

Department of Legislative Services

Maryland General Assembly

2001 Session

FISCAL NOTE

Senate Bill 699

(Senator Miller, *et al.*)

Judicial Proceedings

Criminal Procedure - Postconviction - DNA Testing for Death Sentences

This bill authorizes a person confined under a sentence of death to file a petition for postconviction DNA testing of any evidence in possession of the State that is related to the conviction. The bill specifies the related court findings under which the court must order DNA testing. A petitioner must notify the State in writing of the filing of such a petition. The State may file a response to the petition within 15 days after notice of the filing or within a time period determined by the court.

If a court orders DNA testing, the court order must identify the specific evidence to be tested, identify the method of testing to be used, and select the laboratory for testing from an accredited list maintained by the Office of the Attorney General.

The bill requires the State to pay the cost of DNA testing if the test results are favorable to the petitioner; otherwise, the cost must be borne by the petitioner. The bill provides that these provisions must be construed and applied retroactively.

Fiscal Summary

State Effect: While the potential impact on the State for the costs of DNA tests cannot be reliably predicted, it is assumed that such costs would arise in a limited number of instances and would be relatively small.

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

Small Business Effect: Minimal.

Analysis

Current Law: State law and criminal procedure do not currently require, or specifically provide for, postconviction DNA testing of evidence. Generally, a convicted person may move for a new trial on the basis of newly discovered evidence, or other appropriate relief, within one year of either the imposition of sentence or exhaustion of appeals. DNA evidence is generally admissible to prove or disprove the identity of any person, provided that certain notice and discovery requirements are met. A convicted person is entitled to file one postconviction petition within ten years of the imposition of sentence, provided that the petitioner has not finally litigated or waived the issue previously unless “extraordinary cause” is shown. A court also retains a revisory power to reopen a postconviction proceeding “if the court determines that such action is in the interests of justice.”

In addition, the State is required to collect DNA samples of persons convicted of certain qualifying crimes of violence. The statute applies both prospectively as well as retroactively to currently incarcerated qualifying prisoners. The statute requires that the Crime Laboratory Division of the Department of State Police permanently retain such DNA records in a statewide database, subject to a request for expungement by a person with a profile in the database.

Background: DNA (deoxyribonucleic acid) is genetic material that is present in every cell of the human body, and may often be detectable in common criminal evidence such as hair and body fluids. It is unique and specific to an individual (except for identical twins who share identical genetic material). As technology in genetic and evidentiary testing has evolved, more attention has been given to DNA identification testing as a law enforcement tool, used to establish either the guilt or innocence of suspected or convicted offenders.

Significant attention has been given to issues relating to when an inmate should be allowed to obtain DNA testing of evidence when either the DNA tests were not available or not as sophisticated at the time the inmate was convicted. Several states, including Maryland, and the federal government have recently considered establishing procedures for post-conviction DNA identification testing for certain felony offenses.

The push for postconviction DNA testing gained momentum with the creation of the Innocence Project at Benjamin Cardozo School of Law in New York in 1992. The Innocence Project was founded to help wrongly convicted prison inmates prove their

innocence through DNA testing. According to news reports, 76 prisoners nationwide, including eight inmates on death row, have been released from prison because of post-conviction DNA testing that has exonerated the person who was convicted. In 16 cases the DNA testing also led to the identification of the real perpetrator of the crime.

According to the National Conference of State Legislatures, within the last year six states have enacted new laws providing courts with broader authority to order or admit DNA evidence in post-conviction review proceedings. Two states, Illinois and New York, currently provide inmates the right to postconviction identification testing using the latest DNA technology.

In October 2000, the Standing Committee on Rules of Practice and Procedure of the Court of Appeals of Maryland issued recommendations to the Court of Appeals to amend Rule 4-331 of the Maryland Rules of Procedure to authorize a circuit court to grant a motion for new trial for a felony conviction “at any time if the motion is based upon DNA identification testing or other generally accepted scientific techniques the results of which, if proven, could show that the defendant is innocent of the crime for which the defendant was convicted.” The proposed amendment is currently pending before the Court of Appeals for its review before any rule change may take effect.

Also this past fall, the State’s Attorney for Prince George’s County announced plans to provide free DNA testing for inmates convicted of murder or sexual assaults who request testing when “relevant biological evidence would demonstrate innocence.” According to news reports, the tests would be paid for by the State’s Attorney’s Office and would be conducted by the State Police or Prince George’s County police laboratories. Montgomery County expressed interest in a similar program but wanted to explore funding sources to pay for any testing.

Although different types of DNA tests exist, according to various sources, the latest, most accurate genomic and mitochondrial DNA testing procedures can cost up to \$5,000 per test. However, according to the Office of the Public Defender, the cost of the most widely used forensic method for testing DNA samples is about \$900. The number of samples available for testing in an individual case can range from three (one evidentiary and two reference samples) to as many as 20.

There are currently 13 persons under sentence of death, of whom all but one are held at Maryland Correctional Adjustment Center (one person is in federal custody).

State Expenditures: Because the number of inmates confined in Maryland under a sentence of death has remained relatively small, it is assumed that the requirements of

this bill could be handled with the existing budgeted resources of the Judiciary and the Office of the Public Defender.

The Public Defender believes that this bill would result in the need for one additional attorney and one legal assistant to handle these cases, since the trial records of any such cases would be long and complex. However, this need is doubtful because: (1) this bill would only tend to expand the existing right to petition for a new trial based on new evidence for a small number of people; and (2) DNA testing at the trial level is likely to significantly increase in use by police agencies, prosecutors, and defense attorneys.

Nevertheless, although the bill is unclear as to which State agency would be responsible for paying for DNA testing costs, the bill could result in some additional costs to the State for DNA tests subsequent to a favorable finding for petitioners. This analysis assumes that the bill's reference to the "State" as payor of DNA testing costs does not mean State's Attorneys' offices, which are locally funded. However, such costs could fall to the Judiciary or the Office of the Public Defender. In any case, if seven DNA tests were required and performed for each case at a cost of \$900, State general fund expenditures for DNA testing under this bill would be about \$6,300 per case. Per case costs could increase if more expensive testing methods are ordered.

The bill's responsibilities attributable to the Attorney General could be handled with existing budgeted resources. The DOC advises that the average cost of transporting an inmate to and from court could be handled with existing budgeted resources. To the extent that defendants are exonerated as a result of the DNA testing authorized by the bill, incarceration cost savings could be realized. Excluding overhead, the average cost of housing a DOC inmate at the Maryland Correctional Adjustment Center (including medical care and variable costs) is \$288 per month.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, Office of the Public Defender, Department of Legislative Services

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