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FISCAL IMPACT REPORT

SPONSOR: Sanchez, M DATE TYPED: 02/09/01 HB _____
 SHORT TITLE: Procedures for Consideration of DNA Evidence SB 337
 ANALYST: Rael

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender (PD)

SUMMARY

Synopsis of Bill

Senate Bill 337 relates to criminal procedure; establishing procedures for the consideration of DNA evidence which was not available at the time of an offender's criminal trial; and enacting a new section of the criminal procedure act.

Significant Issues

This 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. The effective date of the bill is July 1, 2001, and the last day to petition the district court would be July 1, 2002, thus opening a one year window of opportunity for petitioners.

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,
- 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. This bill has the potential to increase caseloads in the courts, thus requiring significant additional resources.

The Public Defender reports that this legislation is likely to have significant impact upon the department through fiscal year 2003. The Bill only provides a one-year window of opportunity to petition for a review of the potentially exonerating test. Given the complexity of the requirements and conditions contained in sections C, D and E, the majority of submitted petitions will likely be toward the latter end of that one year. It is impossible to speculate exactly how many incarcerated or non- incarcerated petitioners may seek the remedies of the statute, but again, because of statute's stringent requirements, counsel will almost certainly be sought from this office. The 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.

ADMINISTRATIVE IMPLICATIONS

Since petitioners only have one year to file for a DNA review, there may be a large influx of petitions for consideration of DNA evidence, thus resulting in an immediate increase in caseload and/or in the amount of time necessary to dispose of cases.

According to the Administrative Office of the District Attorneys, it is unclear which State agency will have the responsibility of investigating and preparing the claims of applicable convicted persons. Indigent defendants who used the Public Defenders office will probably avail themselves of that Office. District Attorney's offices will have to prepare responses to these requests. The District Courts will have to add these requests to their dockets. This type of petition could greatly tax the system with the attendant petitions and hearings required for the District Court to evaluate these

claims.

TECHNICAL ISSUES

According to the AOC, Fifth Amendment issues may arise regarding self-incrimination as a result of §B.(3) of this bill, in which the petitioner must authorize the DA's office to investigate or prosecute unrelated cases based on the DNA results.

FR/ar