House
Legislative
Analysis
Section

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EXPAND DNA PROFILE DATABASE

House Bill 4610 as enrolled
Public Act 88 of 2001
Sponsor: Rep. Jennifer Faunce

House Bill 4611 as enrolled
Public Act 91 of 2001
Sponsor: Rep. Larry Julian

House Bill 4612 as enrolled
Public Act 86 of 2001
Sponsor: Rep. Mike Kowall

House Bill 4613 as enrolled
Public Act 89 of 2001
Sponsor: Rep. Thomas M. George

House Bill 4633 as enrolled
Public Act 85 of 2001
Sponsor: Rep. William O'Neil

Senate Bill 389 as enrolled
Public Act 87 of 2001
Sponsor: Sen. William Van Regenmorter

Senate Bill 393 as enrolled
Public Act 90 of 2001
Sponsor: Sen. Thaddeus G. McCotter

Senate Bill 394 as enrolled
Public Act 84 of 2001
Sponsor: Sen. Bill Bullard, Jr.

House Committee: Criminal Justice
Senate Committee: Judiciary

Second Analysis (8-16-01)

THE APPARENT PROBLEM:

DNA technology has changed the way in which forensic laboratories analyze samples of blood, hair, semen, and other body fluids and tissues found at crime scenes. DNA analysis of crime-scene samples can often jumpstart otherwise dead-end investigations, and can provide important corroborative evidence in building a case or confirming investigative theories. All states collect DNA samples from persons with criminal convictions, but laws differ from state to state as to the types of crimes that result in the collection and profiling of DNA samples for entry into a state database.

Currently, in Michigan, only individuals convicted of or found responsible for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree criminal sexual conduct (CSC); or assault with intent to commit CSC are required to provide samples for

DNA profiling. However, eight states now require DNA profiling to be conducted on all convicted felons, and four other states are considering similar proposals. The growing trend to expand DNA profiling to include all convicted felons and certain misdemeanors is based on the "clear-eyed recognition" that some persons convicted of nonviolent crimes go on to commit crimes of murder, manslaughter, arson, kidnapping, and robbery. Virginia, which has required DNA sampling and profiling to be conducted for all felony convictions for several years, reports that about one-third of felons convicted of certain property crimes such as breaking and entering have gone on to commit violent crimes. Therefore, a comprehensive state DNA database has proven to be a valuable investigative tool.

As the availability, use, and reliability of DNA evidence has increased (and costs to conduct such tests have decreased), some propose that Michigan should expand its DNA sampling and profiling requirements. Separate bill packages were proposed in the House and the Senate to implement this concept. A compromise package, composed of several House bills and several Senate bills, has emerged from negotiations.

THE CONTENT OF THE BILLS:

The bill package would amend various acts to require that DNA samples be obtained from adults, and juveniles tried as adults, who are convicted of a felony or attempted felony or certain misdemeanor offenses and also from juveniles found responsible for certain felony and misdemeanor offenses. The Department of State Police (DSP) would have to permanently retain those DNA profiles. Senate Bill 389, Senate Bills 393-394, House Bills 4610-4613 and House Bill 4633 are tie-barred to each other. The bills would take effect January 1, 2002. Specifically, the bills would do the following:

Senate Bill 389 and House Bill 4610 would amend Section 6 and Section 2 of the DNA Identification Profiling System Act (MCL 28.176 and 28.172), respectively. Currently, the act requires the Department of State Police to obtain and retain a DNA identification profile of an individual convicted of or found responsible for attempted murder (MCL 750.91); first-degree murder (MCL 750.316); second-degree murder (MCL 750.317); kidnapping (MCL 750.349); first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) (MCL 750.520b-750.520e); or assault with intent to commit CSC (MCL 750.520g). (Note: The term "convicted of" applies to an adult or a juvenile tried as an adult and the term "found responsible for" applies to a juvenile offender.)

Instead, Senate Bill 389 would require the department to obtain and permanently retain a sample from adults convicted of any felony offense and specific misdemeanors and from juveniles found responsible for certain felony offenses and certain misdemeanors.

Under the bill, a sample would have to be obtained and retained from an individual found responsible (a juvenile) for any of the above offenses, plus assault with intent to murder (MCL 750.83) and manslaughter (MCL 750.321) and specified misdemeanor offenses that involve disorderly person by window peeping, engaging in indecent or obscene conduct in public [MCL 750.167(1)(c), or (f)], or indecent exposure (MCL 750.335a), or a local ordinance substantially similar to these misdemeanor offenses.

A sample would have to be obtained and retained from an individual convicted (an adult or a juvenile tried as an adult) of any felony or attempted felony, or any of the above misdemeanors or local ordinances substantially similar to those misdemeanors. In addition, a DNA sample would also have to be obtained and retained for an individual convicted of the following misdemeanors: enticing a child for immoral purpose (MCL 750.145a), loitering in a house of ill fame or prostitution [MCL 750.167(1)(I)], leasing a house for purposes of prostitution (MCL 750.454), female under the age of 17 in a house of prostitution (750.462), or a first and second prostitution violation (MCL 750.451), or a local ordinance substantially similar to these misdemeanor offenses. (Note: The bill would appear to remove the requirement for adults or juveniles tried as adults to provide a DNA sample if convicted of fourth degree criminal sexual conduct. However, House Bill 4610 would, for the purposes of DNA profiling, consider any offense a felony if it were punishable by more than one year of imprisonment. Fourth degree CSC, though designated a misdemeanor in the Michigan Penal Code, would therefore trigger the DNA sampling provisions because the crime carries a maximum sentence of two years imprisonment.)

Further, the bill would restrict disclosure of the DNA profiles of DNA samples received under the bill as follows:

• To a criminal justice agency for law enforcement identification purposes.

• In a judicial proceeding as authorized or required by a court.

• To a defendant in a criminal case if the DNA profile was used in conjunction with a charge against the defendant.

• For an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications were removed.

An individual would not have to provide a DNA sample or pay the fee required under the bill if, at the time the individual was convicted of or found responsible for the violation, the investigating law enforcement agency or the Department of State Police (DSP) already had a sample that met the requirements of the DNA Identification Profiling System Act.

The county sheriff or the investigating law enforcement agency would have to provide for collecting the samples in a medically approved manner by qualified persons using supplies provided by the department. Samples, including samples already in the possession of the agency, would have to be forwarded to the department. A sample would be collected by the county sheriff or investigating law enforcement agency after conviction or a finding of responsibility but before sentencing or disposition as ordered by the court and promptly transmitted to the department. However, a law enforcement agency or state agency would not be precluded under the bill from obtaining a sample at or after sentencing or disposition.

Each individual found responsible for or convicted of one or more crimes listed in the bill would be ordered by the court to pay an assessment of $60. This assessment would be in addition to any fine, costs, or other assessments imposed by the court. The assessment would be ordered upon the record and would have to be listed separately in the adjudication order, judgment of sentence, or order of probation. The bill would provide for the suspension of payment of all or part of the assessment if the individual could not pay it.

The court that imposed the assessment could retain ten percent of all assessments or portions of assessments collected for costs incurred under the bill and would have to transmit the money to its funding unit. On the last day of each month, the clerk of the court would have to transmit the assessments or portions of assessments collected as follows:

• Twenty-five percent to the county sheriff or other investigating law enforcement agency that collected the DNA sample as designated by the court to defray the costs of collecting DNA samples.

• Sixty-five percent to the Department of Treasury for the DSP's Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention.

Beginning December 31, 2002, the director of the DSP would have to report by December 31 of each year on the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments to the standing committees of the Senate and House of Representatives concerned with DNA sample collection and retention, the House of Representatives Appropriations subcommittee on state police and military affairs, and the Senate Appropriations subcommittee on state police.

Finally, if a person had only one conviction, the bill would provide a mechanism for a person to petition the sentencing court to order the DNA sample and the DNA identification profile record to be disposed of if that conviction was reversed on appeal. However, the sentencing court could only enter an order to dispose of the DNA sample and profile record if the person proved by clear and convincing evidence that the conviction had been reversed based upon the great weight of the evidence; specifically, that there was overwhelming evidence against the verdict resulting in a miscarriage of justice.

House Bill 4610 would amend Section 2 of act to redefine the term "DNA identification profiling" to mean "a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a biological specimen to determine a match or a nonmatch between a reference sample and an evidentiary sample." The bill would also define the term "felony" to mean a violation of a state penal law for which the punishment is imprisonment for more than one year or an offense that is expressly designated by law to be a felony. Further, the bill would specify that the term "investigating law enforcement agency" would mean the law enforcement agency responsible for the investigation of the offense for which the individual was convicted, but would not include a probation officer employed by the Department of Corrections.

In addition, the bill would specify that it would be a misdemeanor offense for a person who is required by law to provide samples for DNA identification profiling to refuse to or resist doing so. The offense would be punishable by imprisonment for not more than one year or a fine of not more than $1,000, or both. An individual would have to be advised that resistance or refusal to provide the required sample would be a misdemeanor. Also, the bill would specify that if the investigating law enforcement agency or the Department of State Police already had a sample from an individual who was convicted, and the law required a sample from that individual, that another sample would not have to be provided.

Senate Bill 393 would amend the Juvenile Facilities Act (MCL 803.225a). The act currently provides that a juvenile convicted of or found responsible for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC who is under the supervision of the Family Independence Agency (FIA) or a county juvenile agency, may not be placed in community placement or discharged from wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for a determination of the juvenile's secretor status.

The bill would amend this provision in a manner similar to Senate Bill 389. The bill also contains the same privacy protection provision as Senate Bill 389, and would require a juvenile convicted of or found responsible for one or more crimes listed in the bill to pay an assessment fee of $60. The juvenile agency would have to transmit the assessments or portions of assessments collected to the Department of Treasury for the DSP Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA Identification Profiling System Act. In addition, the bill would define "felony" in a manner similar to House Bill 4610, meaning that for purposes of Section 5a of the act, felony would mean a violation of a state penal law for which the punishment included imprisonment for more than one year or an offense expressly designated by law to be a felony.

Further, the bill would delete a provision specifying that a juvenile, upon discharge from wardship, does not have to provide a sample if the Department of State Police already has one and replace it with a provision specifying that another sample would not have to be provided, nor the assessment fee paid, if, at the time the juvenile was convicted or found responsible, the investigating law enforcement agency or the DSP already had a sample from the juvenile that met the requirements of the DNA Identification Profiling System Act. (The act requires the FIA or county juvenile agency, as applicable, to collect the samples and transmit them to the DSP as required under the DNA Identification Profiling System Act.)

Senate Bill 394 would amend the Youth Rehabilitation Services Act (MCL 803.307a). Currently, the act provides that a public ward under a youth agency's jurisdiction for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC may not be placed in community placement or discharged from wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for a determination of the ward's secretor status.

The bill, instead, contains language similar to Senate Bill 389 regarding the offenses that would trigger DNA sampling and retention. The bill also contains the same privacy protection provision as Senate Bill 389 and would require a juvenile convicted of or found responsible for one or more crimes listed in the bill to pay an assessment fee of $60. The Family Independence Agency would have to transmit the assessments or portions of assessments collected to the Department of Treasury for the DSP Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA Identification Profiling System Act.

Further, similarly to Senate Bill 389, the bill would delete a provision specifying that a public ward does not have to provide a sample if the Department of State Police already has one and replace it with a provision specifying that another sample would not have to be provided, nor the assessment fee paid, if, at the time the juvenile was convicted or found responsible, the investigating law enforcement agency or the DSP already had a sample from the juvenile that met the requirements of the DNA Identification Profiling System Act. (The act requires the youth agency to collect the samples and transmit them to the DSP as prescribed by rules promulgated under the DNA Identification Profiling System Act.)

House Bill 4611 would amend the chapter of the Probate Code known as the juvenile code (MCL

712A.18k). Currently, the code requires an individual convicted of or found responsible for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC, to provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for a determination of the person's secretor status.

The bill contains language identical to Senate Bill 389 regarding the felony and misdemeanor offenses that would trigger DNA sampling and retention, as well as to the privacy protection provision, the required sampling before sentencing provision, the provision pertaining to the collection and disposition of the $60 assessment fee, and the report regarding the DNA sample collection rate. The term "felony", with regard to DNA collection and retention, would be defined as it is in House Bill 4610.

The bill would delete a provision that specifies that an individual does not have to provide a DNA sample if the investigating law enforcement agency, the Department of State Police, the Family Independence Agency, or a county juvenile agency already has a sample to instead specify that an individual would not have to provide a DNA sample or pay the fee required under the bill if, at the time the individual was convicted of or found responsible for the violation, the investigating law enforcement agency or the Department of State Police (DSP) already had a sample that met the requirements of the DNA Identification Profiling System Act.

(The juvenile code currently requires the investigating law enforcement agency to provide for collecting the samples in a medically approved manner by qualified persons using supplies provided by the DSP, and requires the samples to be collected and forwarded to the DSP as required under the rules promulgated under the DNA Identification Profiling System Act. This provision was inadvertently eliminated from the enrolled bill due to a clerical error. However, the clerical error did not result in a substantive change, as an earlier Senate substitute bill amended the bill so as to strike the provision. In addition, another subsection in the act currently specifies that samples are required to be collected by the investigating law enforcement agency and transmitted by that agency to the DSP as provided in rules promulgated under the DNA Identification Profiling Act. The bill would make a slight change to this provision by specifying that samples instead be collected and transmitted in the manner prescribed by the DNA Identification Profiling Act.)

House Bill 4612 would amend Public Act 232 of 1953, known as the Department of Corrections act (MCL 791.233d). Currently, the act prohibits the release of a prisoner on parole, for community placement, or for discharge until the prisoner provides samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for the determination of his or her secretor status, if the prisoner is serving a sentence for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC. Under the bill, that prohibition would apply to any prisoner.

Currently, the DOC law requires the department to collect the samples and transmit them to the Department of State Police as prescribed by rules promulgated under the DNA Identification Profiling System Act. The bill would instead require the sampling to be conducted as specified in the DNA Identification Profiling System Act. In addition, the bill would contain the same privacy protection provision as Senate Bill 389. Further, the bill would require a prisoner to pay an assessment fee of $60 to help defray the costs associated with the DNA profiling and retention. The DOC would have to transmit the assessments to the Department of Treasury for the DSP Forensic Science Division. If the DSP already has a DNA sample that meets the requirements of the DNA Identification Profiling System Act, the prisoner would not have to provide another sample or pay the assessment fee.

House Bill 4613 would amend the Michigan Penal Code (750.520m). Currently, the code requires a person convicted of or found responsible for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC, to provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for a determination of the person's secretor status. The bill contains language identical to Senate Bill 389 regarding the felony and misdemeanor offenses that would trigger DNA sampling and retention, as well as to the privacy protection provision, the required sampling before sentencing provision, the provision pertaining to the collection and disposition of the $60 assessment fee, and the report regarding the DNA sample collection rate. The term "felony", with regard to DNA collection and retention, and the term "investigating law enforcement agency", would be defined as they are in House Bill 4610.

Currently, the code requires the investigating law enforcement agency to provide for collecting the samples in a medically approved manner by qualified persons using supplies provided by the DSP, and requires the samples to be collected and forwarded to the DSP as required under the rules promulgated under the DNA Identification Profiling System Act. The bill would delete this provision, and instead specify that the county sheriff or the investigating law enforcement agency would have to collect and transmit the samples in the manner required under the DNA Identification Profiling System Act. The bill would also add that the collecting and forwarding of samples would have to be done after conviction or a finding of responsibility but before sentencing or disposition by the court. However, this would not preclude a law enforcement agency or state agency from obtaining a sample at or after sentencing.

House Bill 4633 would amend the Youth Rehabilitation Services Act (MCL 803.307a). Currently, the act provides that a public ward under a youth agency's jurisdiction for attempted murder; first-degree murder; second-degree murder; kidnapping; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC may not be placed in community placement or discharged from wardship until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and for a determination of the ward's secretor status. The bill contains language identical to Senate Bill 389 regarding the offenses that would trigger DNA sampling and retention.

Currently, the act requires the Family Independence Agency to collect the samples and transmit them to the Department of State Police as prescribed by rules promulgated under the DNA Identification Profiling System Act. The bill would instead require the sampling to be conducted as specified in the DNA Identification Profiling System Act. In addition, the bill would contain the same privacy protection provision as Senate Bill 389. Further, the bill would require a public ward to pay an assessment fee of $60 to help defray the costs associated with the DNA profiling and retention. The FIA would have to transmit the assessments to the Department of Treasury for the DSP Forensic Science Division. If the DSP already has a DNA sample that meets the requirements of the DNA Identification Profiling System Act, the public ward would not have to provide another sample or pay the assessment fee.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the overall fiscal impact of Senate Bill 389, Senate Bills 373-374, House Bills 4610-4613, and House Bill 4633 would be an increase in costs to state agencies and local governmental agencies. Both state and local agencies would also have an indeterminate increase in revenues.

There would be costs to the Department of State Police for distribution of DNA collection kits and processing of samples for entry into the state's DNA database. The department reports that it processes approximately 3,000 samples per year under current law, and that processing costs (including the costs of distributing the kits) are about $64 per sample. Currently, there is no information on how the total number of samples processed annually breaks down between newly convicted adults, juveniles, and prisoners tested prior to release.

Offenses currently subject to DNA collection requirements constituted about five percent of all felony dispositions in Michigan in 1998. The actual number of offenders sentenced in 1998 is substantially lower than the numbers of dispositions because one offender may have more than one disposition. However, assuming that the proportion of offenders subject to DNA collection is comparable to the proportion of dispositions to which the requirements applied, then 2,100 of the 38,000 felons sentenced in 1999 were subject to DNA sampling requirements under current law. Under the bills, the remaining 95 percent, or approximately 36,100 additional newly sentenced felons annually, would be subject to DNA collection requirements.

The House Fiscal Agency goes on to report, however, that this figure accounts only for newly-sentenced felons; it does not include juvenile offenders and misdemeanor and ordinance violators who would be newly subject to the sampling requirements, nor does it include felons in state prisons and corrections camps who would have to provide DNA samples prior to community placement, parole, or discharge on the maximum term. There are no available statewide data on the numbers of these other offenders who would be newly subject to DNA sampling requirements. However, roughly 10,000 prisoners are transferred to community placement or paroled from prison annually, with perhaps another 1,000 discharged on the maximum term. The proportion of these offenders who are subject to the current sampling requirement is undoubtedly low,

because parole rates are low for offenders convicted of the offenses to which current law applies.

Assuming that samples would be required from an additional 47,000 felons annually, the House Fiscal Agency reports that the bills would increase costs for the Department of State Police by approximately $3 million annually for the felony portion of the caseload; there would be additional costs related to juveniles and misdemeanor and ordinance violators. Assuming that the bills substantially increased the volume of testing, they also could necessitate additional state police staffing and they could substantially increase collection costs for state and local authorities, including the Department of Corrections, the Family Independence Agency, and local law enforcement agencies and juvenile authorities.

In addition, the bills include provisions for a $60 assessment to be paid by individuals required to submit a DNA sample. For newly convicted adults, this assessment would be distributed to the funding unit of the court in which the conviction is made (10 percent of the amount paid; $6 if the full $60 is paid), the county sheriff or other law enforcement agency which collects the sample (25 percent/$15), and the Forensic Science Division of the Department of State Police (65 percent/$39). For juveniles and prisoners required to submit a sample upon release from a state or local facility, the entire assessment would be paid to the Forensic Science Division of the Department of State Police.

The bills include a provision for the assessment to be waived if the affected individual was unable to pay it. Assuming the assessment were levied and collected in full (noting that often times such assessments are not collectible or encounter implementation difficulties), the bills would result in annual revenue of $216,600 for court funding units, $541,500 for county sheriffs or other local law enforcement agencies, and $2.1 million for the Department of State Police for the felony portion of the caseload (based on the felony conviction and release figures above). Presumably, these entities would receive additional revenue for juveniles and misdemeanor and ordinance violations under the bills (again, with the collection and implementation caveats).

The House Fiscal Agency reports that it is worth noting that the Department of State Police has recently received a federal grant of approximately $750,000 to clear a backlog of 15,000 samples that have been collected under current statute. It is unclear whether (and how much) additional grant revenue might be available for this purpose in the future.

Further, the agency reports that the provision in House Bill 4610 that would make it a misdemeanor offense to refuse or resist DNA sampling could increase local correctional costs. The provision would also increase the amount of penal fine revenue going to local libraries to the extent that it increased collections of penal fines. (8-16-01)

ARGUMENTS:

For:

DNA profiling is the best thing to come along in criminal justice since the discovery that each person's fingerprints are unique to that individual. Before fingerprinting, many innocent persons were jailed or executed and many guilty roamed free. Unfortunately, as investigative techniques have advanced, so has the ability of criminals to circumvent detection. For example, it is not uncommon for persons to wear gloves during the commission of a crime so that an identifying fingerprint is not left behind. With the advent of DNA profiling, a person can be matched to evidence left at the scene of a crime by things such as a strand of hair, skin cells under a victim's fingernails, semen, blood, and so on. Not only does such information enable law enforcement to identify the perpetrator of a crime, it also can definitively rule out an innocent person who had been considered as a suspect.

The current state and national DNA database, the Combined DNA Index System (CODIS), primarily contains the profiles of persons convicted of violent crimes such as rape and murder. While this represents a substantial investigative tool, it has been pointed out that many individuals convicted of nonassaultive crimes go on to commit violent crimes. For instance, approximately one-third of individuals who previously had been convicted of only property crimes such as breaking and entering or burglary go on to commit violent crimes. Therefore, if a DNA sample were taken of all persons convicted of felony offenses, many more violent crimes such as assault, rape, and murder could be solved today.

Eight states currently collect DNA profiles on all convicted felons. According to testimony offered by a representative of the Department of State Police, Virginia had 178 "cold hits" last year and at least 81 so far this year. A "cold hit" is when there are no investigative leads, just a DNA profile from a sample that is run through the database to see if it matches a

profile currently in the database. A cold hit does not ensure a conviction, but it certainly jumpstarts an investigation and provides important evidence. DNA profiles can also significantly reduce investigative time and therefore the costs associated with an investigation by accurately ruling out some initial suspects and helping to focus the investigation on more likely suspects. It should be noted that the crime a perpetrator is convicted of is often the second or third crime the person has actually committed. If the DNA database were expanded to include all adult felonies, certain misdemeanors, and specified crimes committed by juveniles, it would enable law enforcement to identify and prosecute criminals before they have the opportunity to add to their list of victims.

Against:

Though there are arguments to support the expansion of the state DNA database to include convictions for a broader range of crimes, questions must be raised about the choice of felony and misdemeanor crimes that the bills contain. The bills would require adults and those juveniles tried as adults who are convicted of felony offenses to provide samples for DNA profiling, as well as persons already incarcerated for felony offenses before parole, release, or community placement. This means all felonies, even those associated with white-collar crimes and other nonassaultive crimes. This is simply excessive. The proposal should be limited to violent crimes or crimes that may be a precursor to the commission of violent crimes; for instance, evidence shows a strong link between the commission of certain types of felony property crimes like breaking and entering and the eventual commission of violent crimes.

On the other hand, statistics also demonstrate that minor incidents of domestic assault, which are misdemeanor offenses, are associated with escalating violence toward a spouse or domestic partner. Yet, a person convicted of a first or second domestic assault offense would not be required to give a sample for DNA profiling.

Response:

Though including a first or second domestic assault conviction in the list of misdemeanors requiring a DNA sample and profile has merit, the same case could be made for inclusion of all assault charges. However, expanding the bills' scope to include misdemeanor assault convictions could triple the anticipated number of DNA samples required to be collected and profiled. At this time, the cost would be prohibitive. Perhaps in the future, when the costs to conduct such tests have further decreased, the issue could be revisited.

Against:

The state currently processes approximately 3,000 DNA samples a year. In 1999, 38,000 individuals were convicted of felonies. Therefore, there would be a significant cost increase in requiring samples and testing of all convicted felons. In light of the current economic situation of the state, perhaps such legislation should be delayed.

Response:

According to information supplied by the Department of State Police and the Office of the Governor, the Michigan State Police Forensic Science Division applied for and received a federal grant last year that has enabled the department to eliminate its profiling backlog. There are current and proposed federal programs that may continue to offer grants to states for DNA testing. Therefore, federal money should still be available to fund current and future testing. Also, the cost per test has dropped from about $50 a sample to $32. As technology continues to develop and improve, further cost reductions are expected; for instance, DNA analysis of oral smears obtained by swabbing the inside of the mouth, known as buccal swabs, are less invasive than blood collection, are just as reliable, and are becoming more affordable. Expansion of the DNA database to include all felons is also expected to significantly reduce costs related to investigations. Besides, the point of the legislation is to authorize the collection of DNA samples from all adults convicted of felonies and juveniles under certain circumstances. The samples can be analyzed and entered into the CODIS system as funding becomes available.

Against:

The bills have tremendous potential for abuse, and concerns about privacy issues must be raised. Unlike fingerprints, which only provide information on identification, DNA can provide information that far exceeds what is necessary to a criminal investigation. Information related to the predisposition for genetic diseases, among other things, can be revealed through genetic testing. Therefore, it is important to restrict access to the DNA records to only those who have a demonstrated need to examine them.

Response:

The enrolled bills address the concern of unauthorized access to the DNA records. Under the bills, access would be restricted to criminal justice agencies and then only for identification purposes and to judicial proceedings under a court order. A defendant could receive a copy of his or her DNA

profile if the profile had been used to bring charges for a criminal offense. Though the bills would authorize the information to be used for an academic, research, or statistical analysis, all personal identifiers would have to be removed first. These provisions should reduce the possibility of a person's DNA information being widely or easily disseminated.

In addition, the thirteen genetic markers selected for use in the CODIS system were selected as law enforcement markers because they do not contain, nor are they linked to, the genetic codes associated with medical disorders and diseases. The DNA profile itself consists of a digital readout of numbers and letters. It does not identify a person by sex, race, or any other genetic markers. A DNA profile would no more reveal personal information about a person than a fingerprint could be used to sketch a suspect's facial features. Currently, the DNA records collected and retained by the state police contain only the name of the agency that submitted the sample, the DNA profile, and the name of the DNA personnel associated with the analysis of the sample. Further, the CODIS database stores a digital representation of a person's DNA, not the actual physical sample. Therefore, many concerns regarding the collection of unnecessary information are unfounded.

Analyst: S. Stutzky

■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.