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Senate Bill 361 (as introduced 5-5-11)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

Date Completed: 5-24-11

### **CONTENT**

The bill would amend the Code of Criminal Procedure to extend from January 1, 2012, to January 1, 2016, the deadline for a defendant convicted of a felony at trial, who is serving a prison sentence for that felony, to petition the circuit court to order DNA testing of biological material identified during the investigation that led to his or her conviction, and for a new trial based on the results of that testing.

MCL 770.16

### **BACKGROUND**

Public Act 402 of 2000 amended the Code of Criminal Procedure to establish procedures under which a person who was convicted of a felony before the Act's effective date (January 8, 2001) may petition for DNA testing and a new trial.

The petition must be filed in the circuit court for the county in which the defendant was sentenced, and assigned to the sentencing judge or his or her successor. The petition must be served on the prosecuting attorney of that county. The court must order DNA testing if the defendant does both of the following: 1) 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 2) establishes all of 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 his or her trial.

If the 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 that only the perpetrator could be the source of the biological material; that the material was properly collected, handled, and preserved; and 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 original deadline for filing a petition was January 1, 2006. Public Act 4 of 2005 delayed the deadline to January 1, 2009, and Public Act 410 of 2008 moved it to January 1, 2012.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government based on the extent to which it would increase the number of petitions for DNA tests and the number of new trials resulting from those tests. The bill would potentially increase both court costs and DNA testing costs but also potentially decrease corrections costs as a result of overturned convictions and the release of prisoners.

Fiscal Analyst: Matthew Grabowski

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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.