

Department of Planning and Budget 2001 Fiscal Impact Statement

1. Bill Number HB2802

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

2. Patron Armstrong

3. Committee S. Courts of Justice

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: Yes, tentative (see #8 below).

7. Budget amendment necessary: Yes, Items 30, 462, 490, and C-184.

8. Fiscal implications:

For a person convicted of a felony, but not sentenced to death, the court shall order the storage, preservation, and retention of any evidence or representative samples to be held for at least fifteen years, or longer, if determined by the court. Upon the granting of the motion, the circuit court clerk, or governmental entity, will return the evidence to the original investigating law enforcement agency. 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.

The fiscal impact upon local law enforcement agencies cannot be determined since storage facilities vary widely, and the amount of potential evidence is not known. Recently acquired information from the Department of State Police estimates that for the first year (fiscal year 2002), there could be a fiscal impact of \$100,000. According to the department, it may be necessary to construct a secure, climate-controlled facility/room in the main warehouse (\$30,000) and employ two evidence technicians (\$70,000) to monitor and control the handling of the evidence. Thereafter, the fiscal impact may only be \$70,000 for the costs of the technicians. However, with the quantity of evidence increasing each year, and with the inability to dispose of evidence for up to 15 years, the agency may require the construction and staffing of additional storage space.

If a person is sentenced to death, then the evidence or representative samples shall be transferred to the Division of Forensic Science for storage. The division shall store, preserve, and retain the evidence until the judgement is executed. In addition, if the physical evidence cannot be stored "practically" by the local law enforcement agency, then the division shall take representative samples, cuttings, and/or a swabbing of the evidence, and then transfer these to the law enforcement agency for storage. If the court

later finds that testing should be conducted on any of the stored evidence, then the division shall be responsible for conducting the tests. The Division of Forensic Science estimates that the fiscal impact of this bill could be \$871,484, 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 up to 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). In addition, the bill 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 significantly impact the judicial system, but cannot be determined at this time.

The actual fiscal impact of this bill cannot be 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.

At this time, no information is available from the Office of the Attorney General. In addition, the Commonwealth's Attorneys' Services Council did not note a fiscal impact.

9. Specific agency or political subdivisions affected: The court system, the Department of Criminal Justice Services, the Department of State Police, local law enforcement agencies, the Office of the Attorney General, and Commonwealth's Attorneys.

10. Technical amendment necessary: No.

11. Other comments: See SB 1366.

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cc: Secretary of Public Safety
Secretary of Administration
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