

SUBSTITUTE FOR  
HOUSE BILL NO. 4613

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 520m (MCL 750.520m), as amended by 1996 PA  
510.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 520m. (1) A person ~~convicted of a violation of sec-~~  
2 ~~tion 91, 316, or 317 or a violation or attempted violation of~~  
3 ~~section 349, 520b, 520c, 520d, 520e, or 520g~~ shall provide sam-  
4 ples for chemical testing for DNA identification profiling or a  
5 determination of the sample's genetic markers and shall provide  
6 samples for chemical testing for a determination of his or her  
7 secretor status IF ANY OF THE FOLLOWING APPLY:

8       (A) THE PERSON IS FOUND RESPONSIBLE FOR A VIOLATION OF  
9 SECTION 83, 91, 316, 317, OR 321 OF THE MICHIGAN PENAL CODE, 1931  
10 PA 328, MCL 750.83, 750.91, 750.316, 750.317, AND 750.321, OR A

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1 VIOLATION OR ATTEMPTED VIOLATION OF SECTION 349, 520B, 520C,  
2 520D, 520E, OR 520G OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
3 MCL 750.349, 750.520B, 750.520C, 750.520D, 750.520E, AND  
4 750.520G, OR A VIOLATION OF SECTION 167(C), (F), OR (I), [ ]  
5 335A, 451, OR 520E OF THE MICHIGAN PENAL CODE, 1931 PA 328,  
6 MCL 750.167, [ ] 750.335A, 750.451 (FIRST OR SECOND  
7 OFFENSE), AND 750.520E, OR A LOCAL ORDINANCE SUBSTANTIALLY SIMI-  
8 LAR TO SECTION 167(C), (F), OR (I), [ ] 335A, 451, OR 520E OF  
9 THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.167, [ ]  
10 750.335A, 750.451 (FIRST OR SECOND OFFENSE), AND 750.520E.

11 (B) THE PERSON IS CONVICTED OF A FELONY OR ATTEMPTED FELONY,  
12 OR ANY OF THE FOLLOWING MISDEMEANORS, OR LOCAL ORDINANCES THAT  
13 ARE SUBSTANTIALLY SIMILAR TO THE FOLLOWING MISDEMEANORS:

14 (i) A VIOLATION OF SECTION 145A OF THE MICHIGAN PENAL CODE,  
15 1931 PA 328, MCL 750.145A, ENTICING A CHILD FOR IMMORAL  
16 PURPOSES.

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

21 [

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23 ]

24 [(iii)] A VIOLATION OF SECTION 335A OF THE MICHIGAN PENAL CODE,  
25 1931 PA 328, MCL 750.335A, INDECENT EXPOSURE.

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1 [(iv)] A VIOLATION OF SECTION 451 OF THE MICHIGAN PENAL CODE,  
2 1931 PA 328, MCL 750.451, FIRST AND SECOND PROSTITUTION  
3 VIOLATIONS.

4 [(v)] A VIOLATION OF SECTION 454 OF THE MICHIGAN PENAL CODE,  
5 1931 PA 328, MCL 750.454, LEASING A HOUSE FOR PURPOSES OF  
6 PROSTITUTION.

7 [(vi)] A VIOLATION OF SECTION 462 OF THE MICHIGAN PENAL CODE,  
8 1931 PA 328, MCL 750.462, FEMALE UNDER THE AGE OF 17 IN A HOUSE  
9 OF PROSTITUTION.

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

13 (2) NOTWITHSTANDING SUBSECTION (1), if at the time the  
14 person is convicted OF OR FOUND RESPONSIBLE FOR THE VIOLATION the  
15 investigating law enforcement agency or the department of state  
16 police already has a sample from the person that meets the  
17 requirements of the rules promulgated under the DNA identifica-  
18 tion profiling system act, ~~Act No. 250 of the Public Acts of~~  
19 ~~1990, being sections 28.171 to 28.176 of the Michigan Compiled~~  
20 ~~Laws~~ 1990 PA 250, MCL 28.171 TO 28.176, the person is not  
21 required to provide another sample.

22 (3) ~~(2)~~ The investigating law enforcement agency shall  
23 provide for collecting the samples required to be provided under  
24 subsection (1) in a medically approved manner by qualified per-  
25 sons using supplies provided by the department of state police  
26 and shall forward those samples and any samples described in  
27 subsection (1) that were already in the agency's possession to

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1 the department of state police. The collecting and forwarding of  
2 samples shall be done in the manner required under the rules  
3 promulgated under the DNA identification profiling system act,  
4 ~~Act No. 250 of the Public Acts of 1990~~ 1990 PA 250, MCL 28.171  
5 TO 28.176. THE COLLECTING AND FORWARDING OF SAMPLES SHALL BE  
6 DONE AFTER CONVICTION OR A FINDING OF RESPONSIBILITY BUT BEFORE  
7 SENTENCING OR DISPOSITION BY THE COURT. THIS SUBSECTION DOES NOT  
8 PRECLUDE A LAW ENFORCEMENT AGENCY OR STATE AGENCY FROM OBTAINING  
9 A SAMPLE AT OR AFTER SENTENCING.

10 (4) ~~(3)~~ An investigating law enforcement agency, prosecut-  
11 ing agency, or court that has in its possession a DNA identifica-  
12 tion profile obtained from a sample of a person ~~convicted of an~~  
13 ~~offense described in~~ PURSUANT TO subsection (1) shall forward  
14 the DNA identification profile to the department of state police  
15 at or before the time of the person's sentencing OR DISPOSITION  
16 upon that conviction OR FINDING OF RESPONSIBILITY unless the  
17 department of state police already has a DNA identification pro-  
18 file of the person.

19 (5) THE DNA PROFILES OF DNA SAMPLES RECEIVED UNDER THIS SEC-  
20 TION SHALL ONLY BE DISCLOSED AS FOLLOWS:

21 (A) TO A CRIMINAL JUSTICE AGENCY FOR LAW ENFORCEMENT IDENTI-  
22 FICATION PURPOSES.

23 (B) IN A JUDICIAL PROCEEDING AS AUTHORIZED OR REQUIRED BY A  
24 COURT.

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

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1 (D) FOR AN ACADEMIC, RESEARCH, STATISTICAL ANALYSIS, OR

2 PROTOCOL DEVELOPMENTAL PURPOSE ONLY IF PERSONAL IDENTIFICATIONS  
3 ARE REMOVED.

[(6) THE COURT SHALL ORDER EACH PERSON 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.

(7) AN ASSESSMENT REQUIRED UNDER SUBSECTION (6) SHALL BE ORDERED UPON THE RECORD, AND SHALL BE LISTED SEPARATELY IN THE ADJUDICATION ORDER, JUDGMENT OF SENTENCE, OR ORDER OF PROBATION.

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

(9) THE COURT THAT IMPOSES THE ASSESSMENT PRESCRIBED UNDER SUBSECTION (6) 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 OF STATE POLICE FORENSIC SCIENCE DIVISION TO DEFRAY THE COSTS ASSOCIATED WITH THE REQUIREMENTS OF DNA PROFILING AND DNA RETENTION PRESCRIBED UNDER THE DNA IDENTIFICATION PROFILING SYSTEM ACT, 1990 PA 250, MCL 28.171 TO 28.176.

[(10) BEGINNING DECEMBER 31, 2002, THE DIRECTOR OF THE DEPARTMENT OF STATE POLICE 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 (6) 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 [(11)] ~~-(4)-~~ As used in this section:

5 (a) "DNA identification profile" and "DNA identification  
6 profiling" mean those terms as defined in section 2 of the DNA

7 identification profiling system act, ~~Act No. 250 of the Public~~

8 ~~Acts of 1990, being section 28.172 of the Michigan Compiled Laws~~

9 1990 PA 250, MCL 28.171 TO 28.176.

10 (b) "Investigating law enforcement agency" means the law

11 enforcement agency responsible for the investigation of the

12 offense for which the person is convicted. INVESTIGATING LAW

13 ENFORCEMENT AGENCY DOES NOT INCLUDE A PROBATION OFFICER EMPLOYED

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**14** BY THE DEPARTMENT OF CORRECTIONS.

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15 (C) "FELONY" MEANS A VIOLATION OF A PENAL LAW OF THIS STATE  
16 FOR WHICH THE OFFENDER MAY BE PUNISHED BY IMPRISONMENT FOR MORE  
17 THAN 1 YEAR OR AN OFFENSE EXPRESSLY DESIGNATED BY LAW TO BE A  
18 FELONY.

19 (D) ~~-(c)-~~ "Sample" means a portion of a person's blood,  
20 saliva, or tissue collected from the person.

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. 4610.

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- 1 (b) House Bill No. 4611.
- 2 (c) House Bill No. 4612.
- 3 (d) House Bill No. 4614.
- 4 (e) House Bill No. 4633.