



## ***Local Fiscal Highlights***

LOCAL GOVERNMENT	FY 2003 – FY 2004*	FY 2005	FUTURE YEARS
<b>Counties</b>			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	One-time increase, potentially significant in certain counties	- 0 -	- 0 -

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

\*It appears likely that the one-time local costs associated with the post-conviction DNA tests will fall across FYs 2003 and 2004.

- **Estimated post-conviction DNA testing costs.** The bill is silent on who would cover the cost of the one-time post-conviction DNA tests permitted by the bill. If local governments had to absorb the expense of post-conviction DNA tests, then the maximum total one-time cost for counties statewide is estimated at up to \$3.4 million or so.
  
- **County criminal justice expenditures.** The post-conviction DNA testing application process, in which applications are made to the original trial court for approval or denial, will create a one-time burden for the general divisions of common pleas courts, the clerks of common pleas courts, and county prosecutors. While the exact cost is unclear, in larger and more urban counties, it could exceed minimal, which means in excess of \$5,000.
  
- **Appeals.** Counties will also likely incur some additional one-time costs related to certain appeals in the sense that prosecutors and possibly public defenders would have to provide written briefs and oral arguments before the various courts of appeals or the Supreme Court of Ohio. This cost is also one of increased workload and administrative burdens. In larger and more urban counties that may be initially inundated with DNA test applications, some of which will likely be denied by common pleas courts, the cost for the one-time appeals process may approach and even exceed the minimal threshold. In smaller and more rural counties, the one-time costs associated with such appeals would presumably be much less.

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## ***Detailed Fiscal Analysis***

### **Operation of the bill**

The bill establishes a procedure that permits inmates currently serving a sentence for a felony conviction to petition for a post-conviction DNA test. This opportunity would not be available to every inmate. It would only be available to an inmate whose case and circumstances meet one of the following three conditions enumerated in the bill.

- (1) The inmate was convicted by a judge or jury of a felony resulting in either a death sentence or a prison term with at least one year remaining at the effective date of the bill.
- (2) The inmate must not have pleaded guilty or no contest to the offense for which the inmate is requesting DNA testing.
- (3) If the inmate pleaded guilty or no contest to the offense for which the inmate is requesting DNA testing, and has at least one year remaining on their prison term, then the inmate may also qualify for DNA testing under the terms of the bill, if the prosecuting attorney's office that originally prosecuted their case files a written statement to the effect that the prosecuting attorney's office is in agreement with the inmate's request for DNA testing.

### **New petitions**

As of January 2003, the inmate population in the Department of Rehabilitation and Correction (DRC) was 45,044. The three previously noted conditions in the bill would significantly reduce the number of those inmates who will be able to utilize the post-conviction DNA test procedure.

#### **Condition 1: Pleaded guilty or no contest**

Most felony convictions stem from plea bargains or no contest pleas, and thus, initially at least under the bill, will not be eligible for a post-conviction DNA test. Data from the Ohio Criminal Sentencing Commission suggest that 92% of felony convictions are reached through a negotiated plea. This fact would reduce the inmate population eligible for a post-conviction DNA test, under the terms of the bill, to around 3,600.

#### **Condition 2: Death sentence or at least one year left on a prison term**

The bill also requires that any inmate petitioning for the post-conviction DNA test have at least one year remaining on their sentence at the effective date of the bill. Since we cannot be precise as to if and when the bill will become enacted, it is difficult to discern the exact percentage of inmates that will have more than a year left on their sentence on the bill's effective date. The most recent data from DRC suggest that about 37% of all inmates have less than one year left on their sentence. These inmates would, under the terms of the bill, be excluded from

petitioning for a post-conviction DNA test. Assuming this percentage is randomly distributed, if the 37% exclusion figure is applied to the previously estimated 3,600 inmates, the total number of eligible inmates becomes approximately 2,268 (3,600 inmates x 63%).

### **Condition 3: Application to the prosecuting attorney**

An inmate that pleaded guilty or no contest to a felony offense committed prior to the effective date of the bill, with at least one year remaining on their prison term, may also qualify for DNA testing under the terms of the bill, if the prosecuting attorney's office that originally prosecuted their case files a written statement in response to the inmate's application to the effect that the prosecuting attorney's office is in agreement with the inmate's request for DNA testing. This third condition, in conjunction with conditions (1) and (2) noted above, will create an additional pool of inmates potentially eligible for DNA testing in the range of about 26,108.

This figure is based on the estimate that about 92% of the current DRC population will have pleaded guilty or no contest to the offense for which the inmate is requesting DNA testing. This would represent about 41,440 inmates (January 2004 inmate population of 45,044 x 92%). Assuming a random distribution, if the 37% with less than one year on their sentence exclusion figure is applied to the estimated 41,440 inmates, the total number of additional potentially eligible inmates becomes approximately 26,108 (41,440 inmates x 63%). The number of these inmates that would actually be granted a post-conviction DNA test, however, is likely to be fairly small. Based on a conversation with the Ohio Prosecuting Attorneys Association, county prosecutor's offices will be very confident in the quality of their work, and as a result, would generally not support such a request, unless presented with evidence of a serious miscarriage of justice.

### **Estimated post-conviction DNA testing costs**

The Office of the Attorney General has previously estimated the cost for a post-conviction DNA test to be about \$1,500. Given the above estimate of approximately 2,268 or so eligible inmates, the *maximum* total one-time expense for post-conviction DNA tests would be up to \$3.4 million or so. This maximum estimated one-time expense could be further reduced by two additional realities. First, the bill will only allow a post-conviction DNA test to be conducted if there is a useable sample for testing and a protective chain of custody that has kept the sample intact, and that the identity of the inmate was a key issue at the original trial. Many of the felony crimes, for which inmates are serving sentences, had no DNA samples collected because it was not relevant to the identification of a defendant. While there is no way to accurately calculate such a number, it would further reduce the number of eligible inmates.

Second, presumably those who are guilty of the crime for which they were convicted will rarely seek a DNA test that would simply reconfirm their guilt. Given these factors, it is possible that the actual number of eligible inmates that will petition for the post-conviction DNA test could be perhaps as low as a few hundred. If, for example, the number of inmates filing a petition were 200, the one-time DNA testing cost would be \$300,000.

Upon the effective date of the bill, inmates currently in the prison system would have one year to request the post-conviction DNA test. Since the bill's effective date is uncertain, it is difficult to ascertain which fiscal year or fiscal years the costs associated with these post-conviction DNA tests will fall. Notwithstanding this issue of timing, this is a one-time expense

involving a single test and a fixed number of inmates. The bill is silent on who would pay for the one-time post-conviction DNA tests.

### *Application process*

When an inmate submits a notice of intention to apply for a post-conviction DNA test, the clerk of the common pleas court will screen the notices for proper eligibility and provide eligible inmates with all application materials. Upon receipt of the formal applications, clerks of the common pleas courts must notify, in writing, the county prosecutor originally involved in the case and the Office of the Attorney General. This application review and notification requirement will generate a one-time increase in the workload of the clerks of common pleas courts, which may or may not exceed minimal cost, which means in excess of \$5,000.

If the inmate has not yet commenced any federal habeas corpus proceedings relative to the case in which the inmate was convicted, then the county prosecutor must file a response to the application for a post-conviction DNA test and the Office of the Attorney General is permitted to file a response. If, however, the inmate has commenced federal habeas corpus proceedings, then the Office of the Attorney General is designated as the entity that must file a response to the inmate application and the county prosecutor is permitted to file a response. In any case, the Office of the Attorney General or the county prosecutor must file a response stating whether each agrees or disagrees that the application should be accepted, and in the case of disagreement, a statement of the reasons for that disagreement.

The fiscal effect of this response duty on the state and counties is very difficult to quantify in terms of traditional budgets and dollars. The costs for the Office of the Attorney General and county prosecutors are probably best seen as potentially causing a temporary decrease in their administrative efficiency. Existing legal services resources will have to be stretched to ensure timely and appropriate responses to these applications for post-conviction DNA testing.

The inmate application must be submitted to the common pleas court in which the inmate was convicted of the offense for which the inmate is requesting a post-conviction DNA test and would be assigned to the judge of that court who was the trial judge in the case, or the successor in office of that judge. The judge so assigned is required to make an expedited determination as to whether the application should be accepted or rejected in accordance with the criteria set forth in the bill. The bill is silent on whether the court should or could schedule a hearing on the application; it neither requires, permits, nor prohibits the scheduling of a hearing by the court.

If all these local offices are subjected to an initial flurry of applications from most of the eligible, and many non-eligible, inmates, the combined time and expense to process the applications in compliance with the bill could exceed minimal in some larger and more urban jurisdictions, which means more than \$5,000.

## **Forms**

The bill requires the Office of the Attorney General prescribe an application form and an acknowledgement form and distribute copies of the forms to the Department of Rehabilitation and Correction. As this requirement appears to mirror similar duties to prescribe forms assigned to the Office of the Attorney General in other recent legislation, it seems unlikely that the one-time cost to prescribe and distribute the form will exceed \$10,000.

## **Appeals**

If an eligible inmate submits an application for DNA testing and the common pleas court rejects the application, that judgment is subject to appeal.

### **Supreme Court of Ohio**

If the inmate were under sentence of death, the appeal would be made to the Supreme Court of Ohio. The potential number of eventual appeals to the Supreme Court would be fairly small since there are only about 200 inmates on death row and not all of these would be eligible and presumably not all would apply for testing. The one-time costs associated with handling those appeals would appear unlikely to exceed minimal for the Supreme Court.

### **Courts of Appeals**

If the inmate were not under sentence of death, the appeal would be made to the court of appeals of the district in which the common pleas court rendering the judgment is located. There are 12 courts of appeals in Ohio, the judges of those courts are paid from the state treasury, and many of the court's employees, e.g., reporters, law clerks, secretaries, and other necessary employees are paid from the state treasury as well.

The caseloads of the courts of appeals will likely experience a one-time increase as a result of applications for DNA testing being rejected by common pleas courts. While difficult to calculate a precise cost per appeal, that one-time cost would likely be borne in terms of increased backlogs and reduced administrative efficiency.

### **Counties**

Counties will also likely incur some additional one-time costs related to such appeals in the sense that prosecutors and possibly public defenders would have to provide written briefs and oral arguments before the various courts of appeals or the Supreme Court of Ohio. This cost is also one of increased workload and administrative burdens. In larger and more urban counties that may be initially inundated with DNA test applications, some of which will likely be denied by common pleas courts, the cost for the one-time appeals process may approach and even exceed the minimal threshold. In smaller and more rural counties, the one-time costs associated with such appeals would presumably be much less.

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