

SUBSTITUTE FOR
SENATE BILL NO. 105

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending the title and sections 2, 3, 3a, and 6 (MCL 28.172,
28.173, 28.173a, and 28.176), the title and section 3 as amended by
1998 PA 522, sections 2 and 6 as amended by 2008 PA 535, and
section 3a as amended by 2008 PA 533.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to provide for a DNA identification profiling system;
to provide for the collection of samples from **INDIVIDUALS ARRESTED**
FOR COMMITTING OR ATTEMPTING TO COMMIT A FELONY OFFENSE, certain
prisoners, convicted offenders, and juvenile offenders and the
analysis of those samples; and to prescribe the powers and duties
of certain state departments and county agencies.

1 Sec. 2. As used in this act:

2 (a) "Department" means the department of state police.

3 (b) "DNA identification profile" or "profile" means the
4 results of the DNA identification profiling of a sample, including
5 a paper, electronic, or digital record.

6 (c) "DNA identification profiling" means a validated
7 scientific method of analyzing components of deoxyribonucleic acid
8 molecules in a biological specimen to determine a match or a
9 nonmatch between a reference sample and an evidentiary sample.

10 (d) "Felony" means a violation of a penal law of this state
11 for which the offender may be punished by imprisonment for more
12 than 1 year or an offense expressly designated by law to be a
13 felony.

14 (e) "Investigating law enforcement agency" means the law
15 enforcement agency responsible for the investigation of the offense
16 for which the individual is **ARRESTED OR** convicted. Investigating
17 law enforcement agency includes the county sheriff but does not
18 include a probation officer employed by the department of
19 corrections.

20 (f) "Sample" means a portion of an individual's blood, saliva,
21 or tissue collected from the individual.

22 Sec. 3. The department shall promulgate rules under the
23 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
24 24.328, to implement this act, including, but not limited to, rules
25 governing all of the following:

26 (a) The method of collecting samples in a medically approved
27 manner by qualified persons and the types and number of samples to

1 be collected by the following:

2 (i) The department of corrections from certain prisoners under
3 section 33d of **THE CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL
4 791.233d.

5 (ii) Law enforcement agencies from certain convicted offenders
6 under section 520m of the Michigan penal code, 1931 PA 328, MCL
7 750.520m, ~~or~~ certain juveniles under section 18k of chapter XIIA of
8 **THE PROBATE CODE OF 1939**, 1939 PA 288, MCL 712A.18k, **OR CERTAIN**
9 **INDIVIDUALS ARRESTED FOR COMMITTING OR ATTEMPTING TO COMMIT A**
10 **FELONY OFFENSE.**

11 (iii) The ~~family independence agency~~ **DEPARTMENT OF HUMAN**
12 **SERVICES** or a county juvenile agency, as applicable, from certain
13 juveniles under section 7a of the youth rehabilitation services
14 act, 1974 PA 150, MCL 803.307a, or section 5a of the juvenile
15 facilities act, 1988 PA 73, MCL 803.225a. As used in this
16 subparagraph, "county juvenile agency" means that term as defined
17 in section 2 of the county juvenile agency act, **1998 PA 518, MCL**
18 **45.622.**

19 (b) Distributing blood specimen vials, mailing tubes, and
20 labels and instructions for collecting samples.

21 (c) Storing and transmitting to the department the samples
22 described in subdivision (a).

23 (d) The DNA identification or genetic marker profiling of
24 samples described in subdivision (a).

25 (e) The development, in cooperation with the federal bureau of
26 investigation and other appropriate persons, of a system of filing,
27 cataloging, retrieving, and comparing DNA identification profiles

1 and computerizing this system.

2 (f) Protecting the privacy interests of individuals whose
3 samples are analyzed under this act.

4 Sec. 3a. (1) An individual required by law to provide samples
5 for DNA identification profiling who refuses to provide or resists
6 providing those samples is guilty of a misdemeanor punishable by
7 imprisonment for not more than 1 year or a fine of not more than
8 \$1,000.00, or both. The individual shall be advised that his or her
9 resistance or refusal to provide samples described in this
10 subsection is a misdemeanor.

11 (2) If at the time an individual who is required by law to
12 provide samples for DNA identification profiling is **ARRESTED FOR**
13 **COMMITTING OR ATTEMPTING TO COMMIT A FELONY OFFENSE OR IS** convicted
14 the investigating law enforcement agency or the department already
15 has a sample from the individual that meets the requirements of the
16 rules promulgated under this act, the individual is not required to
17 provide another sample. However, if an individual's DNA sample is
18 inadequate for purposes of analysis, the individual shall provide
19 another DNA sample that is adequate for analysis.

20 Sec. 6. (1) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
21 **THE** department shall permanently retain a DNA identification
22 profile of an individual obtained from a sample in the manner
23 prescribed by the department under this act if any of the following
24 apply:

25 (A) **THE INDIVIDUAL IS ARRESTED FOR COMMITTING OR ATTEMPTING TO**
26 **COMMIT A FELONY OFFENSE.**

27 (B) ~~(a)~~ The individual is found responsible for a violation of

1 section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931
2 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a
3 violation or attempted violation of section 349, 520b, 520c, 520d,
4 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349,
5 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a
6 violation of section 167(1)(c) or (f) or 335a of the Michigan penal
7 code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance
8 substantially corresponding to section 167(1)(c) or (f) or 335a of
9 the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

10 (C) ~~(b)~~—The individual is convicted of a felony or attempted
11 felony, or any of the following misdemeanors, or local ordinances
12 that are substantially corresponding to the following misdemeanors:

13 (i) A violation of section 145a of the Michigan penal code,
14 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

15 (ii) A violation of section 167(1)(c), (f), or (i) of the
16 Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by
17 window peeping, engaging in indecent or obscene conduct in public,
18 or loitering in a house of ill fame or prostitution.

19 (iii) A violation of section 335a of the Michigan penal code,
20 1931 PA 328, MCL 750.335a, indecent exposure.

21 (iv) A violation of section 451 of the Michigan penal code,
22 1931 PA 328, MCL 750.451, first and second prostitution violations.

23 (v) A violation of section 454 of the Michigan penal code,
24 1931 PA 328, MCL 750.454, leasing a house for purposes of
25 prostitution.

26 (vi) A violation of section 462 of the Michigan penal code,
27 1931 PA 328, MCL 750.462, female under the age of 17 in a house of

1 prostitution.

2 (2) The DNA profiles of DNA samples received under this
3 section shall only be disclosed as follows:

4 (a) To a criminal justice agency for law enforcement
5 identification purposes.

6 (b) In a judicial proceeding as authorized or required by a
7 court.

8 (c) To a defendant in a criminal case if the DNA profile is
9 used in conjunction with a charge against the defendant.

10 (d) For an academic, research, statistical analysis, or
11 protocol developmental purpose only if personal identifications are
12 removed.

13 (3) Notwithstanding subsection (1), if at the time the
14 individual is **ARRESTED FOR**, convicted of, or found responsible for
15 the violation the investigating law enforcement agency or the
16 department of state police already has a sample from the individual
17 that meets the requirements of this act, the individual is not
18 required to provide another sample or pay the fee required under
19 subsection (5).

20 (4) The county sheriff or the investigating law enforcement
21 agency as ordered by the court shall provide for collecting the
22 samples required to be provided under subsection (1) in a medically
23 approved manner by qualified persons using supplies provided by the
24 department of state police and shall forward those samples and any
25 samples described in subsection (1) that were already in the
26 agency's possession to the department of state police. The
27 collecting and forwarding of samples shall be done in the manner

1 required under this act. A sample shall be collected by the county
2 sheriff or the investigating law enforcement agency after
3 ~~conviction or a finding of responsibility~~ **ARREST** but before
4 sentencing or disposition as ordered by the court and promptly
5 transmitted to the department of state police. This subsection does
6 not preclude a law enforcement agency or state agency from
7 obtaining a sample at or after sentencing or disposition.

8 (5) ~~Until October 1, 2003, the~~ **THE** court shall order each
9 individual found responsible for or convicted of 1 or more crimes
10 listed in subsection (1) to pay an assessment of \$60.00. The
11 assessment required under this subsection is in addition to any
12 fine, costs, or other assessments imposed by the court.

13 (6) An assessment required under subsection (5) shall be
14 ordered upon the record and shall be listed separately in the
15 adjudication order, judgment of sentence, or order of probation.

16 (7) After reviewing a verified petition by an individual
17 against whom an assessment is imposed under subsection (5), the
18 court may suspend payment of all or part of the assessment if it
19 determines the individual is unable to pay the assessment.

20 (8) The court that imposes the assessment prescribed under
21 subsection (5) may retain 10% of all assessments or portions of
22 assessments collected for costs incurred under this section and
23 shall transmit that money to its funding unit. On the last day of
24 each month, the clerk of the court shall transmit the assessments
25 or portions of assessments collected under this section as follows:

26 (a) Twenty-five percent to the county sheriff or other
27 investigating law enforcement agency that collected the DNA sample

1 as designated by the court to defray the costs of collecting DNA
2 samples.

3 (b) ~~Until October 1, 2003, 65%~~ **SIXTY-FIVE PERCENT** to the
4 department of treasury for the department's forensic science
5 division to defray the costs associated with the requirements of
6 DNA profiling and DNA retention prescribed under this act.

7 ~~— (c) Beginning October 1, 2003, 65% to the state treasurer for~~
8 ~~deposit in the justice system fund created in section 181 of the~~
9 ~~revised judicature act of 1961, 1961 PA 236, MCL 600.181.~~

10 (9) ~~Beginning December 31, 2002, the~~ **THE** director of the
11 department shall report by December 31 of each year concerning the
12 rate of DNA sample collection, DNA identification profiling,
13 retention and compilation of DNA identification profiles, and the
14 collection of assessments required under subsection (5) to all of
15 the following:

16 (a) The standing committees of the senate and house of
17 representatives concerned with DNA sample collection and retention.

18 (b) The house of representatives appropriations subcommittee
19 on state police and military affairs.

20 (c) The senate appropriations subcommittee on state police.

21 (10) If a sample was collected under subsection (1) from an
22 individual who does not have more than 1 conviction, and that
23 conviction was reversed by an appellate court, ~~the individual may~~
24 ~~petition the sentencing court to~~ **SHALL** order the disposing of the
25 sample collected and DNA identification profile record for that
26 conviction in the manner provided in subsections (13) and (14). The
27 sentencing court shall only enter the order upon a finding that the

~~individual has proven by clear and convincing evidence that the conviction was reversed based upon the great weight of the evidence, specifically, that there was overwhelming evidence against the verdict resulting in a miscarriage of justice.~~ **CONDITIONS OF THIS SUBSECTION HAVE BEEN SATISFIED.**

(11) Any other DNA identification profile obtained by the department shall not be permanently retained by the department but shall be retained only as long as it is needed for a criminal investigation or criminal prosecution. Except as provided in subsection (12), the state police forensic laboratory shall dispose of a DNA sample collected under subsection (1) or a DNA identification profile, or both, if any of the following circumstances occur:

(a) The department receives a written request for disposal from the investigating police agency or prosecutor indicating that the sample or profile is no longer necessary for a criminal investigation or criminal prosecution.

(b) The department receives a written request for disposal and a certified copy of a final court order establishing that the charge for which the sample was obtained has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable limitations period.

(12) Subsection (11) does not apply if either of the following circumstances exists:

(a) The department determines that the individual from whom the sample is taken has otherwise become obligated to submit a sample.

1 (b) Subsection (16) applies.

2 (13) The state police forensic laboratory shall dispose of a
3 sample and a DNA identification profile record in the following
4 manner:

5 (a) The laboratory shall dispose of the sample in compliance
6 with section 13811 of the public health code, 1978 PA 368, MCL
7 333.13811.

8 (b) The laboratory shall dispose of the sample and the DNA
9 identification profile record in the presence of a witness.

10 (14) After disposal in accordance with subsection (13), the
11 laboratory shall make and keep a written record of the disposal,
12 signed by the individual who witnessed the disposal.

13 (15) An identification, warrant, detention, probable cause to
14 arrest, arrest, or conviction based upon a DNA match or DNA
15 information is not invalidated if it is later determined that 1 or
16 more of the following errors occurred in good faith:

17 (a) A DNA sample was erroneously obtained.

18 (b) A DNA identification profile was erroneously retained.

19 (c) A DNA sample was not disposed of or there was a delay in
20 disposing of the sample.

21 (d) A DNA identification profile was not disposed of or there
22 was a delay in disposing of the profile.

23 (16) Notwithstanding any other provision of this act, the
24 department is not required to dispose of physical evidence or data
25 obtained from a sample if evidence relating to an individual other
26 than the individual from whom the sample was taken would be
27 destroyed and the evidence or data relating to the other individual

1 would otherwise be retained under this section.