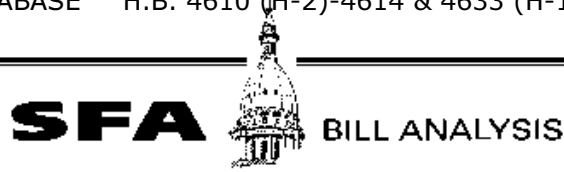


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House Bill 4610 (Substitute H-2 as passed by the House)
House Bill 4611 (Substitute H-1 as passed by the House)
House Bill 4612 (Substitute H-1 as passed by the House)
House Bill 4613 (Substitute H-1 as passed by the House)
House Bill 4614 (Substitute H-1 as passed by the House)
House Bill 4633 (Substitute H-1 as passed by the House)
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)
Representative Jerry O. Kooiman (House Bill 4614)
Representative William O'Neil (House Bill 4633)

House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 6-6-01

CONTENT

House Bills 4610 (H-2), 4611 (H-1), 4612 (H-1), 4613 (H-1), 4614 (H-1), and 4633 (H-1) 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 are tie-barred and, with the exception of House Bill 4612 (H-1), would take effect on October 1, 2001.

House Bill 4610 (H-2) would amend the DNA

Identification Profiling System Act; House Bill 4611 (H-1) would amend the juvenile code; House Bill 4612 (H-1) would amend the Department of Corrections (DOC) law; House Bill 4613 (H-1) would amend the Michigan Penal Code; House Bill 4614 (H-1) would amend the Juvenile Facilities Act; and House Bill 4633 (H-1) would amend the Youth Rehabilitation Services Act.

House Bills 4610 (H-2), 4611 (H-1), 4613 (H-1), 4614 (H-1), & 4633 (H-1)

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 (CSC) (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, engaging in indecent or obscene conduct in public, or loitering in a house of ill fame or prostitution (MCL 750.167(1)(c), (f), or (i)).
- Indecent exposure (MCL 750.335a).
- A first or second adjudication of various prostitution violations (MCL 750.451).
- A local ordinance substantially similar to the disorderly conduct, indecent exposure, prostitution, or fourth-degree CSC 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 similar to those misdemeanors:

- Enticing a child for immoral purposes (MCL 750.145a).
- Being a disorderly person 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 (MCL 750.454).
- Taking, conveying, employing, receiving, or detaining a female under 17 years old in a house of prostitution (MCL 750.462).
- Fourth-degree CSC.

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 (H-1), 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.

Under the Juvenile Facilities Act, a juvenile convicted of or found responsible for any of the currently listed offenses, who is under the jurisdiction 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 DNA identification profiling or determinations of genetic markers and secretor status. 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 Acts also require the FIA, county juvenile agency, or youth 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.

Assessment

Under House Bills 4610 (H-2), 4611 (H-1), and 4613 (H-1), 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 Bills 4614 (H-1) and 4633 (H-1), a juvenile or 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 FIA 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 Bill 4610 (H-2) would require that a sample be collected by a law enforcement agency as ordered by the court before a convicted person was sentenced 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. If, at the time of conviction of an individual who was required to provide DNA samples, the investigating law enforcement agency or the Department of State Police already had from that individual a sample that met the requirements of rules promulgated under the DNA Identification Profiling System Act, the individual would not be required to provide another sample.

Refusal to Provide Sample

House Bill 4610 (H-2) specifies 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 who was required by law to provide samples for DNA identification profiling to refuse to provide or resist providing those samples. The individual would have to be advised that his or her resistance or refusal to provide DNA samples was a misdemeanor.

Annual Report

Under House Bills 4610 (H-2), 4611 (H-1), and 4613 (H-1), 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 Bill 4610 (H-2) 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.

House Bills 4610 (H-2), 4611 (H-1), and 4613 (H-1) 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. Those bills also provide that "law enforcement agency" would not include a probation officer employed by the Department of Corrections.

House Bill 4612 (H-1)

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.)

Under the bill, an individual found responsible for or convicted of one or more crimes for which DNA profiling was required, would have to pay an assessment of \$60. The DOC 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.

The bill includes the same disclosure limitations as House Bill 4610 (S-2).

MCL 28.172 et al. (H.B. 4610)
712A.18k (H.B. 4611)
791.233d (H.B. 4612)
750.520m (H.B. 4613)
803.225a (H.B. 4614)
803.307a (H.B. 4633)

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 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.

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 Department of Corrections 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 (H-1). In 1998, there were 45,879 prisoners, of whom 13,913 were serving for attempted murder, 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 (H-1) 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 costs based 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.