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Senate Bill 1014 (as introduced 9-26-2024)
Sponsor: Senator Jeff Irwin
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-1-24

CONTENT

The bill would amend Chapter 10 (New Trials, Writs of Error and Bills of Exceptions) of the Code of Criminal Procedure to do the following:

- **Modify the circumstances under which a convicted defendant may petition the circuit court to order DNA testing of biological material identified during the investigation leading to the conviction, and for a new trial based on the results of that testing.**
- **Modify the requirements for when a court would have to order DNA testing for a convicted defendant.**
- **Require, if the results of the DNA testing called into question the convicted defendant's identity, that the court hold a hearing to determine if the testing and any new evidence could yield a different result upon retrial.**
- **Modify how long an investigating agency would have to persevere any biological material.**

Currently, the Act allows a defendant convicted of a felony at trial before January 8, 2001, who is serving a prison sentence for the felony conviction to petition the court to order DNA testing of biological material identified during the investigation leading to a conviction, and for a new trial based on the results of that testing. The bill would delete the requirement that a defendant be convicted before January 8, 2001.

"Biological material" would include any evidence for which there is a reasonable probability of containing quantities of DNA from any human body product.

A defendant convicted after January 8, 2001, may petition the court for the testing and a new trial upon establishing that DNA testing was done in the case or under the Code, that the results were inconclusive, and that testing with current DNA technology is likely to result in conclusive results. The bill would delete this provision.

Instead, under the bill, any convicted defendant's petition for testing and a new trial would have to establish that the biological matter was not subjected to DNA testing or that the biological matter was subjected to DNA testing and at least one of the following applied:

- The defendant was requesting DNA testing using a method or technology that provided a reasonable likelihood of results that were more accurate and probative than the results of the previous test.
- The court determined that granting the petition was in the interest of justice.

The Code requires the court to order DNA testing if the defendant presents prima facie proof that the evidence sought to be tested is material to the issue of the convicted person's identity

as the perpetrator of, or accomplice to, the crime that resulted in the conviction and establishes all 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 of the crime was at issue during the defendant's trial.

The bill would delete these requirements. Instead, the court would have to order DNA testing if the defendant presented prima facie evidence that the biological material sought to be tested was material to the issue of the convicted defendant's identity as the perpetrator or, or accomplice to, the crime that resulted in the conviction and that a sample of biological material was available for testing.

Under the Code, if DNA 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 all the following:

- That only the perpetrator of the crime for which the defendant was convicted could be the source of the biological material.
- That the material was properly collected, handled, and preserved.
- 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.

The bill would modify this provision to require the court to appoint counsel and hold a hearing to determine whether the results of the testing along with any other new evidence made a different result probable upon retrial if the DNA testing results called into question the defendant's identity as the perpetrator.

Additionally, the Code requires the investigating law enforcement agency to preserve any biological material identified during the investigation for a crime for which any person may file a petition for DNA testing for the period that a person is incarcerated in connection with that case. The bill would modify this provision to require the agency to preserve the biological material for the period that any person was in the custody of the State, under jurisdiction of the State, including serving a term of probation or parole, or required to register under the Sex Offender's Registration Act.

MCL 770.16

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bill would increase the likelihood of more DNA testing, post-conviction. This would have varied, indeterminate fiscal impacts on the State and local governments depending on the extent to which DNA test petitions would increase under the bill. Additionally, an increase in petitions would likely result in a corresponding increase in circuit court hearings under the bill; however, the cost to local courts would likely be minimal. The Cooley Law School Innocence Project is the only post-conviction DNA-based innocence program in Michigan and has screened over 6,000 cases since 2001, resulting in nearly 400 exonerations in that time, mostly based on DNA evidence, an average of less than 20 exonerations per year.

DNA testing costs, which are covered by the State, vary depending on the sample to be tested and the type of test involved. Some types of forensic testing cost less than \$100, while other sample testing can exceed \$5,000 depending on the number and complexity of tests involved. New cost-effective testing procedures are constantly being developed. A median range the State can expect to pay for DNA testing is likely to be between \$1,000 and \$2,000 per case.

Any new exonerations that came as a result of a bill would come with statewide savings and costs. These savings and costs would likely balance each other out. Savings would predominantly come from a reduction in the prison population, cited in recent years by multiple publications as costing the State \$48,000 per prisoner, per year, while costs would likely come from payments under the Wrongful Imprisonment Compensation Act of 2016, at \$50,000 per prisoner, per year.

Fiscal Analyst: Michael Siracuse

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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.