

## Department of Planning and Budget 2017 Fiscal Impact Statement

**1. Bill Number: HB 2085**

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

**2. Patron: Herring**

**3. Committee: House Courts of Justice**

**4. Title: Writ of actual innocence**

**5. Summary:**

Under current law, certain persons convicted of a felony may petition the Supreme Court for a writ of actual innocence based on new testing of human biological evidence that was either (i) not known or available to the petitioner at the time of the trial, or (ii) was known and available, but was not tested at the time of the trial because the test most recently used was not available at that time. With some exceptions, only those persons convicted of a felony upon a plea of not guilty are eligible to apply for a writ of actual innocence. The exceptions are persons sentenced to death or convicted of a Class 1 felony, Class 2 felony, or any felony for which the maximum penalty is imprisonment for life; persons in these categories are eligible to apply for a writ of actual innocence, regardless of the plea.

If, after hearing the petition, the Supreme Court finds clear and convincing evidence that no rational trier of fact would have found proof of guilt beyond a reasonable doubt, it shall grant the writ and vacate the conviction.

The proposed legislation would eliminate the requirement that felons convicted of an offense that carried a sentence of less than a death sentence or life imprisonment must have pled not guilty in order to be eligible to apply for a writ of actual innocence. The legislation also would change the standard of proof to be used by the Supreme Court in considering the petition from “clear and convincing evidence” to “preponderance of the evidence.”

**6. Budget Amendment Necessary: None.**

**7. Fiscal Impact Estimates: Preliminary. See Item 8 below.**

**8. Fiscal Implications:**

By lifting the restriction on eligibility to file for a writ of actual innocence, the proposed legislation could result in more petitions being filed with the Supreme Court. However, it is not feasible to reasonably project how many additional petitions would be filed or if any additional law clerks or administrative staff would be needed to help with the additional workload.

To the extent that the proposed legislation resulted in additional persons being granted writs of actual innocence and being released from the custody of the Department of Corrections (DOC), the department would have additional bed space in its prisons. It could then transfer to DOC facilities more state responsible inmates being housed in local jails. Because the state reimburses local and regional jails \$12 per day for state responsible inmates housed in the jails, the state could experience a reduction in its per diem payments to the jails. However, there is not sufficient data available to project the extent to which such reduction might occur.

**9. Specific Agency or Political Subdivisions Affected:**

Supreme Court  
Department of Corrections  
Department of Forensic Science  
Office of the Attorney General  
Local and regional jails.

**10. Technical Amendment Necessary:** None.

**11. Other Comments:** Identical to SB 1066.

**Date:** 1/23/2017