

Department of Planning and Budget

2001 Fiscal Impact Statement

1. Bill Number SB1366

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

2. Patron Stolle

3. Committee Passed Both Houses

4. Title Storage and testing of certain evidence, writ of actual innocence.

5. Summary/Purpose:

Establishes a procedure for the transfer, storage, preservation, and retention of human biological evidence in felony cases. The Division of Forensic Science shall store, preserve, retain, and test such evidence. The bill also establishes a procedure for a person convicted of a felony to petition the circuit court that entered the conviction to apply for a new scientific investigation of human biological evidence. Certain elements must be met for the court to order the testing. In addition, for a person convicted of a felony upon a plea of not guilty, or for any person, regardless of the plea, sentenced to death, or convicted of a class 1 felony, a class 2 felony, or any felony for which the maximum penalty is imprisonment for life, the Supreme Court has the authority to issue a writ of actual innocence. The provision for the issuance of writ of actual innocence will not become effective until November 15, 2002. However, the other provisions of this act are in force from its passage.

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. Upon the granting of the motion, the circuit court clerk, or governmental entity, will provide the evidence to the Division of Forensic Science. 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, along with the number of petitions and possible court proceeding related to the scientific analysis of newly discovered or untested evidence.

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 three separate proceedings relating to the use of new biological evidence or the development of new testing procedures. The first proceeding described by the bill would allow the court, by motion of a party, or the court, in a case involving a sentence of death, 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. According to the Office of the Executive Secretary of the Supreme Court, there could be a total fiscal impact on the judicial agencies of \$1.4 million each year (see below).

In 1998, there were 8,446 felony convictions for offenses that may involve biological evidence (such as arson, assault, burglary, family offenses, kidnapping, murder, manslaughter, rape, robbery, sex offenses, 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 second proceeding could allow a person convicted of a felony to file a motion with the convicting circuit court requesting new scientific testing of evidence related to the case. The motion must be heard within 90 days but no sooner than 30 days following the filing of the motion. The court must make specific findings in the order issued following a hearing and may either dismiss the motion or order that the testing be done by the Division of Forensic Science. If testing is ordered, the method of custody, transfer and return of the evidence must be included in the order. The current population of inmates convicted of felonies in state and local facilities is approximately 32,000. If 10 percent of that population filed a motion in a given year, then there could be 3,200 hearings. The other 90 percent are those felonies that would not involve biological evidence, as well as those cases where no motion would be filed. Each hearing could require fifteen minutes of circuit court judge's time and thirty minutes of circuit clerk's time for receipt of papers and preparation of the file for the hearing and preparation of the order for the judges signature. 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 \$157,920 (for judges and clerks' time). If 90 percent of petitioners are indigent, then payment would also have to be made for a court appointed attorney, at an average cost of \$ 380 per proceeding, for a total cost of \$1,094,400 (\$380 x 2880 proceedings). Finally, if 10 percent (320) of the petitions are granted, and if 90 percent of petitioners are indigent, then the Commonwealth must pay for the tests, at a cost of \$10,080 (\$35 per test x 288 tests). Therefore, the total cost for these types of proceedings could be approximately \$1,262,400.

However, the full fiscal impact on the Criminal Fund is not expected until fiscal year 2003, or thereafter.

The final proceeding noted in this bill provides for the issuance of a writ of actual innocence. However, any fiscal impact resulting from this provision would not occur until fiscal year 2003 since its effective date is not until November 15, 2002. A felon, upon a plea of not guilty, or for any person, regardless of the plea, sentenced to death, or convicted of a class 1 felony, a class 2 felony, or any felony for which the maximum penalty is imprisonment for life, may petition the Supreme Court of Virginia for a writ of

actual innocence based on testing of human biological evidence that was not previously known or available. The bill requires specific representations by the petitioner and that the petition be filed on a form provided by the Supreme Court. The Attorney General is given 30 days to respond to the motion. The response may include a proffer of any evidence pertaining to guilt that is not included in the official record of the case, including evidence that was suppressed at trial. The Supreme Court may require the clerk of the lower court to provide it with the whole record or any part of the record. In addition, the Supreme Court may, at any time during the pendency of the petition, order the circuit court to conduct a hearing to certify findings of fact with respect to certain issues. The circuit court must conduct a hearing within 90 days after the Supreme Court's order. The record and certified findings of fact must be filed in the Supreme Court within 30 days by the circuit court. Based on the record before it, the Supreme Court may either dismiss the petition for failure to state a claim, or upon a hearing, dismiss the petition for failure to establish allegations sufficient to issue a writ or grant the writ and vacate the conviction, or modify the conviction and remand the case to the circuit court for resentencing. The Supreme Court estimates that, of the number of motions granted for new testing, 32 will file petitions for writs of innocence. This is 10 percent of the number of motions granted. On average, each case filed with the Supreme Court costs approximately \$1,800. Therefore, the total cost of the proceedings before the Supreme Court could be approximately \$57,600 (for judge and clerk's times). In addition, in 10 percent of those cases, the circuit court will be directed to hold fact-finding hearings. It is difficult to determine the amount of time that will be required for each hearing because it will be dictated by the number and complexity of the issues on which the circuit court is required to take evidence. A prudent estimate could be two hours. The clerk would have an additional one-half hour of preparation and clean-up time, which could cost \$1,157 (for judge and clerk's times). If the workload of judges and clerks increase to an unacceptable level, then additional positions may have to be added.

In addition, the workload of the Office of the Attorney General and Commonwealth's attorneys' could increase because the number of cases could also potentially increase. In addition, they may be inclined to submit more evidence for the record, even when the defendant pleads guilty. If their workload increases to an unacceptable level, then additional positions may have to be added.

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.

Neither the House Appropriation Committee nor the Senate finance Committee recommended additional funding as a result of this bill.

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, line 61 appears to be referencing 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: Identical to HB 1311. Also see HB 2802.

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cc: Secretary of Public Safety
Secretary of Administration