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Bill Analysis
Legislative Service Commission

S.B. 262

126th General Assembly
(As Introduced)

Sens. Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler, Fedor, Fingerhut, Miller

BILL SUMMARY

- Eliminates the former two-year window for filing applications for post-conviction DNA testing for eligible inmates (which expired on October 29, 2005) and instead allows an eligible inmate to request post-conviction DNA testing at any time if specified criteria are met.
- Removes the provisions that specified that the felony offense for which an inmate is incarcerated must have been committed prior to October 29, 2003, and that the inmate must have been in prison on that date in order to be eligible for post-conviction DNA testing.

CONTENT AND OPERATION

Post-conviction DNA testing

Current law

Procedure when inmate did not plead guilty or no contest. Substitute S.B. 11 of the 125th General Assembly, as modified by Sub. H.B. 525 of the 125th General Assembly, allowed certain incarcerated offenders (inmates), before October 29, 2005, to submit an application for DNA testing to the court of common pleas that sentenced the inmate for the offense for which the inmate was requesting the testing. Generally, an inmate could submit an application for DNA testing if: (1) the offense for which the inmate was incarcerated and was requesting the testing was a felony that was committed prior to October 29, 2003, and the inmate was convicted by a judge or jury, (2) the inmate was sentenced to a prison term or sentence of death for the felony and on October 29, 2003, was in prison serving that prison term or under that sentence of death, (3) on the date on which the application was filed, the inmate had at least one year remaining on the prison term, or the inmate was in prison under a sentence of death, and (4) the

inmate did not plead guilty or no contest to the offense for which the inmate was incarcerated and was requesting the testing (R.C. 2953.72(C)). The court, based on statutory criteria and procedures, decides whether the application should be accepted or rejected; if the court rejects the application, a limited appeal of the rejection is available (R.C. 2953.73(D) and (E)).

Procedure when inmate pleaded guilty or no contest. The two acts cited in the preceding paragraph also allowed inmates who pleaded guilty or no contest to a felony offense that was committed prior to October 29, 2003, to file an application for DNA testing regarding that felony by October 29, 2005, if: (1) the inmate was sentenced to a prison term or sentence of death for the felony and on October 29, 2003, was in prison serving that prison term or under that sentence of death, and (2) on the date on which the application was filed, the inmate had at least one year remaining on the prison term or the inmate was in prison under a sentence of death (R.C. 2953.82(A)). However, if an inmate filed an application as described in this paragraph, the prosecuting attorney has authority to refuse the application, the decision of which cannot be appealed by the offender. If the prosecuting attorney agrees that the inmate should be permitted to obtain the DNA testing, the application is considered as if it had been made under the provisions described in the preceding paragraph that the court accepted. (R.C. 2953.82(B) to (E).)

General procedure for DNA testing. If an inmate filed an application under either of the two preceding paragraphs and the application is accepted, the DNA test is conducted (R.C. 2953.77 to 2953.31, not in the bill). If the DNA test establishes, by clear and convincing evidence, the actual innocence of the inmate, the inmate may file a petition for postconviction relief asking the court to set aside or vacate the judgment or sentence or grant other appropriate relief. (R.C. 2953.21, not in the bill.)

While the time period has expired under current law during which an application for post-conviction DNA testing may be filed, the process of reviewing previously filed applications and for testing under accepted applications continues. Consequently, under current law an inmate is no longer permitted to timely file an application for DNA testing, but an application that was timely filed may still be accepted or rejected.

The bill

The bill removes the time period during which an inmate was authorized to file an application for DNA testing under the existing procedure for DNA testing, which the bill does not modify. Thus, under the bill, an inmate described above in "**Current law**" may file an application for DNA testing at any time if the inmate satisfies the other requirements in current law. The bill also removes the



provisions that specified that the felony offense for which an inmate was incarcerated had to have been committed prior to October 29, 2003, and that the inmate must have been in prison on that date as a prerequisite to filing the application (the bill otherwise retains the "felony conviction" and "prison term" criteria). Thus, under the bill, if an inmate meets the other requirement of current law, the inmate can file an application for DNA testing regardless of when the offense for which the inmate is incarcerated was committed. (R.C. 2953.72(A), (C)(1)(a), and (C)(1)(b), 2953.73(A), and 2953.82(A) and (B).)

The bill makes two other changes in existing law: (1) it modifies a provision that describes one of the statements that must be in an acknowledgment that an inmate must submit with an application, so that the statement must set forth that the provisions of the DNA Testing Law (R.C. 2953.71 to 2953.81) do not give any inmate any additional Constitutional right *that the inmate did not already have* instead of setting forth that those provisions do not give any inmate any additional Constitutional right *that the inmate did not have prior to October 29, 2003* (R.C. 2953.72(A)(8)), and (2) it modifies a provision that currently requires an inmate who pleaded guilty or no contest to a felony and who wishes to request DNA testing under the DNA Testing Law to *submit an application to the court of common pleas and the prosecuting attorney* so that it instead requires the inmate to submit an application to the court of common pleas and, *upon submitting the application to the court, to serve a copy on the prosecuting attorney* (R.C. 2953.82(B)).

HISTORY

ACTION	DATE
Introduced	01-31-06

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