

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5089

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:

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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 may petition the circuit court to order DNA testing of
biological material identified during the investigation leading to
his or her conviction, and for a new trial based on the results of

1 that testing. The petition shall be filed not later than January 1,
2 ~~2009~~—2012. A DEFENDANT CONVICTED OF A FELONY AT TRIAL ON OR AFTER
3 JANUARY 8, 2001 WHO ESTABLISHES THAT ALL OF THE FOLLOWING APPLY MAY
4 PETITION THE CIRCUIT COURT TO ORDER DNA TESTING OF BIOLOGICAL
5 MATERIAL IDENTIFIED DURING THE INVESTIGATION LEADING TO HIS OR HER
6 CONVICTION, AND FOR A NEW TRIAL BASED ON THE RESULTS OF THAT
7 TESTING:

8 (A) THAT DNA TESTING WAS DONE IN THE CASE OR UNDER THIS ACT.

9 (B) THAT THE RESULTS OF THE TESTING WERE INCONCLUSIVE.

10 (C) THAT TESTING WITH CURRENT DNA TECHNOLOGY IS LIKELY TO
11 RESULT IN CONCLUSIVE RESULTS.

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

17 (3) A PETITION UNDER THIS SECTION SHALL ALLEGE THAT BIOLOGICAL
18 MATERIAL WAS COLLECTED AND IDENTIFIED DURING THE INVESTIGATION OF
19 THE DEFENDANT'S CASE. IF THE DEFENDANT, AFTER DILIGENT
20 INVESTIGATION, IS UNABLE TO DISCOVER THE LOCATION OF THE IDENTIFIED
21 BIOLOGICAL MATERIAL OR TO DETERMINE WHETHER THE BIOLOGICAL MATERIAL
22 IS NO LONGER AVAILABLE, THE DEFENDANT MAY PETITION THE COURT FOR A
23 HEARING TO DETERMINE WHETHER THE IDENTIFIED BIOLOGICAL MATERIAL IS
24 AVAILABLE. IF THE COURT DETERMINES THAT IDENTIFIED BIOLOGICAL
25 MATERIAL WAS COLLECTED DURING THE INVESTIGATION, THE COURT SHALL
26 ORDER APPROPRIATE POLICE AGENCIES, HOSPITALS, OR THE MEDICAL
27 EXAMINER TO SEARCH FOR THE MATERIAL AND TO REPORT THE RESULTS OF

1 **THE SEARCH TO THE COURT.**

2 (4) ~~(3)~~—The court shall order DNA testing if the defendant
3 does all of the following:

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

8 (b) Establishes all of the following by clear and convincing
9 evidence:

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

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

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

18 (5) ~~(4)~~—The court shall state its findings of fact on the
19 record or shall make written findings of fact supporting its
20 decision to grant or deny a petition brought under this section.

21 (6) ~~(5)~~—If the court grants a petition for DNA testing under
22 this section, the identified biological material and a biological
23 sample obtained from the defendant shall be subjected to DNA
24 testing by a laboratory approved by the court. If the court
25 determines that the applicant is indigent, the cost of DNA testing
26 ordered under this section shall be borne by the state. The results
27 of the DNA testing shall be provided to the court and to the

1 defendant and the prosecuting attorney. Upon motion by either
2 party, the court may order that copies of the testing protocols,
3 laboratory procedures, laboratory notes, and other relevant records
4 compiled by the testing laboratory be provided to the court and to
5 all parties.

6 (7) ~~(6)~~—If the results of the DNA testing are inconclusive or
7 show that the defendant is the source of the identified biological
8 material, the court shall deny the motion for new trial. If the DNA
9 test results show that the defendant is the source of the
10 identified biological material, the defendant's DNA profile shall
11 be provided to the Michigan state police for inclusion under the
12 DNA identification profiling system act, 1990 PA 250, MCL 28.171 to
13 28.176.

14 (8) ~~(7)~~—If the results of the DNA testing show that the
15 defendant is not the source of the identified biological material,
16 the court shall appoint counsel pursuant to MCR 6.505(a) and hold a
17 hearing to determine by clear and convincing evidence all of the
18 following:

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

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

1 investigation described in subsection (1).

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

6 (9) ~~(8)~~—Upon motion of the prosecutor, the court shall order
7 retesting of the identified biological material and shall stay the
8 defendant's motion for new trial pending the results of the DNA
9 retesting.

10 (10) ~~(9)~~—The court shall state its findings of fact on the
11 record or make written findings of fact supporting its decision to
12 grant or deny the defendant a new trial under this section.

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

17 (11) ~~(10)~~—If the name of the victim of the felony conviction
18 described in subsection (1) is known, the prosecuting attorney
19 shall give written notice of a petition under this section to the
20 victim. The notice shall be by first-class mail to the victim's
21 last known address. Upon the victim's request, the prosecuting
22 attorney shall give the victim notice of the time and place of any
23 hearing on the petition and shall inform the victim of the court's
24 grant or denial of a new trial to the defendant.

25 (12) ~~(11)~~—Effective January 1, 2001, the investigating law
26 enforcement agency shall preserve any biological material
27 identified during the investigation of a crime or crimes for which

1 any person may file a petition for DNA testing under this section.
2 The identified biological material shall be preserved for the
3 period of time that any person is incarcerated in connection with
4 that case.