

# SENATE BILL No. 575

June 8, 2005, Introduced by Senators McMANUS, GEORGE, JOHNSON and ALLEN and referred to the Committee on Judiciary.

A bill to amend 1990 PA 250, entitled "DNA identification profiling system act," by amending the title and sections 3a and 6 (MCL 28.173a and 28.176), the title as amended by 1998 PA 522, section 3a as added by 2001 PA 88, and section 6 as amended by 2003 PA 76.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

### TITLE

An act to provide for a DNA identification profiling system; to provide for the collection of samples from certain prisoners, ~~convicted offenders, and juvenile offenders~~ **CERTAIN JUVENILES, AND CERTAIN OTHER INDIVIDUALS** and the analysis of those samples; **TO PROHIBIT CERTAIN CONDUCT AND PRESCRIBE PENALTIES;** and to prescribe the powers and duties of certain state departments and county agencies.

1       Sec. 3a. ~~—(1)—~~ An individual required by law to provide  
2 samples for DNA identification profiling who refuses to provide or  
3 resists providing those samples is guilty of a misdemeanor  
4 punishable by imprisonment for not more than 1 year or a fine of  
5 not more than \$1,000.00, or both. The individual shall be advised  
6 that his or her resistance or refusal to provide samples described  
7 in this ~~subsection~~ **SECTION** is a misdemeanor.

8       ~~—(2) If at the time an individual who is required by law to~~  
9 ~~provide samples for DNA identification profiling is convicted the~~  
10 ~~investigating law enforcement agency or the department already has~~  
11 ~~a sample from the individual that meets the requirements of the~~  
12 ~~rules promulgated under this act, the individual is not required to~~  
13 ~~provide another sample.~~

14       Sec. 6. (1) The department shall permanently retain a DNA  
15 identification profile of an individual obtained from a sample in  
16 the manner prescribed by the department under this act if any of  
17 the following apply:

18       (a) The ~~individual is found responsible~~ **COURT AUTHORIZES THE**  
19 **FILING OF A PETITION** for a violation of section 83, 91, 316, 317,  
20 or 321 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.91,  
21 750.316, 750.317, and 750.321, or a violation or attempted  
22 violation of section 349, 520b, 520c, 520d, 520e, or 520g of the  
23 Michigan penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c,  
24 750.520d, 750.520e, and 750.520g, or a violation of section  
25 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328,  
26 MCL 750.167 and 750.335a, or a local ordinance substantially  
27 corresponding to section 167(1)(c) or (f) or 335a of the Michigan

1 penal code, 1931 PA 328, MCL 750.167 and 750.335a.

2 (b) The individual is ~~convicted of~~ **BOUND OVER FOR TRIAL FOR**  
3 a felony or attempted felony. ~~— or~~

4 **(C) THE INDIVIDUAL IS ARRAIGNED ON A CHARGE OF** any of the  
5 following misdemeanors ~~—~~ or local ordinances that ~~are~~  
6 substantially ~~corresponding~~ **CORRESPOND** to the following  
7 misdemeanors:

8 (i) A violation of section 145a of the Michigan penal code,  
9 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

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

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

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

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

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

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

26 (a) To a criminal justice agency for law enforcement  
27 identification purposes.

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

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

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

8 (3) Notwithstanding subsection (1), if ~~at the time the~~  
9 ~~individual is convicted of or found responsible for the violation~~  
10 the investigating law enforcement agency or the department of state  
11 police already has a sample from the individual that meets the  
12 requirements of this act, the individual is not required to provide  
13 another sample **UNDER SUBSECTION (1)** or pay the fee required under  
14 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 court shall order each  
4 individual ~~found responsible for or convicted of 1 or more crimes~~  
5 ~~listed in subsection (1)~~ **REQUIRED TO PROVIDE A DNA SAMPLE UNDER**  
6 **THIS SECTION** to pay an assessment of \$60.00. The assessment  
7 required under this subsection is in addition to any fine, costs,  
8 or other assessments imposed by the court.

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

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

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

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

26 (b) Until October 1, 2003, 65% to the department of treasury  
27 for the department's forensic science division to defray the costs

1 associated with the requirements of DNA profiling and DNA retention  
2 prescribed under this act.

3 (c) Beginning October 1, 2003, 65% to the state treasurer for  
4 deposit in the justice system fund created in section 181 of the  
5 revised judicature act of 1961, 1961 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, **AND THE INDIVIDUAL**  
20 **IS NOT AWAITING TRIAL ON A CRIME DESCRIBED IN SUBSECTION (1)**, the  
21 individual may petition the sentencing court to order the disposing  
22 of the sample collected and DNA identification profile record for  
23 that conviction in the manner provided in subsections (12) and  
24 (13). The sentencing court shall only enter the order upon a  
25 finding that the individual has proven by clear and convincing  
26 evidence that the conviction was reversed based upon the great  
27 weight of the evidence, specifically, that there was overwhelming

1 evidence against the verdict resulting in a miscarriage of justice.

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

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

11 (a) The laboratory shall dispose of the sample in compliance  
12 with section 13811 of the public health code, 1978 PA 368, MCL  
13 333.13811.

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

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

19 Enacting section 1. This amendatory act takes effect 90 days  
20 after the date it is enacted.