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SFA BILL ANALYSIS

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Senate Bills 389 through 394 (as introduced 4-18-01)
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: 4-25-01

CONTENT

Senate Bills 389 through 394 would amend various acts to require that a person convicted of any felony or certain specified misdemeanors, or found responsible for a juvenile offense that would be a felony or a specified misdemeanor if committed by an adult, provide samples for DNA identification profiling, and require that the Department of State Police permanently retain those DNA profiles. Currently, only persons 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.

Under Senate Bills 389 and 391 through 394, "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 Bills 389 and 391 through 394 are tie-barred to each other and to Senate Bill 390, which is tie-barred to Senate Bill 389. All of the bills would take effect on October 1, 2001.

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

Senate Bill 389

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 an individual convicted of any felony or attempted felony, found responsible for a juvenile offense or attempted offense that, if committed by an adult, would be a 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).

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

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 determination of the person's secretor status. Under the bill, the requirement would apply to a person convicted of a felony or attempted felony or any of the misdemeanors specified above. (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

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 determination of the person's secretor status. Under the bill, the requirement would apply to a person convicted of a felony or attempted felony, found responsible for a juvenile offense or attempted offense that, if committed by an adult, would be a felony or attempted felony, or any of the misdemeanors specified above. (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

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 determination of the juvenile's secretor status. Under the bill, that provision would apply to a juvenile convicted of a felony or attempted felony, found responsible for a juvenile offense or attempted offense that, if committed by an adult, would be a felony or attempted felony, or any of the misdemeanors specified above. (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 rules promulgated under the DNA Identification Profiling System Act.)

Senate Bill 394

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 determination of the ward's secretor status. Under the bill, that provision would apply if the public ward were convicted of a felony or an attempted felony or any of the misdemeanors specified above. (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 & 28.176 (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)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 389 through 394 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 that perform the actual drawing of these DNA samples: the Department of Corrections and the Family Independence Agency. 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 (described below), 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 also would have an indeterminate fiscal impact on the Department of Corrections and local units of government. In 1998, there were 40,016 offenders convicted of felony crimes, of whom 9,886 received a prison sentence and 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 inclusion of misdemeanors subject to sampling, could require local law enforcement and local jail operations 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.

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