA evidence to prosecute unrelated cases.

Petitioners must prove by clear and convincing evidence to the district court that:

- They were convicted of a criminal offense at trial,

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- There is no appeal pending,
- Their identity was at issue during the initial trial,
- The evidence to be used for DNA testing was secured and preserved by the law enforcement agency that investigated the case,
- The chain of custody has not been corrupted for the evidence that the DNA testing is to be performed on,
- DNA testing had not been performed because testing technology was unavailable, and
- The evidence is likely to provide evidentiary results that would have been admissible at the initial trial, and a reasonable judge or jury would not have been able to find him guilty beyond a reasonable doubt.

If the above criteria are met, the district court must find that evidence is new and not cumulative and the testing was done in scientifically accepted manner. Moreover, the district court may provide additional requirements to protect the integrity of the evidence and must provide findings of fact.

FISCAL IMPLICATIONS

According to the Administrative Office of the Courts (AOC), there will be a \$400 cost to the judicial information system for a statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the number of petitions received.

According to the AODA, the fiscal impact could be tremendous to District Attorney's offices, the Public Defender offices, and the District Courts because it is unknown how many adjudicated case exist that fall under the requirements of this statute. It is also unknown how much time and resources will be spent preparing these requests, responding to these requests and hearing these requests. The Public Defender Department estimates it will require at least two PD III's and one legal liaison at approximately \$170,000, travel and per diem costs of \$15,000 through fiscal year 2003, and investigation costs (opening court records/files, etc.) at approximately \$50,000. The Department of Public Safety reports a cost of an average of \$370 per case in reagents/supplies and forty hours of analyst time at \$25.8/hour to complete.

However, the Attorney General's Office believes that the number of inmates or parolees in a position to file such a petition is expected to be small. The requirement that DNA testing was not done because the technology was not available will, as a practical matter, limit these inquiries to cases investigated and tried before 1988 or so. It should also be noted that this bill will not apply to any of the four inmates currently on death row as DNA testing was available or was performed, where possible, in those cases.

This bill will apply equally to those that are no longer in custody and simply wish to clear his or her name in addition to those currently in custody.

ADMINISTRATIVE IMPLICATIONS

DPS suggests that these tests be done by an outside agency. DPS reports understaffing and that the storage area for biological evidence is very near maximum capacity with the current submissions.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

This bill is substantially identical to SB 337. However this bill does not contain the one year time limitation that SB 337 contains and this bill provides that the court may order that the petitioner pay the expense of DNA testing.

FAR/prr