

SUBSTITUTE FOR
HOUSE BILL NO. 4610

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending sections 2 and 6 (MCL 28.172 and 28.176), section 2
as amended by 1996 PA 508 and section 6 as amended by 2000 PA 30,
and by adding section 3a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Department" means the department of state police.

3 (b) "DNA identification profile" means the results of the
4 DNA identification profiling of a sample.

5 (c) "DNA identification profiling" means a validated scien-
6 tific method of analyzing components of deoxyribonucleic acid
7 molecules in a ~~sample to identify the pattern of the components~~
8 ~~chemical structure that is unique to the individual~~ BIOLOGICAL

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1 SPECIMEN TO DETERMINE A MATCH OR A NONMATCH BETWEEN A REFERENCE
2 SAMPLE AND AN EVIDENTIARY SAMPLE.

3 (D) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE
4 FOR WHICH THE OFFENDER MAY BE PUNISHED BY IMPRISONMENT FOR MORE
5 THAN 1 YEAR OR AN OFFENSE EXPRESSLY DESIGNATED BY LAW TO BE A
6 FELONY.

7 (E) "LAW ENFORCEMENT AGENCY" DOES NOT INCLUDE A PROBATION
8 OFFICER EMPLOYED BY THE DEPARTMENT OF CORRECTIONS.

9 (F) ~~-(d)-~~ "Sample" means a portion of an individual's blood,
10 saliva, or tissue collected from the individual.

11 SEC. 3A. (1) AN INDIVIDUAL REQUIRED BY LAW TO PROVIDE SAM-
12 PLES FOR DNA IDENTIFICATION PROFILING WHO REFUSES TO PROVIDE OR
13 RESISTS PROVIDING THOSE SAMPLES IS GUILTY OF A MISDEMEANOR PUN-
14 ISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT
15 MORE THAN \$1,000.00, OR BOTH. THE INDIVIDUAL SHALL BE ADVISED
16 THAT HIS OR HER RESISTANCE OR REFUSAL TO PROVIDE SAMPLES
17 DESCRIBED IN THIS SUBSECTION IS A MISDEMEANOR.

18 (2) IF AT THE TIME AN INDIVIDUAL WHO IS REQUIRED BY LAW TO
19 PROVIDE SAMPLES FOR DNA IDENTIFICATION PROFILING IS CONVICTED THE
20 INVESTIGATING LAW ENFORCEMENT AGENCY OR THE DEPARTMENT ALREADY
21 HAS A SAMPLE FROM THE INDIVIDUAL THAT MEETS THE REQUIREMENTS OF
22 THE RULES PROMULGATED UNDER THIS ACT, THE INDIVIDUAL IS NOT
23 REQUIRED TO PROVIDE ANOTHER SAMPLE.

24 Sec. 6. (1) The department shall permanently retain a DNA
25 identification profile of an individual obtained from a sample in
26 the manner prescribed by the department under this act if ~~that~~
27 ANY OF THE FOLLOWING APPLY:

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1 (A) THE individual is ~~convicted of or~~ found responsible
2 for a violation of section 83, 91, 316, ~~or~~ 317, OR 321 of the
3 Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316,
4 ~~and~~ 750.317, AND 750.321, or a violation or attempted violation
5 of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan
6 penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c,
7 750.520d, 750.520e, and 750.520g, OR A VIOLATION OF SECTION
8 167(C), (F), OR (I), [] 335A, OR 451 OF THE MICHIGAN PENAL
9 CODE, 1931 PA 328, MCL 750.167, [] 750.335A, AND 750.451
10 (FIRST OR SECOND OFFENSE), OR A LOCAL ORDINANCE SUBSTANTIALLY
11 SIMILAR TO SECTION 167(C), (F), OR (I), [] 335A, 451, OR 520E
12 OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.167, []
13 750.335A, 750.451 (FIRST OR SECOND OFFENSE), AND 750.520E.

14 (B) THE INDIVIDUAL IS CONVICTED OF A FELONY OR ATTEMPTED
15 FELONY, OR ANY OF THE FOLLOWING MISDEMEANORS, OR LOCAL ORDINANCES
16 THAT ARE SUBSTANTIALLY SIMILAR TO THE FOLLOWING MISDEMEANORS:

17 (i) A VIOLATION OF SECTION 145A OF THE MICHIGAN PENAL CODE,
18 1931 PA 328, MCL 750.145A, ENTICING A CHILD FOR IMMORAL
19 PURPOSES.

20 (ii) A VIOLATION OF SECTION 167(C), (F), OR (I) OF THE
21 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.167, DISORDERLY PERSON
22 BY WINDOW PEEPING, ENGAGING IN INDECENT OR OBSCENE CONDUCT IN
23 PUBLIC, OR LOITERING IN A HOUSE OF ILL FAME OR PROSTITUTION.

24 [

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1 [(iii)] A VIOLATION OF SECTION 335A OF THE MICHIGAN PENAL CODE,
2 1931 PA 328, MCL 750.335A, INDECENT EXPOSURE.

3 [(iv)] A VIOLATION OF SECTION 451 OF THE MICHIGAN PENAL CODE,
4 1931 PA 328, MCL 750.451, FIRST AND SECOND PROSTITUTION
5 VIOLATIONS.

6 [(v)] A VIOLATION OF SECTION 454 OF THE MICHIGAN PENAL CODE,
7 1931 PA 328, MCL 750.454, LEASING A HOUSE FOR PURPOSES OF
8 PROSTITUTION.

9 [(vi)] A VIOLATION OF SECTION 462 OF THE MICHIGAN PENAL CODE,
10 1931 PA 328, MCL 750.462, FEMALE UNDER THE AGE OF 17 IN A HOUSE
11 OF PROSTITUTION.

12 [(vii)] A VIOLATION OF SECTION 520E OF THE MICHIGAN PENAL
13 CODE, 1931 PA 328, MCL 750.520E, CRIMINAL SEXUAL CONDUCT IN THE
14 FOURTH DEGREE.

15 (2) THE DNA PROFILES OF DNA SAMPLES RECEIVED UNDER THIS SEC-
16 TION SHALL ONLY BE DISCLOSED AS FOLLOWS:

17 (A) TO A CRIMINAL JUSTICE AGENCY FOR LAW ENFORCEMENT IDENTI-
18 FICATION PURPOSES.

19 (B) IN A JUDICIAL PROCEEDING AS AUTHORIZED OR REQUIRED BY A
20 COURT.

21 (C) TO A DEFENDANT IN A CRIMINAL CASE IF THE DNA PROFILE IS
22 USED IN CONJUNCTION WITH A CHARGE AGAINST THE DEFENDANT.

23 (D) FOR AN ACADEMIC, RESEARCH, STATISTICAL ANALYSIS, OR PRO-
24 TOCOL DEVELOPMENTAL PURPOSE ONLY IF PERSONAL IDENTIFICATIONS ARE
25 REMOVED.

26 (3) A SAMPLE SHALL BE COLLECTED BY A LAW ENFORCEMENT AGENCY
27 AS ORDERED BY THE COURT BEFORE THE CONVICTED PERSON IS SENTENCED

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- 1 BY THE COURT. THIS SUBSECTION DOES NOT PRECLUDE A LAW
2 ENFORCEMENT AGENCY OR STATE AGENCY FROM OBTAINING A SAMPLE AT OR
3 AFTER SENTENCING.

[(4) THE COURT SHALL ORDER EACH INDIVIDUAL FOUND RESPONSIBLE FOR OR CONVICTED OF 1 OR MORE CRIMES LISTED IN SUBSECTION (1) TO PAY AN ASSESSMENT OF \$60.00. THE ASSESSMENT REQUIRED UNDER THIS SUBSECTION IS IN ADDITION TO ANY FINE, COSTS, OR OTHER ASSESSMENTS IMPOSED BY THE COURT.

(5) AN ASSESSMENT REQUIRED UNDER SUBSECTION (4) SHALL BE ORDERED UPON THE RECORD, AND SHALL BE LISTED SEPARATELY IN THE ADJUDICATION ORDER, JUDGMENT OF SENTENCE, OR ORDER OF PROBATION.

(6) AFTER REVIEWING A VERIFIED PETITION BY AN INDIVIDUAL AGAINST WHOM AN ASSESSMENT IS IMPOSED, THE COURT MAY SUSPEND PAYMENT OF ALL OR PART OF THE ASSESSMENT IF IT DETERMINES THE INDIVIDUAL IS UNABLE TO PAY THE ASSESSMENT.

(7) THE COURT THAT IMPOSES THE ASSESSMENT PRESCRIBED UNDER SUBSECTION (4) MAY RETAIN 10% OF ALL ASSESSMENTS OR PORTIONS OF ASSESSMENTS COLLECTED FOR COSTS INCURRED UNDER THIS SECTION AND SHALL TRANSMIT THAT MONEY TO ITS FUNDING UNIT. ON THE LAST DAY OF EACH MONTH, THE CLERK OF THE COURT SHALL TRANSMIT THE ASSESSMENTS OR PORTIONS OF ASSESSMENTS COLLECTED AS FOLLOWS:

(A) TWENTY-FIVE PERCENT OF THE ASSESSMENTS OR PORTIONS OF ASSESSMENTS COLLECTED UNDER THIS SECTION 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.

(B) SIXTY-FIVE PERCENT OF THE ASSESSMENTS OR PORTIONS OF ASSESSMENTS COLLECTED TO THE DEPARTMENT OF TREASURY FOR THE DEPARTMENT'S FORENSIC SCIENCE DIVISION TO DEFRAY THE COSTS ASSOCIATED WITH THE REQUIREMENTS OF DNA PROFILING AND DNA RETENTION PRESCRIBED UNDER THIS ACT.

(8) BEGINNING DECEMBER 31, 2002, THE DIRECTOR OF THE DEPARTMENT SHALL REPORT BY DECEMBER 31 OF EACH YEAR CONCERNING THE RATE OF DNA SAMPLE COLLECTION, DNA IDENTIFICATION PROFILING, RETENTION AND COMPILATION OF DNA IDENTIFICATION PROFILES, AND THE COLLECTION OF ASSESSMENTS REQUIRED UNDER SUBSECTION (4) TO ALL OF THE FOLLOWING:

(A) THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES CONCERNED WITH DNA SAMPLE COLLECTION AND RETENTION.

(B) THE HOUSE OF REPRESENTATIVES APPROPRIATIONS SUBCOMMITTEE ON STATE AND MILITARY AFFAIRS.

(C) THE SENATE APPROPRIATIONS SUBCOMMITTEE ON STATE POLICE.]

- 4 [(9) ~~(4)~~] Any other DNA identification profile obtained by the
5 department shall not be permanently retained by the department
6 but shall be retained only as long as it is needed for a criminal
7 investigation or criminal prosecution.

8 [(10)] ~~-(2)-~~ If the state police forensic laboratory determines
9 after analysis that a sample has been submitted by an individual
10 who has been eliminated as a suspect in a crime, the laboratory
11 shall dispose of the sample and the DNA identification profile
12 record in the following manner:

13 (a) The laboratory shall dispose of the sample in compliance
14 with section 13811 of the public health code, 1978 PA 368,
15 MCL 333.13811.

16 (b) The laboratory shall dispose of the sample and the DNA

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17 identification profile record in the presence of a witness.

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18 [(11)] ~~-(3)-~~ After disposal in accordance with subsection ~~-(2)-~~
19 (5), the laboratory shall make and keep a written record of the
20 disposal, signed by the individual who witnessed the disposal.

21 Enacting section 1. This amendatory act takes effect
22 October 1, 2001.

23 Enacting section 2. This amendatory act does not take
24 effect unless all of the following bills of the 91st Legislature
25 are enacted into law:

26 (a) House Bill No. 4611.

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- 1 (b) House Bill No. 4612.
- 2 (c) House Bill No. 4613.
- 3 (d) House Bill No. 4614.
- 4 (e) House Bill No. 4633.