

HOUSE BILL No. 4014

January 27, 2005, Introduced by Rep. Kahn and referred to the Committee on Judiciary.

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending section 6 (MCL 28.176), as amended by 2003 PA 76.

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, 520d,
9 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349,

1 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a
2 violation of section 167(1)(c) or (f) or 335a of the Michigan penal
3 code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance
4 substantially corresponding to section 167(1)(c) or (f) or 335a of
5 the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

6 (b) The individual is convicted of a felony or attempted
7 felony, or any of the following misdemeanors, or local ordinances
8 that are substantially corresponding to the following 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 purposes.

11 (ii) A violation of section 167(1)(c), (f), or (i) of the
12 Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by
13 window peeping, engaging in indecent or obscene conduct in public,
14 or loitering in a house of ill fame or prostitution.

15 (iii) A violation of section 335a of the Michigan penal code,
16 1931 PA 328, MCL 750.335a, indecent exposure.

17 (iv) A violation of section 451 of the Michigan penal code,
18 1931 PA 328, MCL 750.451, first and second prostitution violations.

19 (v) A violation of section 454 of the Michigan penal code,
20 1931 PA 328, MCL 750.454, leasing a house for purposes of
21 prostitution.

22 (vi) A violation of section 462 of the Michigan penal code,
23 1931 PA 328, MCL 750.462, female under the age of 17 in a house of
24 prostitution.

25 (2) The DNA profiles of DNA samples received under this
26 section shall only be disclosed as follows:

27 (a) To a criminal justice agency for law enforcement

1 identification purposes.

2 (b) In a judicial proceeding as authorized or required by a
3 court.

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

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

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

15 (4) The county sheriff or the investigating law enforcement
16 agency as ordered by the court shall provide for collecting the
17 samples required to be provided under subsection (1) in a medically
18 approved manner by qualified persons using supplies provided by the
19 department of state police and shall forward those samples and any
20 samples described in subsection (1) that were already in the
21 agency's possession to the department of state police. The
22 collecting and forwarding of samples shall be done in the manner
23 required under this act. A sample shall be collected by the county
24 sheriff or the investigating law enforcement agency after
25 conviction or a finding of responsibility but before sentencing or
26 disposition as ordered by the court and promptly transmitted to the
27 department of state police. This subsection does not preclude a law

1 enforcement agency or state agency from obtaining a sample at or
2 after sentencing or disposition.

3 (5) ~~Until October 1, 2003, the~~ **THE** court shall order each
4 individual found responsible for or convicted of 1 or more crimes
5 listed in subsection (1) to pay an assessment of \$60.00. The
6 assessment required under this subsection is in addition to any
7 fine, costs, or other assessments imposed by the court.

8 (6) An assessment required under subsection (5) shall be
9 ordered upon the record and shall be listed separately in the
10 adjudication order, judgment of sentence, or order of probation.

11 (7) After reviewing a verified petition by an individual
12 against whom an assessment is imposed under subsection (5), the
13 court may suspend payment of all or part of the assessment if it
14 determines the individual is unable to pay the assessment.

15 (8) The court that imposes the assessment prescribed under
16 subsection (5) may retain 10% of all assessments or portions of
17 assessments collected for costs incurred under this section and
18 shall transmit that money to its funding unit. On the last day of
19 each month, the clerk of the court shall transmit the assessments
20 or portions of assessments collected under this section as follows:

21 (a) Twenty-five percent to the county sheriff or other
22 investigating law enforcement agency that collected the DNA sample
23 as designated by the court to defray the costs of collecting DNA
24 samples.

25 ~~— (b) Until October 1, 2003, 65% to the department of treasury~~
26 ~~for the department's forensic science division to defray the costs~~
27 ~~associated with the requirements of DNA profiling and DNA retention~~

1 ~~prescribed under this act.~~

2 (B) ~~-(c) Beginning October 1, 2003, 65%~~ **SIXTY-FIVE PERCENT**
3 to the state treasurer for deposit in the justice system fund
4 created in section 181 of the revised judicature act of 1961, 1961
5 PA 236, MCL 600.181.

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

12 (a) The standing committees of the senate and house of
13 representatives concerned with DNA sample collection and retention.

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

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

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

1 (11) Any other DNA identification profile obtained by the
2 department shall not be permanently retained by the department but
3 shall be retained only as long as it is needed for a criminal
4 investigation or criminal prosecution.

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

10 (a) The laboratory shall dispose of the sample in compliance
11 with section 13811 of the public health code, 1978 PA 368, MCL
12 333.13811.

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

15 (13) After disposal in accordance with subsection (12), the
16 laboratory shall make and keep a written record of the disposal,
17 signed by the individual who witnessed the disposal.