



**House
Legislative
Analysis
Section**

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**DNA IDENTIFICATION PROFILES:
EXTEND GROUNDS FOR RETAINING**

**House Bill 5783 (Substitute H-2)
Sponsor: Rep. Michael Goschka**

**House Bill 5912 (Substitute H-2)
Sponsor: Rep. Gerald Law**

**House Bill 5913 (Substitute H-2)
Sponsor: Rep. Eric Bush**

**House Bill 5914 (Substitute H-2)
Sponsor: Rep. James Ryan**

**House Bill 6061 (Substitute H-1)
Sponsor: Rep. Sandra Hill**

**House Bill 6062 (Substitute H-1)
Sponsor: Rep. Beverly Bodem**

First Analysis (9-24-96)

Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

In 1990 the legislature passed laws creating the DNA Identification Profiling System Act and requiring the Department of Corrections (DOC) to collect blood and saliva samples for DNA identification profiling before releasing persons convicted of criminal sexual conduct (CSC) offenses. The act also requires the Department of State Police to retain DNA profiles obtained under the act and promulgate rules regarding the collection of samples for DNA profiling. In addition the act requires the establishment of a DNA advisory committee. The DNA profiles collected under the act are retained by the Department of State Police for use in identifying the perpetrators of later crimes. The term "DNA profiling" refers to the process of extracting DNA codes from blood or other body tissue and producing a profile that can be compared to other DNA profiles (See BACKGROUND INFORMATION). One of the many applications of this procedure is in the area of criminal investigation. Law enforcement officials are able, under the act, to collect samples for use in creating a DNA profile data base that can be used in the same way that fingerprint information is used.

Unfortunately, the effectiveness of the profile bank as an investigative tool is limited, since the current law restricts the collection of DNA samples to adult criminals convicted of CSC crimes. It has been suggested that the act would better serve its purpose if it were to include a wider spectrum of criminal activity and provide for collecting and retaining samples from certain juvenile offenders as well.

THE CONTENT OF THE BILLS:

The package of bills would expand the DNA Identification Profiling System maintained by the Department of State Police by adding to the list of offenses and to the points in the criminal justice system that would trigger the taking and retention of an individual's DNA identification profile, and by including juveniles. Current law provides for retaining DNA identification profiles of adults who have violated or attempted to violate the laws against first, second, third, or fourth degree criminal sexual conduct (CSC) or assault with intent to commit criminal sexual conduct. The bills

House Bills 5783, 5912-5914 and 6061-6062 (9-24-96)

would add violations or attempted violations of first or second degree murder, attempted murder, kidnaping, or manslaughter to this list. Further, they would provide for DNA profiles to be maintained on juvenile offenders convicted or found responsible for the listed offenses. All the bills contain similar definitions of the terms "sample", which would refer to blood, saliva, or tissue samples and would replace references to the specific fluid to be taken and tested.

House Bill 5912 would amend the DNA Identification Profiling System Act (MCL 28.172, 28.173 and 28.176) to require the Department of State Police to permanently retain a DNA identification profile of any individual (including juvenile offenders) who had been convicted of one of the offenses described above. Further, the bill would provide that samples would be collected by law enforcement agencies from certain juveniles under the provisions of House Bill 5783, and by the Family Independence Agency from certain juveniles under House Bills 6061 or 6062. The bill would also remove language allowing the department to retain any other DNA identification profiles only as long as needed for a criminal investigation or prosecution. Finally, House Bill 5912 would repeal a section of the act that establishes a DNA advisory committee, which was established by Public Act 250 of 1990 to advise the legislature on issues related to DNA testing.

Currently, only prisoners who are released on parole are required to provide DNA samples before their release. House Bill 5913 would amend the Department of Corrections act (MCL 791.233d) to specify that a prisoner serving a sentence for a violation of the laws against attempted murder, first or second degree murder, kidnaping, first, second, third or fourth degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct could not be released on parole, placed in a community placement facility of any kind, including a community corrections center or a community residential home, or discharged upon completion of his or her maximum sentence until he or she had provided samples for DNA identification profiling or determination of genetic markers and for determination of his or her secretor status. However, if the Department of State Police already had a sample from the prisoner that met the requirements of the rules promulgated under the DNA Identification Profiling System Act, the prisoner would not be required to supply another sample. The bill would also provide that the Department of Corrections could collect the needed samples without the prisoner's consent and without a prior hearing or court order.

House Bill 5914 would amend the Michigan Penal Code (MCL 750.520m) to require that samples for DNA identification profiling or determination of genetic markers and for determination of the individual's secretor

status be provided by anyone convicted of a violation of the laws against attempted murder, first degree or second degree murder, kidnaping, first, second, third or fourth degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct, unless the investigating law enforcement agency or the Department of State Police already possessed adequate samples from that person. If an investigating law enforcement agency, prosecuting agency, or court retained a DNA identification profile that had been obtained from a sample from an individual convicted of one of the listed offenses, the agency or court would be required to forward the profile to the department on or before the convicted person's sentencing, unless the department already possessed a DNA identification profile of that individual.

House Bill 5783 would amend the juvenile code (MCL 712A.1 et al.) to add a section requiring certain juveniles to provide samples for DNA identification profiling or determination of genetic markers and samples for determination of the individual's secretor status. Samples for these tests would have to be provided in all cases where the individual had been convicted of or found responsible for attempted murder, first or second degree murder, actual or attempted first, second, third, or fourth degree criminal sexual conduct, or assault with intent to commit criminal sexual conduct. However, if the investigating law enforcement agency, the Department of State Police, or the Family Independence Agency already possessed samples from that individual that met the requirements of the DNA Identification Profiling System Act, the individual would not be required to provide another sample.

The investigating law enforcement agency would be required to have samples collected by qualified persons acting in a medically approved manner using supplies provided by the Department of State Police. The collection and forwarding of samples would have to be performed in the manner established by rules promulgated under the DNA Identification Profiling System Act. Any samples already in the agency's possession would have to be forwarded to the Department of State Police. As above, unless the Department of State Police were already in possession of the individual's DNA identification profile, the FIA or an investigating law enforcement agency, prosecuting agency, or court that was in possession of such a profile would be required to forward it to the department on or before the time the court imposed sentence or entered an order of disposition upon the individual's conviction or finding of responsibility.

House Bill 6061 would amend the Juvenile Facilities Act (MCL 803.221 et al.) to require that samples for DNA identification profiling, determination of genetic markers,

and determination of secretor status be taken from all juveniles who were under the FIA's jurisdiction and had been convicted or found responsible for one the listed offenses. The samples would be required to be taken prior to the juvenile's placement in a community placement facility. However, if the were not taken at the time of the juveniles placement they would have to be taken prior to his or her discharge from wardship. The juvenile could not be discharged from wardship until such samples were taken, unless the Department of State Police already possessed adequate samples from the juvenile.

Samples could be collected without the permission of the juvenile and no court order or hearing would be required before the sample could be collected. The samples would have to be collected and transmitted to the Department of State Police according to rules promulgated under the DNA Identification Profiling System Act.

House Bill 6062 would amend the Youth Rehabilitation Services Act (MCL 803.301 et al.) by adding a section requiring that samples for DNA profiling be taken from certain juveniles either prior to their placement in any kind of community placement or prior to their release from state wardship. Specifically, the bill would apply to juveniles who were state wards under the jurisdiction of the FIA who were convicted of or found responsible for the listed offenses. However, samples would not have to be provided if the Department of the State Police already had adequate samples from the juvenile. Samples collected and transmitted to the department would have to be collected and transmitted in accordance with the rules promulgated under the DNA Identification Profiling System Act. As above, the permission of the juvenile would not be needed to collect the samples and no hearing or court order would be needed to authorize the taking of the samples.

Tie-bars, effective date. House Bills 5912-5914 are tie-barred to each other. House Bill 5783 is tie-barred to House Bills 5912, 6061, and 6062. House Bills 6061 and 6062 are tie-barred together, and are each tie-barred to House Bills 5912 and 5783. The bills would take effect on January 1, 1997.

BACKGROUND INFORMATION:

Human cells that contain a nucleus, such as those cells found in hair and skin, hold chromosomes that contain living matter known as deoxyribonucleic acid (DNA). DNA is the complex molecule that houses genetic instructions and transmits hereditary patterns. DNA molecules contain long strands of genetic code that contain instructions for general human characteristics and shorter sequences that contain instructions for individual

characteristics. These shorter strands distinguish individuals from one another and are unique to the particular individual, except in the case of identical twins who share the same DNA pattern. The study of DNA has been in the news a great deal lately due to advances in the knowledge of how certain DNA strands effect the person carrying them. Of particular interest have been discoveries pertaining to the causes of certain physical characteristics and the predisposition for certain diseases.

The process of "DNA profiling" involves a series of steps whereby the DNA sample is extracted from a sample of a person's blood, hair, semen, or other body tissue and then is chemically fragmented with restrictive enzymes. The fragments, which are negatively charged, are then suspended at one end of a slab of gelatin, and a positively charged electrode is placed at the other end. When the electrode is turned on, the DNA fragments are attracted towards the electrode and drift through the gel. The lightest, smallest fragments travel farthest because they meet with less resistance as they travel through the gelatin. The heavier fragments, for the opposite reason, remain closer to their starting point. The pattern of the length of and spacing between the fragments is unique to each individual and is captured in the gel as a kind of spectrum. This spectrum, which is retained as the DNA profile, resembles a bar code. What is visible is the pattern of how the DNA strands separated and are spaced, not the actual DNA code.

Since each sample of DNA from the same source will invariably, when run through this process, produce an identical pattern or spectrum, a record of the individual's DNA profile is as unique (if not more so) as his or her fingerprint. During a criminal investigation, a DNA profile of a sample taken from a crime scene may then be compared with DNA profiles retained by the state police in the same manner that a fingerprint found at a crime scene could be compared with a record of fingerprint maintained by the state police.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bills 5912-5914 would increase costs by an indeterminate amount. Expanding the DNA identification profiling program within the Department of State Police by requiring profiling for additional criminal violations would increase costs to the department for the processing of additional samples and supplying additional collection kits to the Department of Corrections and local law enforcement agencies. The cost of laboratory processing is approximately \$270 per sample (assuming an annual allocation of \$630,000 for the program, with 2,300 samples). The additional cost to the Department of State

Police is indeterminate because the additional number of samples that would be collected is unknown.

To the extent that House Bill 5913 requires the DOC to collect additional samples under the DNA identification profiling program, it would increase departmental costs for collection. The cost of collecting samples is roughly \$3 per sample.

In addition, the cost to local law enforcement agencies would increase proportionately with the number of samples they were required to collect under House Bill 5914. The additional cost to the local units of government is indeterminate because the additional number of sample they would be required to collect is unknown. (9-18-96)

ARGUMENTS:

For:

DNA profiling has been hailed by law enforcement officials and forensic scientists as a major advancement toward the solution of violent crimes, especially sexual assaults. Due to the nature of many violent acts, particularly rape, perpetrators are likely to leave traces of themselves behind. Further, DNA is more resilient than other proteins, enzymes, and antibodies that are usually targets of blood and semen analysis. As a result retaining DNA profiles of violent criminals will allow for DNA evidence taken from a crime scene to be compared with the DNA profiles retained by the state police. Comparison of the DNA evidence from the crime scene with the DNA profiles contained in the database will facilitate the identification, prosecution and conviction of recidivists, or may eliminate suspects or establish the innocence of those wrongly accused.

Expanding the list of crimes for which DNA profiles may be retained by the Department of State Police to include other violent crimes, in addition criminal sexual conduct crimes, will increase the effectiveness of the profiling system. Furthermore, including DNA profiles of juveniles will also increase the system's effectiveness, and will be particularly helpful in catching juveniles who continue to be involved in violent crimes. As the number of profiles maintained in the system grows, the ability of the police to match DNA evidence from a crime scene with a DNA profile contained in the DNA identification profiling system will increase. A DNA profile match is extremely accurate; comparison of profile patterns can result in excluding every other person on the planet from the possibility of having provided the sample.

In addition, the DNA profiling system will assist police in solving crimes that have gone unsolved. In cases where police have DNA evidence from a crime scene but

have been unable to match it with an individual, such evidence could be matched through the profiling system to establish who the responsible party was, even if that individual were already in prison for another crime.

Against:

Including juveniles in this system is unfair and would serve to stigmatize them. Further, there are significant privacy issues to consider. Allowing the police to retain genetic information about a person in a DNA profile could allow for misuse of such information.

Response:

According to the state police, the DNA profiles retained under the provisions of these bills provides no information about the individual from whom the sample was taken. Although the amount of information that may be "read" from an individual's DNA code is increasing as scientists learn more about what traits are influenced by different strands of DNA, a DNA profile does not offer a great deal of information about the person from whom it was taken. The DNA profile's only real use is to compare it with another DNA profile to see whether they came from the same source. Essentially, what is contained in a DNA profile is information about how the individual's DNA strands fragment when broken down by certain chemical processes. The resultant information is a pattern of spacing resulting from the fragmentation of the DNA which resembles a bar code. It does not contain the sort of genetic information that would allow someone to determine whether the individual had blue eyes, or a predisposition for a particular disease. In fact, the information available from an examination of an individual's DNA profile is less informative than the police, court, or Department of Corrections records of his or her arrest, conviction, and/or incarceration.

POSITIONS:

The Department of State Police supports the bills. (9-18-96)

The Family Independence Agency supports the bills. (9-18-96)

The Prosecuting Attorneys Association of Michigan supports the bills. (9-20-96)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.