

Department of Planning and Budget

2019 Fiscal Impact Statement

1. Bill Number: SB1066S2

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

2. Patron: Stanley

3. Committee: Finance

4. Title: Post-conviction relief; previously admitted scientific evidence.

5. Summary: Permits a person convicted of certain offenses who had entered a not guilty or Alford plea to file a petition in the Court of Appeals to vacate such conviction or adjudication of delinquency if credible scientific testing was not available at the time, or if discredited forensic science evidence was presented at such trial or adjudication. The bill provides the particular information that shall be included in such a petition to be filed in the Court of Appeals on a form provided by the Supreme Court. If the Court of Appeals does not summarily dismiss the petition, it shall so notify the Attorney General, the attorney for the Commonwealth, and the petitioner. The Attorney General shall have 60 days after receipt of such notice in which to file a response. If the Court of Appeals determines that a resolution of the case requires further development of the facts, the Court may order the circuit court in which the conviction was originally entered to conduct a hearing within 90 days after the order has been issued to certify findings of fact with respect to such issues as the Court of Appeals shall direct. Such findings of fact shall be filed in the Court of Appeals within 30 days after the circuit court hearing is concluded. Upon consideration of the petition, the response by the Attorney General, previous records of the case, and any evidence presented at the hearing, the Court shall (i) dismiss the petition for failure to establish allegations sufficient to justify vacating the petitioner's conviction, or (ii) upon a finding by clear and convincing evidence that the admission of the discredited forensic scientific evidence or the absence of the newly available forensic scientific evidence was not harmless, grant the writ and vacate the petitioner's conviction, subject to retrial in the discretion of the Commonwealth. The burden of proof in a proceeding brought pursuant to this section shall be upon the petitioner. This version of the bill requires that the provisions of this act shall not become effective unless an appropriation effectuating the purposes of the act is included in the general appropriation act passed in 2019 by the General Assembly and becomes law.

6. Budget Amendment Necessary: Yes. Item 56.

7. Fiscal Impact Estimates: Preliminary. See below.

8. Fiscal Implications: According to the Department of Forensic Science (DFS), it does not anticipate a fiscal impact on its operations as a result of the provisions of this proposed legislation.

There is no anticipated fiscal impact on the Indigent Defense Commission (IDC) as a result of the provisions of this bill.

Any potential fiscal impact on Commonwealth's Attorneys is indeterminate at this time.

This bill is likely to result in additional hearings in circuit courts and the Court of Appeals. However, the courts are unable to project how many additional cases will be brought as a result of the provisions of this bill. It is possible funding will be needed for additional staff to assist the Court of Appeals to process an increase in cases.

According to the Office of the Attorney General (OAG), the agency would need additional staff to respond to the provisions of this bill. OAG estimates it would need a minimum of two Assistant Attorney General positions to file responses to petitions and attend to court and trial matters. The agency believes it would also need a minimum of one forensic trained investigator FTE. The total estimated cost for these positions is \$439,078. OAG would also need funding to retain independent experts to respond to forensic science challenges in court; however, the amount of funding needed is indeterminate at this time.

9. Specific Agency or Political Subdivisions Affected: Department of Forensic Science, Courts, Office of the Attorney General, Commonwealth's Attorneys, Indigent Defense Commission

10. Technical Amendment Necessary: No.

11. Other Comments: None.