

HOUSE BILL No. 5945

March 30, 2006, Introduced by Reps. Condino, Bieda, Alma Smith, Lipsey, Donigan, Sheltrown, Accavitti, Polidori, Meisner, Hopgood, Vagnozzi, Gleason, Plakas, Tobocman, Gonzales, Kathleen Law, Zelenko, Cushingberry, Adamini, Gillard, Espinoza and Nofs and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 16 of chapter X (MCL 770.16), as amended by
2005 PA 4.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 16. (1) Notwithstanding the limitations of section 2 of
this chapter, ~~a defendant convicted of a felony at trial before~~
~~January 8, 2001 who is serving a prison sentence for the felony~~
~~conviction~~ **ANY OF THE FOLLOWING INDIVIDUALS** may petition the
circuit court to order DNA testing of biological material
identified during ~~the~~ **AN** investigation leading to his or her
conviction **FOR A CRIME**, and for a new trial based on the results of

1 that testing: ~~— The petition shall be filed not later than January~~
2 ~~1, 2009.~~

3 (A) AN INDIVIDUAL CONVICTED OF THE CRIME PURSUANT TO A TRIAL
4 OR PLEA OF GUILTY OR NOLO CONTENDERE.

5 (B) AN INDIVIDUAL INCARCERATED, SERVING A SENTENCE OF
6 PROBATION, OR RELEASED ON PAROLE FOR THE CRIME.

7 (C) AN INDIVIDUAL WHO HAS COMPLETED SERVING HIS OR HER
8 SENTENCE FOR THE CRIME.

9 (2) A petition under this section shall be filed in the
10 circuit court for the county in which the ~~defendant~~ **INDIVIDUAL**
11 was sentenced and shall be assigned to the sentencing judge or his
12 or her successor. The petition shall be served on the prosecuting
13 attorney of the county in which the ~~defendant~~ **INDIVIDUAL** was
14 sentenced.

15 (3) AN INDIVIDUAL WHO HAS PREVIOUSLY FILED A PETITION UNDER
16 THIS SECTION MAY FILE A SUBSEQUENT PETITION UNDER THIS SECTION
17 ASSERTING NEW OR DIFFERENT GROUNDS FOR RELIEF INCLUDING, BUT NOT
18 LIMITED TO, FACTUAL, SCIENTIFIC, OR LEGAL ARGUMENTS NOT PREVIOUSLY
19 MADE OR THE AVAILABILITY OF MORE ADVANCED DNA TECHNOLOGY.

20 (4) NOTWITHSTANDING SUBSECTION (3), THE COURT MAY HEAR A
21 SUBSEQUENT PETITION UNDER THIS SECTION IF THE COURT DETERMINES IT
22 IS IN THE INTERESTS OF JUSTICE TO DO SO.

23 (5) IF THE INDIVIDUAL ALLEGES IN HIS OR HER PETITION THAT
24 BIOLOGICAL MATERIAL WAS COLLECTED DURING THE INVESTIGATION LEADING
25 TO HIS OR HER CONVICTION, THE PROSECUTING ATTORNEY SHALL DO 1 OF
26 THE FOLLOWING WITHIN 28 DAYS AFTER THE PETITION IS FILED OR AS
27 OTHERWISE AGREED TO BY THE INDIVIDUAL AND THE PROSECUTING ATTORNEY

1 AND ORDERED BY THE COURT:

2 (A) PRODUCE THE IDENTIFIED BIOLOGICAL MATERIAL FOR TESTING
3 UNDER THIS SECTION.

4 (B) FILE A WRITTEN RESPONSE AND SUPPORTING AFFIDAVIT SETTING
5 FORTH IN DETAIL WHY THE BIOLOGICAL MATERIAL IS UNAVAILABLE FOR
6 TESTING. THE AFFIDAVIT SHALL INCLUDE ALL OF THE FOLLOWING:

7 (i) INFORMATION REGARDING THE SPECIFIC LOCATIONS SEARCHED,
8 INCLUDING POLICE AGENCIES, LABORATORIES, AND PUBLIC AND PRIVATE
9 HOSPITALS.

10 (ii) INFORMATION REGARDING THE TIME, PLACE, AND MANNER OF THE
11 DESTRUCTION OF THE BIOLOGICAL MATERIAL, IF APPLICABLE.

12 (iii) A STATEMENT OF ANY OTHER FACTS RELEVANT TO THE LOSS OR
13 NONEXISTENCE OF THE EVIDENCE.

14 (iv) ANY DOCUMENTS RELEVANT TO THE LOSS OR NONEXISTENCE OF THE
15 EVIDENCE.

16 (6) ~~-(3)-~~ The court shall order DNA testing if the ~~defendant~~
17 ~~does~~ COURT DETERMINES THAT all of the following CIRCUMSTANCES
18 EXIST:

19 (a) ~~Presents~~ THERE IS prima facie proof that the evidence
20 sought to be tested is material to the issue of the ~~convicted~~
21 ~~person's~~ INDIVIDUAL'S identity as the perpetrator of, or
22 accomplice to, the crime that resulted in the conviction.

23 ~~—(b) Establishes all of the following by clear and convincing~~
24 ~~evidence:-~~

25 (B) ~~-(i)-~~ A sample of identified biological material described
26 in subsection (1) is available for DNA testing.

27 (C) ~~-(ii)-~~ The identified biological material described in

1 subsection (1) was not previously subjected to DNA testing or, if
2 previously tested, ~~will be subject to DNA testing technology that~~
3 ~~was not available when the defendant was convicted~~ **WAS NOT TESTED**
4 **BY CURRENTLY ACCEPTED DNA TECHNOLOGY.**

5 ~~—— (iii) The identity of the defendant as the perpetrator of the~~
6 ~~crime was at issue during his or her trial.~~

7 (7) ~~—(4)—~~ The court shall state its findings of fact on the
8 record or shall make written findings of fact supporting its
9 decision to grant or deny a petition brought under this section.

10 (8) ~~—(5)—~~ If the court grants a petition for DNA testing under
11 this section, the identified biological material and a biological
12 sample obtained from the ~~defendant~~ **INDIVIDUAL OR OTHER RELEVANT**
13 **SOURCE** shall be subjected to DNA testing by a laboratory approved
14 by the court. If the court determines that the applicant is
15 indigent, the cost of DNA testing ordered under this section shall
16 be borne by the state. The results of the DNA testing shall be
17 provided to the court and to the ~~defendant~~ **INDIVIDUAL** and the
18 prosecuting attorney. Upon motion by either party, the court may
19 order that copies of the testing protocols, laboratory procedures,
20 laboratory notes, and other relevant records compiled by the
21 testing laboratory be provided to the court and to all parties.

22 (9) ~~—(6)—~~ If the results of the DNA testing are inconclusive
23 or show that the ~~defendant~~ **INDIVIDUAL** is the source of the
24 identified biological material **OR THE RESULTS ARE CONSISTENT WITH**
25 **THE STATE'S THEORY OF GUILT**, the court shall deny the motion for
26 new trial. If the DNA test results show that the ~~defendant~~
27 **INDIVIDUAL** is the source of the identified biological material, the

1 ~~defendant's~~ **INDIVIDUAL'S** DNA profile shall be provided to the
2 Michigan state police for inclusion under the DNA identification
3 profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

4 **(10)** ~~-(7)-~~ If the results of the DNA testing show that the
5 ~~defendant~~ **INDIVIDUAL** is not the source of the identified
6 biological material **OR SUPPORT THE INDIVIDUAL'S CLAIM OF INNOCENCE,**
7 the court shall appoint counsel pursuant to MCR 6.505(a) and hold a
8 hearing to determine by clear and convincing evidence all of the
9 following:

10 (a) That only the perpetrator of the crime or crimes for which
11 the ~~defendant~~ **INDIVIDUAL** was convicted could be the source of the
12 identified biological material **OR THAT THE BIOLOGICAL EVIDENCE IS**
13 **CONSISTENT WITH THE INDIVIDUAL'S CLAIM OF INNOCENCE.**

14 (b) That the identified biological material was collected,
15 handled, and preserved by procedures that allow the court to find
16 that the identified biological material is not contaminated or is
17 not so degraded that the DNA profile of the tested sample of the
18 identified biological material cannot be determined to be identical
19 to the DNA profile of the sample initially collected during the
20 investigation described in subsection (1).

21 (c) That the ~~defendant's purported exclusion as the source of~~
22 ~~the identified biological material~~ **EVIDENCE IS CONSISTENT WITH THE**
23 **INDIVIDUAL'S CLAIM OF INNOCENCE,** balanced against the other
24 evidence in the case, **AND** is sufficient to justify the grant of a
25 new trial.

26 **(11)** ~~-(8)- Upon~~ **IF THERE IS A SUFFICIENT BIOLOGICAL SAMPLE,**
27 **UPON** motion of the ~~prosecutor~~ **PROSECUTING ATTORNEY OR THE**

1 **INDIVIDUAL**, the court shall order retesting of the identified
2 biological material and shall stay the ~~defendant's~~ **INDIVIDUAL'S**
3 motion for new trial pending the results of the DNA retesting. **IF**
4 **THERE IS NOT SUFFICIENT BIOLOGICAL MATERIAL FOR ADDITIONAL TESTING,**
5 **THE PARTIES SHALL BE NOTIFIED OF THAT FACT BEFORE ANY TEST IS**
6 **CONDUCTED AND SHALL BE PROVIDED THE OPPORTUNITY TO HAVE AN EXPERT**
7 **PRESENT DURING ANY TEST THAT IS CONDUCTED.**

8 (12) ~~-(9)-~~ The court shall state its findings of fact on the
9 record or make written findings of fact supporting its decision to
10 grant or deny the ~~defendant~~ **INDIVIDUAL** a new trial under this
11 section. Notwithstanding section 3 of this chapter, an aggrieved
12 party may appeal the court's decision to grant or deny the petition
13 for DNA testing and for new trial by application for leave granted
14 by the court of appeals.

15 (13) ~~-(10)-~~ If the name of the victim of the felony conviction
16 described in subsection (1) is known, the prosecuting attorney
17 shall give written notice of a petition under this section to the
18 victim **WHEN AN ORDER FOR TESTING HAS BEEN ENTERED.** The notice shall
19 be by first-class mail to the victim's last known address. Upon the
20 victim's request, the prosecuting attorney shall give the victim
21 notice of the time and place of ~~any hearing on the petition and~~
22 ~~shall inform the victim of the court's grant or denial of a new~~
23 ~~trial to the defendant~~ **THE MOTION FOR NEW TRIAL HEARING OR ANY**
24 **SUBSEQUENT HEARING RELATED TO THE ISSUE OF THE INDIVIDUAL'S**
25 **RELEASE.**

26 (14) ~~-(11)-~~ Effective January 1, 2001, the investigating law
27 enforcement agency shall preserve any biological material

1 identified during the investigation of a crime or crimes for which
2 ~~any person~~ **AN INDIVIDUAL** may file a petition for DNA testing under
3 this section. The identified biological material shall be preserved
4 for the period of time that ~~any person~~ **THE INDIVIDUAL** is
5 incarcerated in connection with that case. **IT IS A REBUTTABLE**
6 **PRESUMPTION THAT BIOLOGICAL MATERIAL THAT WAS DESTROYED OR IS**
7 **OTHERWISE UNAVAILABLE FOR USE DUE TO A VIOLATION OF THIS SUBSECTION**
8 **WOULD HAVE BEEN FAVORABLE TO THE INDIVIDUAL.**