

## Department of Planning and Budget 2001 Fiscal Impact Statement

**1. Bill Number** HB2802

<b>House of Origin</b>	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
<b>Second House</b>	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

**2. Patron** Armstrong

**3. Committee** Passed Both Houses

**4. Title** Criminal procedure; retention of evidence.

**5. Summary/Purpose:**

Establishes a procedure for the storage, preservation and retention of human biological evidence in felony cases. The defendant may also request a hearing for the purpose of identifying the human biological evidence or samples to be stored.

**6. Fiscal Impact:** Final, see #8 below.

**7. Budget amendment necessary:** No.

**8. Fiscal implications:**

For a person convicted of a felony, or sentenced to death, the court shall order the storage, preservation, and retention of any evidence or representative samples to be held by the Division of Forensic Science for at least fifteen years, or longer, if determined by the court. The overall fiscal impact of this bill cannot be determined. The fiscal impact of this bill may not be significant for the first few years of implementation. However, the costs for storage and retention could increase over time.

With the quantity of evidence increasing each year, and with the inability to dispose of evidence for up to 15 years, the Division of Forensic Science may require additional staffing and storage space. The agency estimates that the fiscal impact of this bill could be \$871,484 within the next few years, which includes eleven additional positions (\$511,485), and equipment and supplies (\$360,000). It is likely, though, that the initial fiscal impact may be less than this; but expenses could increase above this level as more evidence is stored and analyzed.

The bill also provides for a proceeding that would allow the court to order the retention of evidence. The order must state the method of custody, transfer, and return of the evidence, and may order that only representative samples to be stored. The provision could result in additional hearings before the circuit court or, at the very least, additional time at the time of trial. The defendant may also request a hearing to determine possible evidence or samples that are to be stored. According to the Office of the Executive Secretary of the Supreme Court, in 1998, there were 8,446 felony convictions for offenses that may involve biological evidence (including arson, assault, burglary, family offenses, kidnapping, murder, manslaughter, rape, robbery, sex offenses, solicitation, stalking, trespass and violent activities). If three-fourths of these cases involve human biological evidence, then there could be 6,335 possible motions filed. However, since many convictions rely on evidence that is not subject to "testing," it is

unclear to what extent possible evidence may be retained. The Supreme Court estimates that a five minute hearing, including the time required to produce the order, would be held to hear the motion since the judge would be aware of the evidence and the issues in the case, and five minutes of a circuit court clerk's time. If the workload of judges and clerks increase to an unacceptable level, then additional positions may have to be added. According the Supreme Court, the bill could have a fiscal impact of approximately \$92,491 (for judges and clerks' time).

The potential total fiscal impact of this bill cannot be definitely determined. There are many factors involved with these cases, and although the fiscal impact may reach the estimates provided herein, the full impact of this bill may not be realized until sometime in the future.

In addition, the Office of the Attorney General and Commonwealth's attorneys' could be impacted due to possible workload increases, but this cannot be determined.

**9. Specific agency or political subdivisions affected:** The court system, the Department of Criminal Justice Services, the Office of the Attorney General, and Commonwealth's Attorneys.

**10. Technical amendment necessary:** Yes, the last sentence in subsection B appears to reference an earlier version of this bill since the provisions in this bill specifies that the Division of Forensic Science shall retain the evidence.

**11. Other comments:** This bill is similar to HB 1311 and SB 1366, however, unlike those two bills, HB 2802 does not address the procedures for a convicted felon to petition the court to apply for a new scientific evaluation. Additional proceedings, and the manner in which they are conducted, could have a fiscal impact, but cannot be determined at this time.

**Date:** 03/06/01 / jlm

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cc: Secretary of Public Safety  
Secretary of Administration  
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