

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 411
Judiciary

(Delegate Anderson, *et al.*)

DNA Evidence - Postconviction Review - Continuation of Reforms

This bill repeals the termination provision of Chapter 337 of 2008, as it applies to postconviction review of DNA evidence. The bill takes effect on January 1, 2014, only if the termination provision of Chapter 337 of 2008 takes effect. If the termination provision of Chapter 337 of 2008 does not become effective, the bill is null and void.

Fiscal Summary

State Effect: The bill's extension of the duration of current policies will not materially affect State finances.

Local Effect: Any increase in circuit court caseloads resulting from the bill's extension of current policies will not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: Pursuant to Chapter 337 of 2008, a person convicted of murder, manslaughter, rape, and sexual offenses in the first and second degree is authorized to file a petition for a search by a law enforcement agency of its databases or logs for the purpose of identifying the source of physical evidence used for DNA testing. A court must order a law enforcement agency to conduct a database search if the court finds that a reasonable probability exists that the database search will produce exculpatory or mitigating evidence relevant to a postconviction claim.

A petitioner may move for a new trial on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence. The court must order a new trial if (1) the results of postconviction DNA testing are favorable to the petitioner; and (2) the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial. However, the court is authorized to order a new trial in the interest of justice even if there is not a substantial possibility that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial.

Prior to the 2008 legislation, the State was required to preserve scientific identification evidence that the State had reason to know contained DNA material and was secured in connection with a murder, manslaughter, rape, or sexual offense in the first or second degree. The State was required to preserve this evidence for the time of the defendant's sentence, including any consecutive sentence imposed in connection with the offense.

Chapter 337 of 2008 specified that if the State is unable to produce this evidence, the court must hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction. If the court determines at a hearing that the failure to produce evidence was the result of intentional and willful destruction, the court must order a postconviction hearing and at the postconviction hearing infer that the results of the postconviction DNA testing would have been favorable to the petitioner.

In general, a petitioner has to pay for postconviction review court-ordered DNA testing. However, the State has to pay the costs of the testing if the results of the testing are favorable to the petitioner.

Background: According to the National Conference of State Legislatures, 48 states have laws pertaining to postconviction DNA testing.

The Office of the Public Defender advises that it has handled 10 postconviction review cases as a result of Chapter 337 of 2008.

According to the *Statewide DNA Database Annual Report*, no convicted individuals were exonerated by DNA matches in calendar 2009 and 2010.

State Expenditures: The Department of State Police advises that the bill's impact is procedural, not fiscal.

Local Expenditures: Postconviction reviews take place in the circuit courts. Since the bill extends the duration of one of several available avenues of postconviction review, it is assumed that any increase in circuit court caseloads resulting from the bill's extension of current policies can be handled with existing resources.

Frederick County, the City of Havre de Grace, and the Montgomery County Police Department advise that they do not anticipate a fiscal impact from the bill. However, the Frederick City Police Department indicates that there are issues surrounding the continued maintenance, testing, and court-related duties and costs associated with the current policies extended by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick and Montgomery counties, City of Havre de Grace, City of Frederick, Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, University System of Maryland, Department of Legislative Services

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