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Senate Bill 1 (Substitute S-4 as passed by the Senate)  
Sponsor: Senator Shirley Johnson  
Committee: Judiciary

Date Completed: 2-13-01

### **RATIONALE**

In recent years, technological progress in genetic testing has made DNA evidence a predominant forensic technique for identifying criminals. When a biological sample, such as blood, hair, or semen, is left at a crime scene or on a victim, DNA testing can compare that sample with one taken from a suspect. If the test result is conclusive, it can serve to confirm his or her guilt. In the course of criminal investigations, DNA samples from crime scenes are collected, analyzed, and stored. According to a May 2000 *Detroit News* article, the Michigan State Police Crime Lab receives about 280 DNA samples per month, mostly from "rape kits" used by doctors and nurses to collect evidence. The lab also has collected more than 15,000 DNA samples from convicted sex offenders since 1990, when the law began requiring this practice. Since 1998, all states have been collecting DNA samples from convicted sex offenders and analyzing and storing DNA profiles in computer databases. In addition, the Federal Bureau of Investigation apparently has a national DNA profile database.

The increasing availability, use, and reliability of DNA evidence has raised questions about whether existing statutes of limitations for some crimes, particularly sex offenses, should continue to be observed in the prosecution of cases in which DNA evidence is available but no suspect has been identified. It has been suggested, for example, that an unknown suspect in a rape case whose DNA was collected and profiled should not escape prosecution merely because a certain number of years have passed without the perpetrator's being identified by name. In addition, while most crimes have a six-year statute of limitations under Michigan law, a handful of serious offenses carry a 10-year limitations period. The statute of limitations for criminal sexual conduct (CSC) offenses as well as involvement in child sexually abusive activity or material is six years, but if the victim is less than 18 years old, the limitations period is six years from the date of the crime or the victim's 21st birthday, whichever occurs first. Some people believe that the statute of limitations for those

offenses should be extended for victims of all ages and that the limitations period should be delayed indefinitely if there is DNA evidence from an unidentified individual.

### **CONTENT**

**The bill would amend the Code of Criminal Procedure to revise the statute of limitations for criminal sexual conduct and involvement in child sexually abusive activity or material, and to add attempted murder to the crimes for which the limitations period is 10 years.** The bill also includes a statement of legislative intent.

Under the Code, except for specified offenses, all indictments must be filed within six years after the offense. (There is no statute of limitations on a murder charge; the limitations period is 10 years for kidnapping, extortion, assault with intent to commit murder, and conspiracy to commit murder.) If an alleged victim is under 18 at the time of an offense, however, an indictment may be filed within six years after the commission of the offense or by the alleged victim's 21st birthday, whichever is later, for involvement in or possession of child sexually abusive activity or material; first-, second-, third-, or fourth-degree CSC; or assault with intent to commit CSC. Under the bill, an indictment for those offenses could be found and filed within 10 years after the offense was committed or by the alleged victim's 21st birthday, whichever was later, regardless of the victim's age at the time of the offense.

In addition, if evidence of a CSC or child sexually abusive activity or material violation were obtained and it contained DNA that was determined to be from an "unidentified individual", an indictment against that individual for the violation could be filed at any time after the offense was committed. After that individual was identified, however, an indictment would have to be filed within 10 years or by the alleged victim's 21st birthday, whichever was later. ("Unidentified individual" would include an individual who could only

be identified by his or her DNA profile.)

The bill states: "The legislature intends that the extension or tolling, as applicable, of the limitations period provided in this amendatory act shall apply to any of those violations for which the limitations period has not expired at the time this amendatory act takes effect."

MCL 767.24

## **BACKGROUND**

Human cells that contain a nucleus, such as those found in hair and skin, hold chromosomes that contain an essential component of all living matter known as deoxyribonucleic acid (DNA). DNA is the complex molecule that houses genetic instructions and transmits hereditary patterns. The genetic code, found in a DNA molecule, is made up of long strands that transmit instructions for general human characteristics, such as arms and legs, and shorter sequences (called "markers") that give instructions for characteristics that distinguish individuals from each other. Except in the case of identical twins, each person's genetic code is unique to that individual.

Genetic testing was first developed in England in the early 1980s. Originally, crime laboratories relied primarily on "restrictive fragment length polymorphism" (RFLP) testing, which requires a comparatively large quantity (100,000 or more cells) of good quality DNA. Most laboratories now are shifting to tests based on the "polymerase chain reaction" (PCR) method, a kind of molecular copying technique that can generate reliable data from extremely small samples of DNA (50 to 100 cells).

Several basic steps are performed during DNA testing regardless of the type of test being done. The general procedure includes: 1) the isolation of the DNA from an evidence sample containing DNA of unknown origin and, generally at a later time, the isolation of DNA from a sample (e.g., blood) obtained from a known individual; 2) the processing of the DNA so that test results may be obtained; 3) the determination of the DNA test results (or types) from specific regions of the DNA; and 4) the comparison and interpretation of the test results from the unknown and known samples to determine whether the known individual is not the source of the DNA or is included as a possible source of the DNA ("Postconviction DNA Testing: Recommendations for Handling Requests", by the Working Group on Postconviction Issues of the National Commission on the Future of DNA Evidence).

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Evidence in sex crime cases often can include DNA samples left by a perpetrator in the form of hair, tissue, saliva, or other bodily fluids. With the increased effectiveness of DNA collection and profiling techniques, a rapist's identity, though perhaps not name, can be secured to a virtual certainty. Since DNA evidence is very reliable, there is little reason to continue to limit the period during which a prosecution can be pursued. One reason for statutes of limitations is to guarantee that defendants have a fair and reasonable opportunity to defend themselves before evidence has been diminished or tainted by time. Now, however, DNA evidence can be collected, examined, and stored without losing its validity over time. Although the bill would not entirely remove the statute of limitations for CSC and child sexually abusive activity or material cases, by tolling the limitations period in a rape or child sexual exploitation case until a DNA profile could be matched with a suspect, the bill would recognize technological advances that render the statute of limitations unnecessary.

**Response:** DNA profiling should not be viewed as a trump card or panacea for all unsolved criminal cases in which it is collected. While DNA, like fingerprints, can place a person at a particular scene, it cannot describe the circumstances under which the person was there. Furthermore, DNA evidence requires particularly careful handling by crime scene experts and proper police storage facilities if it is to have any probative value.

### **Supporting Argument**

By tolling the limitations period when DNA evidence was obtained in CSC cases, the bill could prevent criminals from getting away with heinous crimes just because a number of years had passed since the offense. A recent case in Genesee County provides an example. According to testimony of the Genesee County Prosecuting Attorney, in 1999 a man who attacked and raped two children was convicted of rape and attempted murder. As a result of DNA evidence secured in this case, a prior unsolved kidnapping and sexual assault case that occurred in 1993 was solved. In the earlier case, DNA evidence of an unidentified assailant had been collected. The DNA evidence from that case matched DNA evidence collected in the 1999 case. The Genesee County prosecutor charged the perpetrator with kidnapping and CSC in the 1993 case, but the rape charge was dismissed because more than six years had passed since the offense was committed. If the bill had been in effect before the six-year period expired, the statute of limitations would have been

toll until the unidentified DNA had been matched with a particular suspect and the offender would be facing charges of CSC as well as kidnapping.

**Response:** It may not be necessary to toll the statute of limitations when DNA evidence is collected in order to secure an indictment against an unidentified perpetrator. Filing charges against a person based on his or her DNA, even when the person's name has not been identified, may be an alternative. According to an Associated Press article that appeared in the *Lansing State Journal* ("DNA strategy opens new road to justice--or Pandora's box", January 7, 2001), a rapist was recently indicted in California one day before the statute of limitations on the case expired. The indictment was not against a named defendant, but against the genetic code of a DNA sample taken six years earlier from a rape victim. Existing limitations periods could be met with the use of such "John Doe" indictments, identifying the defendant by his or her DNA profile. If the person who fit that profile were later identified by name, then he or she could be prosecuted because the charges were filed before the statute of limitations period ran.

#### **Supporting Argument**

Under the Code of Criminal Procedure, an indictment for murder may be filed at any time after the death of a victim. The statute of limitations is 10 years for kidnapping, extortion, assault with intent to commit murder, and conspiracy to commit murder (and would be 10 years for attempted murder, under the bill). All other offenses, including CSC and involvement in child sexually abusive activity or material, are subject to a six-year statute of limitations.

While kidnapping, extortion, assault with intent to murder, conspiracy to murder, and attempted murder are all very serious offenses that warrant a longer-than-usual period of limitations for solving the crime, criminal sexual conduct and sexually abusive activity involving a child also are egregious enough to demand a longer statute of limitations. In addition, it is not at all unusual for a victim of rape or child sexual abuse to delay reporting the crime for various reasons (e.g., shame, humiliation, fear, or filiation with the perpetrator). By allowing an indictment for CSC and involvement in child sexually abusive activity or material within 10 years of the offense or by the victim's 21st birthday, the bill would recognize the serious and sensitive nature of those crimes and provide for more investigative time to solve the crime and prosecute the offender.

#### **Opposing Argument**

Statutes of limitations are a bedrock of America's

legal system. They exist to provide a balance in the criminal justice system and enable defendants to meet the charges against them. As more time passes, it becomes more difficult for a defendant to mount an effective defense as memories fade, witnesses move on or pass away, and other evidence is misplaced or destroyed. While the use of DNA evidence can be a powerful prosecutorial tool, the State should be wary of radically adjusting the law's time-honored protections for the accused in criminal cases. The statute of limitations has a strong role to play in preserving defendants' due process rights.

**Response:** The bill would not eliminate the statute of limitations for CSC and child sexually abusive activity or material cases. It merely would lengthen the limitations period to 10 years, in recognition of the seriousness of those offenses, and toll the statute of limitations when DNA evidence was obtained until the DNA profile identified a particular individual.

Legislative Analyst: P. Affholter

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many criminal sexual conduct crimes for which DNA evidence is obtained against an individual, are not prosecuted within the current statute of limitations for the offense. Assuming that two additional individuals a year would be convicted of first-degree CSC as a result of these changes to the statute and would serve a term of imprisonment of 25 years, the costs of incarceration to the State would increase \$1,100,000, given an average annual cost of \$22,000.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.