

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 389 (Substitute S-1 as passed by the Senate)
Senate Bill 390 (as passed by the Senate)
Senate Bill 391 (Substitute S-1 as passed by the Senate)
Senate Bill 392 (Substitute S-1 as passed by the Senate)
Senate Bill 393 (Substitute S-1 as passed by the Senate)
Senate Bill 394 (Substitute S-1 as passed by the Senate)
Sponsor: Senator William Van Regenmorter (Senate Bills 389 through 392)
Senator Thaddeus G. McCotter (Senate Bill 393)
Senator Bill Bullard, Jr. (Senate Bill 394)
Committee: Judiciary

Date Completed: 5-2-01

RATIONALE

The increasing availability, use, and reliability of DNA evidence have raised questions about whether the State should expand existing requirements for the collection of biological samples from convicted criminals for DNA identification profiling. Currently, 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. It has been suggested that DNA profiling should be conducted on all convicted felons, as well those convicted of some violent or sexually deviant misdemeanors. Also, proponents of expanded DNA collection believe that DNA profiling should apply to more juvenile offenses than under current law.

Michigan has collected DNA samples for profiling from some criminals since 1990. All states have been collecting samples from convicted sex offenders and analyzing and storing their DNA profiles since 1998, and eight states reportedly have DNA profiling requirements that cover all convicted felons. Some people believe that Michigan should join those eight states. (See **BACKGROUND** for more information on DNA testing.)

CONTENT

Senate Bills 389 (S-1), 390, 391 (S-1), 392 (S-1), 393 (S-1), and 394 (S-1)

would amend various acts to require that a person convicted of any felony or certain specified misdemeanors, or a juvenile found responsible for certain violations, provide samples for DNA identification profiling, and require that the Department of State Police permanently retain those DNA profiles. The bills are tie-barred and would take effect on October 1, 2001.

Under Senate Bills 389 (S-1) and 391 (S-1), "felony" would mean a violation of a Michigan penal law for which the offender could be punished by imprisonment for more than one year or an offense expressly designated by law to be a felony.

Senate Bill 389 (S-1) would amend the DNA Identification Profiling System Act; Senate Bill 390 would amend the Department of Corrections (DOC) law; Senate Bill 391 (S-1) would amend the Michigan Penal Code; Senate Bill 392 (S-1) would amend the juvenile code; Senate Bill 393 (S-1) would amend the Juvenile Facilities Act; and Senate Bill 394 (S-1) would amend the Youth Rehabilitation Services Act.

Senate Bill 389 (S-1)

The DNA Identification Profiling System Act requires that the Department of State Police permanently retain a DNA identification profile of an individual obtained from a sample in the manner prescribed by the Department if that

individual is 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 CSC (MCL 750.520b-750.520e); or assault with intent to commit CSC (MCL 750.520g). Under the bill, the Department would have to retain a DNA profile of a juvenile found responsible for any of those offenses or for assault with intent to commit murder (MCL 750.83) or manslaughter (MCL 750.321), and of any individual convicted of any felony or attempted felony or any of the following misdemeanors:

- Assault and battery, including domestic violence (MCL 750.81).
- Aggravated assault, including aggravated domestic violence (MCL 750.81a).
- Breaking and entering or illegal entry (MCL 750.115).
- Fourth-degree child abuse (MCL 750.136b(6)).
- Enticing a child for immoral purposes (MCL 750.145a).
- Indecent exposure (MCL 750.335a).
- Stalking (MCL 750.411h).

The bill would require that a sample collected under the Act be taken before a convicted person was sentenced by a court. Also, the bill specifies that it would be a misdemeanor for an individual who was required to have his or her biological sample collected for DNA profiling to refuse or resist the collection of the sample. The individual would have to be advised that his or her refusal was a misdemeanor.

In addition, the bill would allow the disclosure of DNA profiles of DNA samples only 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 were 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.

The bill would revise the definition of "DNA identification profile". Currently, that term means a validated scientific method of analyzing components of DNA molecules in a sample to identify the pattern of the components' chemical structure that is unique to the individual. Under the bill, the term would mean a validated scientific method of analyzing components of DNA molecules in a biological specimen to determine a match or a nonmatch between a reference sample and an evidentiary sample.

Senate Bill 390

The DOC law 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 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. (The DOC law requires the DOC 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.)

Senate Bill 391 (S-1)

The Michigan Penal Code requires a person convicted of 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. Under the bill, the requirement would apply to a juvenile found responsible for one of those violations, assault with intent to murder, or manslaughter, and to a person convicted of a felony or attempted felony or any of the misdemeanors specified above. 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. (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 Department of State Police, and requires the samples to be collected and forwarded to the Department of State Police as required under the rules promulgated under the DNA Identification Profiling System Act.)

Senate Bill 392 (S-1)

The juvenile 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. Under the bill, the requirement would apply to a person convicted of or found responsible for one of those violations, assault with intent to murder, or manslaughter. (The juvenile 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 Department of State Police, and requires the samples to be collected and forwarded to the Department of State Police as required under the rules promulgated under the DNA Identification Profiling System Act.)

Senate Bill 393 (S-1)

The Juvenile Facilities Act 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. Under the bill, that provision would apply to a juvenile convicted of or found responsible for one of those violations, assault with intent to murder, or manslaughter. (The Act requires the FIA or county juvenile agency, as applicable, to collect the samples and transmit them to the

Department of State Police as prescribed by the rules promulgated under the DNA Identification Profiling System Act.)

Senate Bill 394 (S-1)

The Youth Rehabilitation Services 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. Under the bill, that provision would apply if the public ward were under a youth agency's jurisdiction for one of those violations, assault with intent to murder, or manslaughter. (The Act requires the youth 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.)

MCL 28.172 et al. (S.B. 389)
791.233d (S.B. 390)
750.520m (S.B. 391)
712A.18k (S.B. 392)
803.225a (S.B. 393)
803.307a (S.B. 394)

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

When Michigan's DNA profiling requirements were enacted, the use of DNA identification as a crime-fighting tool was in an early stage. Since the technology at that time required fairly substantial biological samples of blood, seminal fluid, or tissue, it made sense to require DNA profiling only of those convicted of CSC offenses and a few other serious, violent crimes. In the 11 years since Michigan first began to require profiling, technological advances in the way DNA samples can be collected and analyzed have revolutionized the role of forensic labs in analyzing evidence from crime scenes. These advances have enabled analysts to capture a person's profile with a very small sample not only of blood, semen, or tissue, but also from such things as saliva, sweat, or flakes of skin. Consequently,

the potential for use of DNA evidence as a reliable and effective crime-fighting tool has multiplied. Indeed, a recent *Detroit Free Press* article ("Sleuthing, science solve 1973 slaying case", March 9, 2001) reported that a DNA sample derived from saliva detected on a cigarette butt found in a suspect's trash linked him to the slaying of a young woman in a case that had gone unsolved for almost three decades. Police were able to match the DNA profile from the saliva sample on the cigarette to evidence that had been obtained from the victim's body during the 1973 investigation and carefully preserved for 28 years.

It stands to reason that increasing the pool of DNA profiles the Department of State Police keeps in its database could greatly aid law enforcement officials in tracking and identifying criminal perpetrators, exonerating innocent suspects, avoiding future criminal acts by identifying offenders early, and possibly even deterring people from committing violations because they would know that they could be easily identified through DNA profile comparisons. In fact, the DNA profile database in the State of Virginia (which takes samples from all convicted felons and some juvenile offenders) reportedly has helped to solve more than 200 crimes. According to testimony before the Senate Judiciary Committee by the Department of State Police, that state currently is identifying a suspect from its DNA database, when other leads have failed, approximately every other day.

The man recently arrested for the 1973 murder reportedly had been convicted of and incarcerated for other crimes in the intervening years since the murder. Had he been required to submit a biological sample for DNA profiling subsequent to any of those convictions, the Department of State Police would have had his profile on record for comparison to evidence in unsolved cases, and using a cigarette from his trash 28 years after the crime would not have been necessary. Michigan should join the eight other states that require DNA profiling of all convicted felons. Police should not be denied the use of this efficient and effective investigative tool.

Response: Including the provision in Senate Bill 389 (S-1) that refusing or resisting collection of a sample for DNA profiling would be a misdemeanor may be ill-advised. It could suggest that a convicted criminal who

was subject to profiling would have the option of not submitting a sample, and a felon facing the prospect of a long prison sentence could be willing to incur an additional misdemeanor conviction. The bill should at least specify that the person's sample would be collected with or without his or her cooperation.

In addition, it is unclear whether a juvenile tried and convicted as an adult would be subject to profiling for all felonies, or only for the offenses for which juvenile offenders would be subject to profiling. Senate Bills 389 (S-1) and 391 (S-1) appear to draw a strict line between being "convicted" or "found responsible for" of an offense, seemingly indicating that a juvenile tried and convicted as an adult would be subject to the broader DNA profiling requirement. On the other hand, Senate Bills 392 (S-1), 393 (S-1), and 394 (S-1) refer to an individual "convicted of or found responsible for" the juvenile offenses. This would seem to indicate that a juvenile tried and convicted as an adult would be subject to the narrower DNA profiling requirements for offenders adjudicated as juveniles.

Opposing Argument

While advancements in the area of DNA technology can be a boon for medical, scientific, and forensic applications, there is great potential for abuse in the collection and sharing of information derived from DNA profiles. Knowledge of a person's DNA can provide insight into a large amount of very private information, including information about ethnicity, family relationships, and the likelihood of developing genetic conditions and diseases. A great deal of the information contained in human DNA is not at all pertinent to law enforcement and should not be maintained by governmental entities. Privacy rights and the role of government in keeping tabs on citizens are drawn into question by the proposal to expand greatly the Department of State Police's DNA profile database.

Before the DNA database is vastly expanded, the potential progression of this action should be considered. If it is convenient, efficient, and effective for law enforcement purposes to collect DNA samples from every convicted felon, many juvenile offenders, and some misdemeanants, then expanding DNA profiling to all accused or even merely suspected of a crime could be the next step. The extreme of

such a movement would be to require all citizens to donate a biological sample for DNA profiling.

Given that Michigan already has an established, though somewhat limited, DNA profile database for law enforcement purposes, the State should ensure that storage and use of, and access to, DNA profiles are protected, before expanding the requirement that criminals contribute to the database.

Response: Upon conviction, criminals forfeit certain privacy rights. The current DNA profiling requirements and the bills' proposal to expand them are justified. In addition, Senate Bill 389 (S-1) includes safeguards for the privacy of DNA profiles, which the profiles could be disclosed only for the specific purposes identified in the bill.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 389 (S-1) through 394 (S-1) would have an indeterminate fiscal impact on State and local government. The bills would require perhaps a 10-fold increase in the purchase and distribution of DNA collection kits, handling of kits, profiling of DNA samples taken, and entry of data into a DNA database by the Department of State Police and the collection of DNA samples by the DOC, FIA, and local units of government.

The DOC and FIA could incur additional costs due to being required to draw additional samples, though the personnel and procedures to do this are already in effect under the administration of the current law.

State Police. Under current law, the Department of State Police is responsible for the distribution of DNA collection kits to those State departments and local agencies that perform the actual drawing of these DNA samples: the Department of Corrections, the Family Independence Agency, and local county sheriff departments. The Department of State Police is responsible for the profiling of these samples and their entry into a State database of DNA files.

The approximate cost to the Department of State Police to fulfill its requirement to collect

and maintain a DNA database of persons convicted of certain crimes is \$64 each. This includes approximately \$3 for the DNA collection kit, \$32 for each profile completed, and the remainder for handling, processing, and data entry. Under current statutory requirements for collecting DNA from convicted persons, the Department of State Police processes 3,000 samples annually. This cost is borne by the State Police and funded, in part, by Federal funds awarded to the State to pay for profiling costs.

Based on the estimated DOC caseloads, the increased costs to the State Police of DNA collection activity would be at least \$1.5 million. The State Police would likely be required to hire an additional 3.0 FTEs (technicians and analysts) to handle the DNA profiling. To handle additional data entry duties, another 4.0 FTEs and a minimum of \$100,000 for new automation and programming costs would be needed. In addition, as the DNA database expanded, there would be much more activity in comparing DNA crime scene evidence with the new database, requiring as many as 13.0 to 15.0 FTE technician positions to perform casework.

Currently, testing by a new method of DNA collection - a mouth swab rather than a drawn blood sample - may soon be used by the State, which would reduce unit and handling costs.

Family Independence Agency. Currently, each FIA day treatment and detention facility maintains a supply of DNA profile sample collection kits. Youths committed under the Youth Rehabilitation Services Act who have been convicted or adjudicated of offenses outlined in the juvenile code must have their files checked to determine if a DNA profile was submitted to the State Police. If a profile has been sent to the State Police, no further action is necessary. If not, as part of the intake process a sample must be taken subsequent to the youths' commitment to the FIA. The offenses currently included fall under Classes I, II and III of the juvenile justice system. The bills would expand the affected classes to include those and some Class IV offenses. An increase in the cost for health care personnel (physician, nurse, or trained technician) would be required to obtain samples from an increased number of offenders.

Also, counties would be required to provide DNA samples for an increased number of adjudicated youths, which could increase their costs for health care personnel.

Corrections. There are no data available to indicate how many more DNA samples the Department of Corrections would have to collect and transfer to the Department of State Police, if the prohibition on release without a DNA sample were extended to all prisoners being released on parole, community placement, or discharge, under Senate Bill 390. In 1998, there were 45,879 prisoners, of whom 13,913 were serving for attempted murder, first- or second-degree murder, kidnapping, first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC. There were 11,022 prisoners moved to parole or in community placement centers according to the Data Fact Sheet from December 2000. Assuming that the make-up of the prison population is similar to the make-up of those released or in community placement, then 30% or about 3,307 would have been required to submit a sample under current law and the number of samples would increase by 7,715. It should be noted that there are several problems with this estimate, however, including that most first- and second-degree murderers are not released from prison, resulting in an overstatement of the number of offenders who would have to be sampled under current law, and that some offenders released may already have a sample on file with the State Police, which would inflate the number needed.

Senate Bill 391 (S-1) also would have an indeterminate fiscal impact on local units of government. In 1998, there were 40,016 offenders convicted of felony crimes, of whom 30,130 received probation, a split sentence, or jail and/or a fine. If one assumed that 50% of the offenders convicted each year of a felony and sentenced to a disposition other than prison already have a DNA sample with the Department of State Police, then 15,065 offenders would have to be sampled each year using county facilities. Also, there are no statewide data available to indicate how many offenders a year commit the listed misdemeanors. Misdemeanants are under the supervision of local units of government.

The proposed legislation, with its requirement that DNA samples be taken between

conviction and sentencing of an individual, could require county sheriff departments (or other agencies in custody of a person prior to sentencing) to incur additional costs in order to capture all those samples that would have to be taken. Since all the criminals who currently require testing would enter some type of correctional facility, all those subject to DNA sampling can be handled at entry. Many offenders who might not enter a correctional facility (probationers or misdemeanants, for example) also would be subject to sampling, requiring additional processing.

Fiscal Analyst: B. Baker
C. Cole
K. Firestone

A0102\389a

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.