

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

House Bill 112 (Delegate Fulton. *et al.*)

Judiciary

Crimes - Postconviction Proceeding - DNA Testing

This bill authorizes a person who was convicted of and sentenced for a crime to institute a proceeding requesting the DNA testing of evidence that is in the possession of the State and is related to the conviction. The bill sets forth a set of circumstances under which a court must order DNA testing and a set of circumstances under which a court may order DNA testing. A court may order either the State or the petitioner to pay the costs of the DNA testing, depending on the circumstances.

If the results of the DNA testing are unfavorable to the petitioner, the court must dismiss the petition. If the results of the DNA testing are favorable to the petitioner, the court must order a hearing, notwithstanding any provision of law that would bar the hearing as untimely.

The bill is effective October 1, 2000, and is to be construed retroactively.

Fiscal Summary

State Effect: Expenditures could increase by as much as \$360,000 annually for DNA testing. Additional costs could be incurred for transportation of inmates by the Division of Correction and additional personnel for the Office of the Public Defender. Incarceration cost savings could be realized to the extent that defendants are exonerated.

Local Effect: It is expected that any workload increase for circuit courts and State's Attorney's offices resulting from the bill could be handled using existing budgeted resources.

Small Business Effect: Potential meaningful.

Analysis

State Expenditures: It is estimated that as many as 200 postconviction proceedings would be requested annually pursuant to the bill. The average total cost for DNA testing in a criminal case is approximately \$3,600. Assuming that the State would be required to pay for the DNA testing in half of the postconviction proceedings, the estimated total cost to the State of the DNA testing authorized by the bill is \$360,000 annually.

This analysis assumes that the bill's reference to the State as payor of DNA testing costs does not mean "State's Attorney." State's Attorney's offices are locally funded. It is not clear which State agency would be required to bear these costs -- perhaps the Judiciary or the Office of the Public Defender.

State's Attorney's offices that have a contractual relationship with a DNA testing laboratory can receive discounted rates for DNA testing. The Maryland State's Attorneys' Association, however, advises that few State's Attorney's offices currently have such a relationship.

It is expected that the number of postconviction proceedings instituted pursuant to the bill would decrease over time. The procedure would mainly be used by defendants whose trials took place before DNA testing technology was commonly used in criminal matters.

The Office of the Public Defender advises that it would need to hire a minimum of four attorneys, an investigator, an office secretary, and a legal assistant to handle the additional work that would result from the bill. The Office of the Public Defender estimates the costs for these additional personnel and associated supplies, equipment, and other operating expenses to range from \$281,500 in fiscal 2001 to \$385,000 in fiscal 2005.

Legislative Services believes that the Office of the Public Defender's needs assessment and cost estimates are too high. Although the Office of the Public Defender would probably bear the bulk of the investigatory burden of the bill, the bill does not specifically require the post-conviction hearings to be scheduled immediately. If hearings are spread out over time, the Office of the Public Defender could handle the additional work without hiring as many people as estimated, or possibly using existing budgeted resources.

For each hearing that is held pursuant to the bill, the Division of Correction would incur costs for transporting the defendant between the correctional facility and the court. The Division of Correction advises that the average cost of transporting an inmate to and from court is currently \$257.

To the extent that defendants are exonerated as a result of the DNA testing authorized by the bill, incarceration cost savings could be realized. The average total cost per inmate for the

Division of Correction, including overhead, is estimated at \$1,600 per month.

Local Expenditures: The Judiciary advises that the bill will have no fiscal impact on the Judiciary. It is expected that any workload increase for circuit courts resulting from the bill could be handled using existing budgeted resources. The Maryland State's Attorney's Association advises that the bill is not expected to result in the need to hire additional prosecutors or other personnel.

Small Business Effect: Small businesses that perform DNA testing could receive additional business as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Office of the State's Attorneys' Coordinator; Department of Public Safety and Correctional Services (Division of Correction); Cellmark Diagnostics, Inc.; LabCorp of America; Reliagene Technologies, Inc.; Department of Legislative Services

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