

# HOUSE BILL No. 4413

February 24, 2005, Introduced by Reps. Schuitmaker, Gaffney, Stakoe, Condino, Bieda and Lipsey and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending section 16 (MCL 770.16), as added by 2000 PA 402.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 16. (1) Notwithstanding the limitations of section 2 of  
2 this chapter, a defendant convicted of a felony at trial before ~~the~~  
3 ~~effective date of the amendatory act that added this section~~  
4 **JANUARY 8, 2001** who is serving a prison sentence for the felony  
5 conviction may petition the circuit court to order DNA testing of  
6 biological material identified during the investigation leading to  
7 his or her conviction, and for a new trial based on the results of  
8 that testing. The petition shall be filed not later than January 1,  
9 ~~2006~~ 2011.

1       (2) A petition under this section shall be filed in the  
2 circuit court for the county in which the defendant was sentenced  
3 and shall be assigned to the sentencing judge or his or her  
4 successor. The petition shall be served on the prosecuting attorney  
5 of the county in which the defendant was sentenced.

6       (3) The court shall order DNA testing if the defendant does  
7 all of the following:

8       (a) Presents prima facie proof that the evidence sought to be  
9 tested is material to the issue of the convicted person's identity  
10 as the perpetrator of, or accomplice to, the crime that resulted in  
11 the conviction.

12       (b) Establishes all of the following by clear and convincing  
13 evidence:

14       (i) A sample of identified biological material described in  
15 subsection (1) is available for DNA testing.

16       (ii) The identified biological material described in subsection  
17 (1) was not previously subjected to DNA testing or, if previously  
18 tested, will be subject to DNA testing technology that was not  
19 available when the defendant was convicted.

20       (iii) The identity of the defendant as the perpetrator of the  
21 crime was at issue during his or her trial.

22       (4) The court shall state its findings of fact on the record  
23 or shall make written findings of fact supporting its decision to  
24 grant or deny a petition brought under this section.

25       (5) If the court grants a petition for DNA testing under this  
26 section, the identified biological material and a biological sample  
27 obtained from the defendant shall be subjected to DNA testing by a

1 laboratory approved by the court. If the court determines that the  
2 applicant is indigent, the cost of DNA testing ordered under this  
3 section shall be borne by the state. The results of the DNA testing  
4 shall be provided to the court and to the defendant and the  
5 prosecuting attorney. Upon motion by either party, the court may  
6 order that copies of the testing protocols, laboratory procedures,  
7 laboratory notes, and other relevant records compiled by the  
8 testing laboratory be provided to the court and to all parties.

9 (6) If the results of the DNA testing are inconclusive or show  
10 that the defendant is the source of the identified biological  
11 material, the court shall deny the motion for new trial. If the DNA  
12 test results show that the defendant is the source of the  
13 identified biological material, the defendant's DNA profile shall  
14 be provided to the Michigan state police for inclusion under the  
15 DNA identification profiling system act, **1990 PA 250, MCL 28.171 TO**  
16 **28.176.**

17 (7) If the results of the DNA testing show that the defendant  
18 is not the source of the identified biological material, the court  
19 shall appoint counsel pursuant to MCR 6.505(a) and hold a hearing  
20 to determine by clear and convincing evidence all of the following:

21 (a) That only the perpetrator of the crime or crimes for which  
22 the defendant was convicted could be the source of the identified  
23 biological material.

24 (b) That the identified biological material was collected,  
25 handled, and preserved by procedures that allow the court to find  
26 that the identified biological material is not contaminated or is  
27 not so degraded that the DNA profile of the tested sample of the

1 identified biological material cannot be determined to be identical  
2 to the DNA profile of the sample initially collected during the  
3 investigation described in subsection (1).

4 (c) That the defendant's purported exclusion as the source of  
5 the identified biological material, balanced against the other  
6 evidence in the case, is sufficient to justify the grant of a new  
7 trial.

8 (8) Upon motion of the prosecutor, the court shall order  
9 retesting of the identified biological material and shall stay the  
10 defendant's motion for new trial pending the results of the DNA  
11 retesting.

12 (9) The court shall state its findings of fact on the record  
13 or make written findings of fact supporting its decision to grant  
14 or deny the defendant a new trial under this section.

15 Notwithstanding ~~the provisions of~~ section 3 of this chapter, an  
16 aggrieved party may appeal the court's decision to grant or deny  
17 the petition for DNA testing and for new trial by application for  
18 leave granted by the court of appeals.

19 (10) If the name of the victim of the felony conviction  
20 described in subsection (1) is known, the prosecuting attorney  
21 shall give written notice of a petition under this section to the  
22 victim. The notice shall be by first-class mail to the victim's  
23 last known address. Upon the victim's request, the prosecuting  
24 attorney shall give the victim notice of the time and place of any  
25 hearing on the petition and shall inform the victim of the court's  
26 grant or denial of a new trial to the defendant.

27 (11) Effective January 1, 2001, the investigating law

1 enforcement agency shall preserve any biological material  
2 identified during the investigation of a crime or crimes for which  
3 any person may file a petition for DNA testing under this section.  
4 The identified biological material shall be preserved for the  
5 period of time that any person is incarcerated in connection with  
6 that case.