

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4610 (Substitute S-3 as reported by the Committee of the Whole)
House Bill 4611 (Substitute S-4 as reported by the Committee of the Whole)
House Bill 4612 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 4613 (Substitute S-4 as reported by the Committee of the Whole)

Sponsor: Representative Jennifer Faunce (House Bill 4610)
Representative Larry Julian (House Bill 4611)
Representative Mike Kowall (House Bill 4612)
Representative Thomas M. George (House Bill 4613)

House Committee: Criminal Justice
Senate Committee: Judiciary

CONTENT

The bills would amend various statutes to do the following:

- Require the collection of DNA samples from individuals convicted of any felony or certain misdemeanors, and from juveniles found responsible for specific violations.
- Require individuals subject to DNA profiling to pay a \$60 assessment.
- Specify that the DNA sample and assessment requirements would not apply if the State Police or a law enforcement agency already had a sample.
- Limit the disclosure of DNA profiles to certain purposes.
- Require the State Police to report on DNA profiling annually to the Legislature, beginning on December 31, 2002.
- Prohibit the DOC from releasing any prisoner who had not provided a DNA sample.
- Make it a misdemeanor to refuse to supply a DNA sample, if required to do so.

House Bill 4610 (S-3) would amend the DNA Identification Profiling System Act, which requires that the Department of State Police permanently retain DNA profiles of people convicted of or found responsible for certain crimes, to specify that it would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000 for an individual required to provide DNA samples to refuse or resist providing those samples. The bill also would redefine "DNA identification profile", which currently 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.

House Bills 4611 (S-4) and 4613 (S-4) would amend the juvenile code and the Michigan Penal Code, respectively, which currently provide for the collection of DNA samples from individuals convicted of, and/or juveniles 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. Under the bills, the DNA requirements would apply to a juvenile found responsible for any of those offenses; assault with intent to commit murder; manslaughter; being disorderly by committing window peeping or engaging in indecent or obscene conduct in public; indecent exposure; or a local ordinance substantially

corresponding to the disorderly conduct or indecent exposure violations.

The DNA 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; being disorderly by committing window peeping, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution; indecent exposure; a first or second conviction of various prostitution violations; leasing a house for purposes of prostitution; or taking, conveying, employing, receiving, or detaining a female under 17 years old in a house of prostitution.

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. After review, the court could suspend all or part of the assessment, if the individual were unable to pay. The court could retain 10% of all assessments collected, and would have to transmit 25% to the county sheriff or other law enforcement agency that collected DNA samples and 65% to the Department of Treasury for the Department of State Police's forensic science division.

House Bill 4612 (S-2) would amend the Department of Corrections (DOC) law to prohibit any prisoner from being discharged or released on parole or community placement until he or she provided samples for DNA identification profiling. Currently, this applies only to prisoners serving a sentence for certain crimes. The bill also would require a prisoner to pay an assessment of \$60, which the DOC would have to transmit 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.

House Bills 4611 (S-4), 4612 (S-2), and 4613 (S-4) would allow the disclosure of DNA profiles only 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; or for an academic, research, statistical analysis, or protocol developmental purpose only if personal identifications were removed.

All of the bills would take effect on January 1, 2002, and are tie-barred to each other, House Bill 4633, and Senate Bills 389, 393, and 394.

MCL 28.176 (H.B. 4610)
712A.18k (H.B. 4611)
791.233d (H.B. 4612)
750.520m (H.B. 4613)

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.

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 House Bill 4612 (S-2). 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.

House Bill 4612 (S-2) also would have an indeterminate fiscal impact on the Department of Corrections for the cost of collecting DNA testing fees and transferring the collections to the Department of Treasury. The DOC collects funds from prisoners and offenders recently released from prison for a variety of reasons including court-ordered payments, supervision and oversight fees, and parolee loan repayment. There are no data available to determine whether collection of an additional fee for DNA testing would increase processing costs for the DOC. Collection of delinquent accounts from former prisoners is currently handled by the Department of Treasury.

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.