



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4413 (Substitute H-1 as reported without amendment)
Sponsor: Representative Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 3-24-05

RATIONALE

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. Under Public Act 402, a petition may not be filed after January 1, 2006. Some people believe that the upcoming deadline does not afford prisoners who may have been wrongly convicted sufficient time to petition the court for review. The Cooley Innocence Project, a law clinic operated by the Thomas M. Cooley Law School in Lansing, has reviewed over 2,500 requests for assistance since the Act's inception and several hundred currently are under review and investigation. It has been suggested that the January 1, 2006, deadline for petitioning the court for DNA testing and a new trial should be extended. (Please see **BACKGROUND** for further information on Public Act 402 and the Cooley Innocence Project.)

CONTENT

The bill would amend the Code of Criminal Procedure to extend from January 1, 2006, to January 1, 2009, 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

Under the Code of Criminal Procedure, as amended by Public Act 402, a petition for postconviction DNA testing and a new trial 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.

Cooley Innocence Project

The Thomas M. Cooley Law School initiated the Cooley Innocence Project shortly after Public Act 402 went into effect and began operating the Innocence Project as a law school clinic in May 2001. Its mission is to apply the DNA statutory criteria to identify, provide legal assistance to, and secure the release of wrongfully imprisoned inmates. It also provides law school students with a learning experience.

Each term, a small group of students works with faculty members to review and evaluate postconviction cases for compliance with the statutory criteria and evidence of innocence, and prepares appropriate cases for court action. In a case that is selected for legal action, the Innocence Project prepares pleadings and an attorney is selected to implement litigation. Over 160 criminal defense attorneys statewide have volunteered to work with the Project to take cases to court.

The Cooley Innocence Project does not charge for its services and does not receive government funding. It is maintained by the Cooley Law School, with a supporting grant from the Michigan Bar Foundation and private donations.

Nationally, there are about 30 operating Innocence Projects and several more in the planning stages. Across the nation, the work of Innocence Projects has been credited with the exoneration of 158 wrongfully convicted prisoners, mainly through the use of DNA testing.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By extending the deadline for filing a petition for DNA testing and a new trial, the bill would ensure that individuals who were wrongfully convicted and imprisoned and met the statutory criteria would continue to have reasonable access to the courts in attempting to prove their innocence. Many

individuals currently incarcerated were convicted before DNA testing was generally available or before sophisticated DNA testing was developed. Public Act 402 was enacted after it became apparent that there was no clear authority or procedure for inmates to request postconviction DNA testing or to request a new trial if testing results suggested their innocence. If the January 1, 2006, filing deadline is not extended, Michigan will revert to a system that confounded efforts to reexamine evidence and free wrongly imprisoned individuals.

Response: The filing deadline should be eliminated. A time limit does not serve the cause of justice or the interests of anyone, including victims. If a wrongly convicted individual is behind bars, while a guilty person remains free, there should be no limit on the amount of time the innocent person has to come forward with exculpatory evidence.

Supporting Argument

According to written testimony presented to the Senate Judiciary Committee on March 22, 2005, the Cooley Innocence Project had received, reviewed and evaluated more than 2,500 requests for assistance; a number of cases were in court preparation status; several hundred were under review or investigation; and new requests were coming into the Project on a regular basis. To date, the Project had achieved the exoneration of one wrongly convicted prisoner. The Project's work is very time consuming. The volume and age of the cases makes the review and screening process challenging, as old records and files often are incomplete or missing and evidence frequently is reported as lost, misplaced, or destroyed. It may take years to locate case records and potential evidence. With the Innocence Project's limited resources and difficult task, the 2006 deadline is simply unrealistic, and many of its cases are not likely to be addressed by then. The deadline should be extended.

Legislative Analyst: Patrick Affholter

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: Bethany Wicksall

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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.