

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 389

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending section 6 (MCL 28.176), as amended by 2000 PA 30.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (A) THE individual is ~~convicted of or~~ found responsible
6 for a violation of section 83, 91, 316, ~~or~~ 317, OR 321 of the
7 Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316,
8 ~~and~~ 750.317, AND 750.321, or a violation or attempted violation
9 of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan
10 penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c,
11 750.520d, 750.520e, and 750.520g, OR A VIOLATION OF SECTION

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1 167(1)(C) OR (F) OR 335A OF THE MICHIGAN PENAL CODE, 1931 PA 328,
2 MCL 750.167 AND 750.335A, OR A LOCAL ORDINANCE SUBSTANTIALLY COR-
3 RESPONDING TO SECTION 167(1)(C) OR (F) OR 335A OF THE MICHIGAN
4 PENAL CODE, 1931 PA 328, MCL 750.167 AND 750.335A.

5 (B) THE INDIVIDUAL IS CONVICTED OF A FELONY OR ATTEMPTED
6 FELONY, OR ANY OF THE FOLLOWING MISDEMEANORS, OR LOCAL ORDINANCES
7 THAT ARE SUBSTANTIALLY CORRESPONDING TO THE FOLLOWING
8 MISDEMEANORS:

9 (i) A VIOLATION OF SECTION 145A OF THE MICHIGAN PENAL CODE,
10 1931 PA 328, MCL 750.145A, ENTICING A CHILD FOR IMMORAL
11 PURPOSES.

12 (ii) A VIOLATION OF SECTION 167(1)(C), (F), OR (I) OF THE
13 MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.167, DISORDERLY PERSON
14 BY WINDOW PEEPING, ENGAGING IN INDECENT OR OBSCENE CONDUCT IN
15 PUBLIC, OR LOITERING IN A HOUSE OF ILL FAME OR PROSTITUTION.

16 (iii) A VIOLATION OF SECTION 335A OF THE MICHIGAN PENAL
17 CODE, 1931 PA 328, MCL 750.335A, INDECENT EXPOSURE.

18 (iv) A VIOLATION OF SECTION 451 OF THE MICHIGAN PENAL CODE,
19 1931 PA 328, MCL 750.451, FIRST AND SECOND PROSTITUTION
20 VIOLATIONS.

21 (v) A VIOLATION OF SECTION 454 OF THE MICHIGAN PENAL CODE,
22 1931 PA 328, MCL 750.454, LEASING A HOUSE FOR PURPOSES OF
23 PROSTITUTION.

24 (vi) A VIOLATION OF SECTION 462 OF THE MICHIGAN PENAL CODE,
25 1931 PA 328, MCL 750.462, FEMALE UNDER THE AGE OF 17 IN A HOUSE
26 OF PROSTITUTION.

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1 (2) THE DNA PROFILES OF DNA SAMPLES RECEIVED UNDER THIS
2 SECTION SHALL ONLY BE DISCLOSED AS FOLLOWS:

3 (A) TO A CRIMINAL JUSTICE AGENCY FOR LAW ENFORCEMENT IDENTI-
4 FICATION PURPOSES.

5 (B) IN A JUDICIAL PROCEEDING AS AUTHORIZED OR REQUIRED BY A
6 COURT.

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

9 (D) FOR AN ACADEMIC, RESEARCH, STATISTICAL ANALYSIS, OR PRO-
10 TOCOL DEVELOPMENTAL PURPOSE ONLY IF PERSONAL IDENTIFICATIONS ARE
11 REMOVED.

12 (3) NOTWITHSTANDING SUBSECTION (1), IF AT THE TIME THE INDI-
13 VIDUAL IS CONVICTED OF OR FOUND RESPONSIBLE FOR THE VIOLATION THE
14 INVESTIGATING LAW ENFORCEMENT AGENCY OR THE DEPARTMENT OF STATE
15 POLICE ALREADY HAS A SAMPLE FROM THE INDIVIDUAL THAT MEETS THE
16 REQUIREMENTS OF THIS ACT, THE INDIVIDUAL IS NOT REQUIRED TO PRO-
17 VIDE ANOTHER SAMPLE OR PAY THE FEE REQUIRED UNDER
18 SUBSECTION (5).

19 (4) [THE COUNTY SHERIFF OR] THE INVESTIGATING LAW ENFORCEMENT
AGENCY [AS ORDERED BY THE COURT] SHALL PROVIDE
20 FOR COLLECTING THE SAMPLES REQUIRED TO BE PROVIDED UNDER
21 SUBSECTION (1) IN A MEDICALLY APPROVED MANNER BY QUALIFIED PER-
22 SONS USING SUPPLIES PROVIDED BY THE DEPARTMENT OF STATE POLICE
23 AND SHALL FORWARD THOSE SAMPLES AND ANY SAMPLES DESCRIBED IN
24 SUBSECTION (1) THAT WERE ALREADY IN THE AGENCY'S POSSESSION TO
25 THE DEPARTMENT OF STATE POLICE. THE COLLECTING AND FORWARDING OF
26 SAMPLES SHALL BE DONE IN THE MANNER REQUIRED UNDER THIS ACT. A
27 SAMPLE SHALL BE COLLECTED BY [THE COUNTY SHERIFF OR] THE
INVESTIGATING LAW ENFORCEMENT

1 AGENCY AFTER CONVICTION OR A FINDING OF RESPONSIBILITY BUT BEFORE
2 SENTENCING OR DISPOSITION AS ORDERED BY THE COURT AND PROMPTLY
3 TRANSMITTED TO THE DEPARTMENT OF STATE POLICE. THIS SUBSECTION
4 DOES NOT PRECLUDE [A] LAW ENFORCEMENT AGENCY OR
5 STATE AGENCY FROM OBTAINING A SAMPLE AT OR AFTER SENTENCING OR
6 DISPOSITION.

7 (5) THE COURT SHALL ORDER EACH INDIVIDUAL FOUND RESPONSIBLE
8 FOR OR CONVICTED OF 1 OR MORE CRIMES LISTED IN SUBSECTION (1) TO
9 PAY AN ASSESSMENT OF \$60.00. THE ASSESSMENT REQUIRED UNDER THIS
10 SUBSECTION IS IN ADDITION TO ANY FINE, COSTS, OR OTHER ASSESS-
11 MENTS IMPOSED BY THE COURT.

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

15 (7) AFTER REVIEWING A VERIFIED PETITION BY AN INDIVIDUAL
16 AGAINST WHOM AN ASSESSMENT IS IMPOSED, THE COURT MAY SUSPEND PAY-
17 MENT OF ALL OR PART OF THE ASSESSMENT IF IT DETERMINES THE INDI-
18 VIDUAL IS UNABLE TO PAY THE ASSESSMENT.

19 (8) THE COURT THAT IMPOSES THE ASSESSMENT PRESCRIBED UNDER
20 SUBSECTION (5) MAY RETAIN 10% OF ALL ASSESSMENTS OR PORTIONS OF
21 ASSESSMENTS COLLECTED FOR COSTS INCURRED UNDER THIS SECTION AND
22 SHALL TRANSMIT THAT MONEY TO ITS FUNDING UNIT. ON THE LAST DAY
23 OF EACH MONTH, THE CLERK OF THE COURT SHALL TRANSMIT THE ASSESS-
24 MENTS OR PORTIONS OF ASSESSMENTS COLLECTED AS FOLLOWS:

25 (A) TWENTY-FIVE PERCENT OF THE ASSESSMENTS OR PORTIONS OF
26 ASSESSMENTS COLLECTED UNDER THIS SECTION TO THE COUNTY SHERIFF OR
27 OTHER INVESTIGATING LAW ENFORCEMENT AGENCY THAT COLLECTED THE DNA

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1 SAMPLE AS DESIGNATED BY THE COURT TO DEFRAY THE COSTS OF
2 COLLECTING DNA SAMPLES.

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

8 (9) BEGINNING DECEMBER 31, 2002, THE DIRECTOR OF THE DEPART-
9 MENT SHALL REPORT BY DECEMBER 31 OF EACH YEAR CONCERNING THE RATE
10 OF DNA SAMPLE COLLECTION, DNA IDENTIFICATION PROFILING, RETENTION
11 AND COMPILATION OF DNA IDENTIFICATION PROFILES, AND THE COLLEC-
12 TION OF ASSESSMENTS REQUIRED UNDER SUBSECTION (5) TO ALL OF THE
13 FOLLOWING:

14 (A) THE STANDING COMMITTEES OF THE SENATE AND HOUSE OF REP-
15 RESENTATIVES CONCERNED WITH DNA SAMPLE COLLECTION AND RETENTION.

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

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

[(10) IF A SAMPLE WAS COLLECTED UNDER SUBSECTION (1) FROM AN
INDIVIDUAL WHO DOES NOT HAVE MORE THAN 1 CONVICTION, AND THAT
CONVICTION WAS REVERSED BY AN APPELLATE COURT, THE INDIVIDUAL MAY
PETITION THE SENTENCING COURT TO ORDER THE DISPOSING OF THE SAMPLE
COLLECTED AND DNA IDENTIFICATION PROFILE RECORD FOR THAT CONVICTION
IN THE MANNER PROVIDED IN SUBSECTIONS (12) AND (13). THE SENTENCING
COURT SHALL ONLY ENTER THE ORDER UPON A FINDING THAT THE INDIVIDUAL
HAS PROVEN BY CLEAR AND CONVINCING EVIDENCE THAT THE CONVICTION WAS
REVERSED BASED UPON THE GREAT WEIGHT OF THE EVIDENCE, SPECIFICALLY,
THAT THERE WAS OVERWHELMING EVIDENCE AGAINST THE VERDICT RESULTING
IN A MISCARRIAGE OF JUSTICE.]

19 [(11)] Any other DNA identification profile obtained by the
20 department shall not be permanently retained by the department
21 but shall be retained only as long as it is needed for a criminal
22 investigation or criminal prosecution.

23 [(12)] ~~-(2)-~~ If the state police forensic laboratory deter-
24 mines after analysis that a sample has been submitted by an indi-
25 vidual who has been eliminated as a suspect in a crime, the labo-
26 ratory shall dispose of the sample and the DNA identification
27 profile record in the following manner:

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

4 (b) The laboratory shall dispose of the sample and the DNA
5 identification profile record in the presence of a witness.

6 [(13)] ~~-(3)-~~ After disposal in accordance with subsection
7 ~~-(2)-~~ [(12)], the laboratory shall make and keep a written record
8 of the disposal, signed by the individual who witnessed the
9 disposal.

10 Enacting section 1. This amendatory act takes effect
11 January 1, 2002.

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

15 (a) Senate Bill No. 393.

16 (b) Senate Bill No. 394.

17 (c) House Bill No. 4610.

18 (d) House Bill No. 4611.

19 (e) House Bill No. 4612.

20 (f) House Bill No. 4613.

21 (g) House Bill No. 4633.