

HOUSE BILL No. 4156

February 5, 2003, Introduced by Reps. Kolb, Vagnozzi and Lipsey and referred to the Committee on Criminal Justice.

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending section 6 (MCL 28.176), as amended by 2001 PA 87.

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 any of
4 the following apply:

5 (a) The individual is found responsible for a violation of
6 section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931
7 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a
8 violation or attempted violation of section 349, 520b, 520c,
9 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328,
10 MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and
11 750.520g, or a violation of section 167(1)(c) or (f) or 335a of

1 the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a,
2 or a local ordinance substantially corresponding to section
3 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328,
4 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 code,
17 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.

27 (2) The DNA profiles of DNA samples received under this

1 section shall only be disclosed as follows:

2 (a) To a criminal justice agency for law enforcement
3 identification purposes.

4 (b) In a judicial proceeding as authorized or required by a
5 court.

6 (c) To a defendant in a criminal case if the DNA profile is
7 used in conjunction with a charge against the defendant.

8 (d) For an academic, research, statistical analysis, or
9 protocol developmental purpose only if personal identifications
10 are removed.

11 (3) Notwithstanding subsection (1), if at the time the
12 individual is convicted of or found responsible for the violation
13 the investigating law enforcement agency or the department of
14 state police already has a sample from the individual that meets
15 the requirements of this act, the individual is not required to
16 provide another sample or pay the fee required under
17 subsection (5).

18 (4) The county sheriff or the investigating law enforcement
19 agency as ordered by the court shall provide for collecting the
20 samples required to be provided under subsection (1) in a
21 medically approved manner by qualified persons using supplies
22 provided by the department of state police and shall forward
23 those samples and any samples described in subsection (1) that
24 were already in the agency's possession to the department of
25 state police. The collecting and forwarding of samples shall be
26 done in the manner required under this act. A sample shall be
27 collected by the county sheriff or the investigating law

1 enforcement agency after conviction or a finding of
2 responsibility but before sentencing or disposition as ordered by
3 the court and promptly transmitted to the department of state
4 police. This subsection does not preclude a law enforcement
5 agency or state agency from obtaining a sample at or after
6 sentencing or 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
11 assessments 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
17 payment of all or part of the assessment if it determines the
18 individual 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
24 assessments 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

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
6 associated with the requirements of DNA profiling and DNA
7 retention prescribed under this act.

8 (9) Beginning December 31, 2002, the director of the
9 department shall report by December 31 of each year concerning
10 the rate of DNA sample collection, DNA identification profiling,
11 retention and compilation of DNA identification profiles, and the
12 collection of assessments required under subsection (5) to all of
13 the following:

14 (a) The standing committees of the senate and house of
15 representatives concerned with DNA sample collection and
16 retention.

17 (b) The house of representatives appropriations subcommittee
18 on state police and military affairs.

19 (c) The senate appropriations subcommittee on state police.

20 (10) If a sample was collected under subsection (1) from an
21 individual who does not have more than 1 conviction, and that
22 conviction was reversed by an appellate court, the individual may
23 petition the sentencing court to order the disposing of the
24 sample collected and DNA identification profile record for that
25 conviction in the manner provided in subsections (12) and (13).
26 The sentencing court shall only enter the order upon a finding
27 that the individual has proven by clear and convincing evidence

1 that the conviction was reversed based upon the great weight of
2 the evidence, specifically, that there was overwhelming evidence
3 against the verdict resulting in a miscarriage of justice.

4 (11) 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 (12) If the state police forensic laboratory determines after
9 analysis that a sample has been submitted by an individual who
10 has been eliminated as a suspect in a crime, the laboratory shall
11 dispose of the sample and the DNA identification profile record
12 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
17 identification profile record in the presence of a witness.

18 (13) After disposal in accordance with subsection (12), the
19 laboratory shall ~~make~~ **do both of the following:**

20 (a) **Make** and keep a written record of the disposal, signed by
21 the individual who witnessed the disposal.

22 (b) **Provide a copy of the written record described in**
23 **subdivision (a) to the individual from whom the sample was**
24 **obtained within 30 days after disposal. The copy shall be**
25 **provided to the individual in person or by first-class mail sent**
26 **to his or her last known address.**