

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4610 (Substitute S-2 as reported)

House Bill 4611 (Substitute S-2 as reported)

House Bill 4613 (Substitute S-2 as reported)

House Bill 4633 (Substitute S-2 as reported)

Sponsor: Representative Jennifer Faunce (House Bill 4610)

Representative Larry Julian (House Bill 4611)

Representative Thomas M. George (House Bill 4613)

Representative William O'Neil (House Bill 4633)

House Committee: Criminal Justice

Senate Committee: Judiciary

Date Completed: 6-11-01

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 sexually deviant misdemeanors. Proponents of expanded DNA collection also 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, as well as impose a financial assessment on those required to supply a sample for DNA profiling, and limit the disclosure of DNA profile information. (See **BACKGROUND** for more information on DNA testing.)

CONTENT

House Bills 4610 (S-2), 4611 (S-2), 4613 (S-2), and 4633 (S-2) would amend various acts to do all of the following:

- **Require a person convicted of any felony or certain specified misdemeanors, or a juvenile found responsible for certain violations, to provide samples for DNA identification profiling.**
- **Require that the Department of State Police permanently retain those DNA profiles.**
- **Specify that each individual required to provide a sample for DNA profiling would have to pay an assessment of \$60, and specify how revenue from those assessments would be distributed.**
- **Limit the disclosure of DNA profiles to certain purposes.**
- **Require the Department of State Police to submit an annual report to certain legislative committees.**

The bills would take effect on October 1, 2001, and are tie-barred to each other and to Senate Bills 389, 390, and 393. Those bills would make similar amendments to the DNA Identification Profiling System Act, the Department of Corrections law, and the Juvenile Facilities Act.

House Bill 4610 (S-2) would amend the DNA Identification Profiling System Act; House Bill 4611 (S-2) would amend the juvenile code; House Bill 4613 (S-2) would amend the Michigan Penal Code; and House Bill 4633 (S-2) would amend the Youth Rehabilitation Services Act.

Collection of Sample for DNA Profiling

The statutes that these bills would amend currently provide for the collection or retention of DNA samples from individuals convicted of, and/or juveniles found responsible for, any of the following (referred to below as a currently listed offense): 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 (MCL 750.520b-750.520e); or assault with intent to commit CSC (MCL 750.520g).

Under the bills, as applicable, the DNA requirements would apply to a juvenile found responsible for any of the offenses described above or for any of the following:

- Assault with intent to commit murder (MCL 750.83).
- Manslaughter (MCL 750.321).
- Being a disorderly person by committing window peeping or engaging in indecent or obscene conduct in public (MCL 750.167(1)(c) or (f)).
- Indecent exposure (MCL 750.335a).
- A local ordinance substantially corresponding to the disorderly conduct or indecent exposure violations.

The DNA sampling and profiling requirements also would apply to an individual convicted of any felony or attempted felony or any of the following misdemeanors or local ordinances substantially corresponding to those misdemeanors:

- Enticing a child for immoral purposes (MCL 750.145a).
- Being a disorderly person by committing window peeping or engaging in indecent or obscene conduct in public, or by loitering in a house of ill fame or prostitution (MCL 750.167(1)(i)).
- Indecent exposure.
- A first or second conviction of various prostitution violations (MCL 750.451).

- Leasing a house for purposes of prostitution (MCL 750.454).
- Taking, conveying, employing, receiving, or detaining a female under 17 years old in a house of prostitution (MCL 750.462).

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 the individual is convicted of or found responsible for a currently listed offense. The juvenile code requires an individual convicted of or found responsible for a currently listed offense 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 Michigan Penal Code contains the same requirement for convicted individuals (and, under House Bill 4613 (S-2), also would apply to juveniles found responsible for a specified offense). The juvenile code and the Penal Code also require 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 require the samples to be collected and forwarded to the Department of State Police as prescribed by rules promulgated under the DNA Identification Profiling System Act.

The Youth Rehabilitation Services Act provides that a public ward under a youth agency's jurisdiction for a currently listed offense may not be placed in community placement or discharged from wardship until he or she has provided samples for the same purpose. The Act also requires youth agencies 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.

Assessment

Under House Bills 4610 (S-2), 4611 (S-2), and 4613 (S-2), the court would have to order each individual found responsible for or convicted of one or more crimes described above, to pay an assessment of \$60. The assessment would be in addition to any fine, costs, or other assessments imposed by the court, would have to be ordered upon the record, and would have to be listed separately

in the adjudication order, judgment of sentence, or probation order. After reviewing a verified petition by an individual against whom an assessment was imposed, the court could suspend payment of all or part of the assessment, if it determined that the individual was unable to pay the assessment.

The court that imposed an assessment could retain 10% of all assessments or portions of assessments collected for costs incurred in ordering and collecting samples for DNA profiling. The court would have to transmit that money to its funding unit. On the last day of each month, the court clerk would have to transmit 25% of the assessments or portions of assessments collected to the county sheriff or other law enforcement agency that collected the DNA sample, as designated by the court, to defray the costs of collecting DNA samples, and transmit 65% to the Department of Treasury for the Department of State Police's forensic science division to defray the costs associated with the DNA profiling and retention requirements prescribed in the DNA Identification Profiling System Act.

Under House Bill 4633 (S-2), a public ward found responsible for or convicted of one or more crimes for which DNA profiling would be required, would have to pay an assessment of \$60. The Family Independence Agency would have to transmit the assessments or portions of assessments collected to the Department of Treasury for the Department of State Police's forensic science division to defray the costs associated with DNA profiling and retention requirements prescribed under the DNA Identification Profiling System Act.

Disclosure

The bills 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.

Collection before Sentencing

House Bills 4610 (S-2), 4611 (S-2), and 4613 (S-2) all would require that a sample be collected by a law enforcement agency as ordered after a conviction or finding of responsibility, but before sentencing or disposition by the court. This requirement, however, would not preclude a law enforcement agency or State agency from obtaining a DNA sample at or after sentencing.

Annual Report

Under House Bills 4610 (S-2), 4611 (S-1), and 4613 (S-2), beginning December 31, 2002, the State Police Director would have to report, by December 31 of each year, to the Senate and House standing committees concerned with DNA sample collection and retention, the Senate Appropriations Subcommittee on State Police, and the House Appropriations Subcommittee on State and Military Affairs, concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments.

Definitions

House Bills 4611 (S-2), 4613 (S-2), and 4633 (S-2) all specify that "felony" would mean a violation of a penal law for which the offender could be punished by more than one year's imprisonment or an offense expressly designated by law to be a felony. House Bills 4611 (S-2) and 4613 (S-2) also provide that "investigating law enforcement agency" would not include a probation officer employed by the Department of Corrections.

MCL 28.176 (H.B. 4610)

712A.18k (H.B. 4611)

750.520m (H.B. 4613)

803.307a (H.B. 4633)

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 previous 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 committed in the 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: Similar legislation passed the Senate earlier this year, but the list of misdemeanors in those Senate bills differs considerably from the list in these House bills. The Senate bills tend to encompass violent misdemeanors or those with a great potential for resulting in violence (e.g., simple and aggravated assault, including domestic violence; breaking and entering; and stalking), while the House bills tend to focus more on sexually deviant offenses (e.g., enticing a child for immoral purposes, window peeping, indecent or obscene conduct in public, and prostitution). The violent misdemeanors that were included in the Senate bills also should be included in this legislation.

Supporting Argument

Expanding the number of criminals and juvenile offenders whose DNA must be collected and profiled in the State Police database would require greater funding for the operations of that Department's forensic science division. The bills address this funding need by proposing a \$60 assessment on criminals and juveniles subject to DNA profiling, while also allowing a court to consider a person's ability to pay the assessment and waive all or part of the amount due. Since courts and law enforcement agencies also incur expenses for ordering and collecting DNA samples, a portion of assessments collected would be allocated to these bodies, as well.

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. In addition, the bills include safeguards for the privacy of DNA profiles, under which the profiles could be disclosed only for the specific purposes identified in the bills.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills 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 Family Independence Agency (FIA) and local units of government.

The 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 (DOC), the FIA, 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 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.

The bills would mitigate the additional costs of the DNA requirements on State and local police by providing that each individual required to provide a DNA sample would have to pay an assessment of \$60. Should a court order a sample to be taken, 25% of the \$60 would have to be transmitted to the local law enforcement agency that collected the sample and 65% would be earmarked for the Department of State Police's Forensic Science Division. For samples taken other than as imposed by a court, the entire \$60 assessment would go to the State Police. It is unclear how much revenue would be received by the State Police under the bills, though the

assessments would have a significant impact on assisting with the bill's costs. The number of samples (therefore, assessments) that would be forthcoming from the DOC is not known. Additionally, data are not available on the number of misdemeanants covered by the bills. The number of felonies for 1999 is known to be approximately 38,000. Both local and State police would see a fairly significant amount of assessment funds under the bills.

It should be noted that under the Forensic Laboratory Funding Act, an assessment of \$150 for laboratory testing is required of all persons convicted of a CSC offense. The same assessment may be imposed on a person convicted of any offense when forensic laboratory testing is performed. These funds are distributed to the investigating law enforcement agency and the courts. For calendar year 2000, following distribution of 5% of the total assessments collected to the courts for administrative costs, \$1,270,669 was sent to local and State law enforcement for reimbursement of forensic laboratory costs. Of that total, the Department of State Police received \$946,900 as a funding source for the operational costs of its forensic laboratories.

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.

It appears that administrative costs could be incurred for the collection and transmission of the fees.

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 and administration.

Courts. The courts would receive an indeterminate amount of revenue to cover collection costs depending on the number of defendants ordered to pay the \$60 assessment and actual collections.

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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.