

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