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## FISCAL IMPACT REPORT

SPONSOR: House Floor DATE TYPED: 03/14/03 HB \_\_\_\_\_

SHORT TITLE: Post-Conviction DNA Evidence SB SFIS for SB 390/aHF#1

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 157

### SOURCES OF INFORMATION

Responses Received From  
 Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Attorney General (AG)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of House Floor Amendment

The House Floor Amendment #1 to the Senate Floor Substitute for Senate Bill 390 makes the following changes:

- Inserts “**Providing For a Delayed Repeal**” in the title.
- Strikes “The petitioner shall make a reasonable showing” of certain conditions, inserting “**the petitioner shall show, by a preponderance of the evidence, that:**” certain conditions exist.
- Expands the condition providing that it must be reasonably probable that DNA evidence performed prior to conviction would have been exculpatory **to include cases in which identity was an issue.**
- Provides that “**after reviewing a petition, the district court may dismiss the petition, order a response by the district attorney or issue an order for DNA testing.**”

- Strikes the provision that “the district court shall order appropriate relief for the petitioner” if the results of the DNA testing are exculpatory.
- Provides that Section 1 of the Act, containing all but the repeal of Section 31-1A-1 and the effective date of the Act, shall be repealed effective July 1, 2006.

### Significant Issues

The amended bill provides that effective July 1, 2006, the Section 1 of the Act will be repealed. The bill also contains a provision to repeal Section 31-1A-1, “Procedures for consideration of DNA evidence.” The Legislature will need to revisit the issue of post-conviction DNA evidence before July 1, 2006 to ensure that there is a law in place upon the passage of that date.

### Synopsis of Original Bill

The Senate Floor Substitute for Senate Bill 390 repeals Section 31-1A-1 NMSA and enacts a new section of the Criminal Procedure Act, establishing procedures for post-conviction consideration of DNA evidence. A person convicted of a felony, who claims that DNA evidence will establish his innocence, may petition the district court of the judicial district in which he was convicted to order the disclosure, preservation, production and testing of evidence that can be subjected to DNA testing.

The district court shall appoint counsel for a petitioner who satisfies the requirements contained in the Act.

The cost of DNA testing ordered pursuant to the Act is to be borne by the state or the petitioner, as ordered by the district court. Under the Act, a petitioner may not be denied testing because of his inability to pay for the cost of testing.

DNA testing performed pursuant to the Act shall be performed only by laboratories meeting the minimum standards of the national DNA index system.

### Significant Issues

Section 31-1A-1 NMSA outlines the procedures for consideration of DNA evidence. In repealing this section, the bill makes significant procedural changes.

- **The bill does not designate any time limitation for the filing of a petition.** Under Section 31-1A-1, was required to file a petition for consideration of DNA evidence prior to July 1, 2002. The evidence to be considered was only that DNA evidence not available at the time of the initial trial.
- **The bill provides that a petitioner must make a reasonable showing of certain conditions.** Under Section 31-1A-1, the petitioner had to prove specific conditions by clear and convincing evidence.
- **The bill provides that the cost of DNA testing ordered pursuant to the Act is to be borne by the state or the petitioner, as ordered by the district court.** Section 31-1A-1 allowed the district court to order the petitioner to pay for the expense of DNA testing, with no prohibition of denial due to petitioner’s inability to pay.
- **The bill provides that the petitioner may appeal a district court’s denial of the re-**

**requested DNA testing, a court’s final order on a petition or a decision regarding relief for the petitioner. The state has the right to appeal any final order issued by the district court.** Section 31-1A-1 also did not provide the petitioner with any right of appeal.

AG notes that the bill provides a duplicative procedure for challenging a felony conviction. This procedure is in addition to a direct appeal, state habeas corpus petition and federal habeas corpus petition.

## **FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) notes that relaxing the conditions and standard of proof under which a petitioner may petition for consideration of DNA evidence will likely lead to an increase in petitions filed in district court. Allowing the petition to proceed even if the petitioner is unable to pay for testing may also increase the number of petitions. The petitioner and the state may also appeal rulings and orders of the district court to the court of appeals. Additional petitions and appeals will call for additional judicial resources. District attorneys, courts and the public defender will likely see a significant increase in caseloads.

The bill provides that the district court “shall appoint counsel for the petitioner...” when the petitioner has satisfied the requisite measures to request the test. The Public Defender Department (PDD) notes that a flood of petitions into district court will increase the department’s caseload enormously. PDD also notes that there are bound to be specious claims of innocence and requests for DNA testing even if the petitioner knows the conviction was just and proper.

Corrections Department (CD) reports that this bill could result in a minimal cost savings to the department if the bill results in the release of CD inmates from prison, probation or parole.

Both the state crime lab and CD currently maintain large backlogs of unprocessed DNA samples. An influx of samples would put a further strain on existing resources.

## **RELATIONSHIP**

Relates to SB 157 (expands the DNA Identification Act)

## **OTHER SIGNIFICANT ISSUES**

AG indicates that, in providing an additional procedure to challenge a felony conviction, the bill will disrupt the finality of criminal convictions. Additionally, AG notes that because the bill does not designate any time limitation for the filing of a petition, felony convictions will be challenged indefinitely, providing a lack of finality that is antithetical to criminal justice administration.

The AG notes that only a “reasonable showing” is required to file a petition. AG suggests that a higher standard, an actual and probable claim, should be required.

## **TECHNICAL ISSUES**

The bill states that DNA testing may be requested if the previous DNA testing was “tested incor-

rectly or interpreted incorrectly.” AG notes that this language may be inexact and inapplicable in the context of DNA testing. A DNA sample can only be tested if the sample is sufficient. A test result is usually negative or positive, with the resulting probability (if the DNA shows a consistent match).

AG notes that the provisions for administration of collected samples and evidence contained in the bill may be contrary to or inconsistent with safekeeping procedures currently employed by the state courts and law enforcement agencies.

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