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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

**H.B. 221**  
**135<sup>th</sup> General Assembly**

## **Fiscal Note & Local Impact Statement**

[Click here for H.B. 221's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsors:** Reps. Schmidt and Upchurch

**Local Impact Statement Procedure Required:** No

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### **Highlights**

- The bill's expansion to post-conviction relief based on DNA testing is not likely to result in a significant increase in costs or workload for the state or county criminal justice systems.
- To the extent that a petitioner is granted relief, any additional workload for courts, prosecutors, and public defenders/appointed counsel can likely be absorbed utilizing existing staff and resources.

### **Detailed Analysis**

The bill expands who may file a petition for post-conviction relief based on DNA testing. The bill is not likely to significantly increase costs for state or county criminal justice systems (courts, prosecutors, and public defenders/appointed counsel).

#### **Post-conviction relief**

Under current law, any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing that was performed at the request of an eligible offender may file a petition in the court that imposed a sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. The results must establish by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of the person's sentence.

The bill makes several modifications to current law by authorizing the filing of an initial or subsequent post-conviction relief petition regarding a felony conviction that is based on DNA testing showing actual innocence, when the testing was done at the request or on behalf of the petitioner in the case in any circumstances, the state, or any government entity. In practice, these

changes could be viewed as broadening the circumstances in which an offender may be able to successfully petition for post-conviction relief.

## **Criminal justice system fiscal effects**

LBO presumes that any additional workload created by the bill for courts, prosecutors, and public defenders/appointed counsel can likely be absorbed utilizing existing staff and resources. The number of offenders impacted by the changes to post-conviction relief under the bill is difficult to estimate, but is expected to be minimal as the bill will likely affect a relatively narrow scope of individuals. The Ohio Innocence Project (OIP) stated that they have not had a case that would be impacted by the modifications in the bill and do not anticipate a large increase in petitions based on prosecutorial requested DNA sampling.

The Office of the Ohio Public Defender (OPD) states that the bill is not likely to have more than a minimal fiscal impact on their costs, as they currently file few applications for DNA testing and subsequent post-conviction petitions. To the extent that the petition and records of the case show the petitioner is entitled to relief, and OPD is required to provide representation, the bill may result in an increased workload. The fiscal effect will depend on the number of petitions filed and any related hearings scheduled.

For any offender granted post-conviction relief and subsequent release, the Department of Rehabilitation and Correction (DRC) would likely experience a decrease in incarceration expenditures. In the context of the size of the state's prison population (approximately 44,000) and the number of offenders sentenced to prison annually (typically ranging between 17,000 and 20,000), the associated decrease in expenditures will be minimal. The marginal annual cost of an offender in the prison system administered by DRC is around \$4,000 per offender.

As an indirect effect of the bill, there could be a slight increase in the number of wrongful imprisonment claims filed with the Court of Claims if additional post-conviction relief petitions are successful. However, this would require a separate application process with differing criteria required to be met.<sup>1</sup>

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<sup>1</sup> R.C. 2743.48 governs the wrongful imprisonment civil action process. That section defines a wrongfully imprisoned individual as one: (1) who was charged with a felony, (2) who was found guilty of a felony, (3) who was sentenced to a term of imprisonment in a state correctional institution, (4) whose conviction was vacated, dismissed, or reversed on appeal, and (5) where, subsequent to sentencing and/or imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty either was not committed by the individual or was not committed by any person. If a claim for a monetary settlement is granted, that claim is paid by the Court of Claims from appropriation item 015402 – Wrongful Imprisonment Compensation, upon approval of the Controlling Board.