

# SENATE BILL No. 1388

June 17, 2008, Introduced by Senators KUIPERS and HARDIMAN and referred to the Committee on Judiciary.

A bill to amend 1990 PA 250, entitled "DNA identification profiling system act," by amending sections 2 and 6 (MCL 28.172 and 28.176), section 2 as amended by 2001 PA 88 and section 6 as amended by 2003 PA 76.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2. As used in this act:

2       (a) "Department" means the department of state police.

3       (b) "DNA identification profile" **OR "PROFILE"** means the  
4 results of the DNA identification profiling of a sample, **INCLUDING**  
5 **A PAPER, ELECTRONIC, OR DIGITAL RECORD.**

6       (c) "DNA identification profiling" means a validated  
7 scientific method of analyzing components of deoxyribonucleic acid  
8 molecules in a biological specimen to determine a match or a  
9 nonmatch between a reference sample and an evidentiary sample.

1 (d) "Felony" means a violation of a penal law of this state  
2 for which the offender may be punished by imprisonment for more  
3 than 1 year or an offense expressly designated by law to be a  
4 felony.

5 (e) "Investigating law enforcement agency" means the law  
6 enforcement agency responsible for the investigation of the offense  
7 for which the individual is convicted. Investigating law  
8 enforcement agency includes the county sheriff but does not include  
9 a probation officer employed by the department of corrections.

10 (f) "Sample" means a portion of an individual's blood, saliva,  
11 or tissue collected from the individual.

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

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

26 (b) The individual is convicted of a felony or attempted  
27 felony, or any of the following misdemeanors, or local ordinances

1 that are substantially corresponding to the following misdemeanors:

2 (i) A violation of section 145a of the Michigan penal code,  
3 1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.

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

8 (iii) A violation of section 335a of the Michigan penal code,  
9 1931 PA 328, MCL 750.335a, indecent exposure.

10 (iv) A violation of section 451 of the Michigan penal code,  
11 1931 PA 328, MCL 750.451, first and second prostitution violations.

12 (v) A violation of section 454 of the Michigan penal code,  
13 1931 PA 328, MCL 750.454, leasing a house for purposes of  
14 prostitution.

15 (vi) A violation of section 462 of the Michigan penal code,  
16 1931 PA 328, MCL 750.462, female under the age of 17 in a house of  
17 prostitution.

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

20 (a) To a criminal justice agency for law enforcement  
21 identification purposes.

22 (b) In a judicial proceeding as authorized or required by a  
23 court.

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

26 (d) For an academic, research, statistical analysis, or  
27 protocol developmental purpose only if personal identifications are

1 removed.

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

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

23 (5) Until October 1, 2003, the court shall order each  
24 individual found responsible for or convicted of 1 or more crimes  
25 listed in subsection (1) to pay an assessment of \$60.00. The  
26 assessment required under this subsection is in addition to any  
27 fine, costs, or other assessments imposed by the court.

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

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

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

14           (a) Twenty-five percent to the county sheriff or other  
15 investigating law enforcement agency that collected the DNA sample  
16 as designated by the court to defray the costs of collecting DNA  
17 samples.

18           (b) Until October 1, 2003, 65% to the department of treasury  
19 for the department's forensic science division to defray the costs  
20 associated with the requirements of DNA profiling and DNA retention  
21 prescribed under this act.

22           (c) Beginning October 1, 2003, 65% to the state treasurer for  
23 deposit in the justice system fund created in section 181 of the  
24 revised judicature act of 1961, 1961 PA 236, MCL 600.181.

25           (9) Beginning December 31, 2002, the director of the  
26 department shall report by December 31 of each year concerning the  
27 rate of DNA sample collection, DNA identification profiling,

1 retention and compilation of DNA identification profiles, and the  
2 collection of assessments required under subsection (5) to all of  
3 the following:

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

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

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

9 (10) If a sample was collected under subsection (1) from an  
10 individual who does not have more than 1 conviction, and that  
11 conviction was reversed by an appellate court, the individual may  
12 petition the sentencing court to order the disposing of the sample  
13 collected and DNA identification profile record for that conviction  
14 in the manner provided in subsections ~~(12) and (13)~~ **AND (14)**. The  
15 sentencing court shall only enter the order upon a finding that the  
16 individual has proven by clear and convincing evidence that the  
17 conviction was reversed based upon the great weight of the  
18 evidence, specifically, that there was overwhelming evidence  
19 against the verdict resulting in a miscarriage of justice.

20 (11) Any other DNA identification profile obtained by the  
21 department shall not be permanently retained by the department but  
22 shall be retained only as long as it is needed for a criminal  
23 investigation or criminal prosecution. **EXCEPT AS PROVIDED IN**  
24 **SUBSECTION (12), THE STATE POLICE FORENSIC LABORATORY SHALL DISPOSE**  
25 **OF A DNA SAMPLE COLLECTED UNDER SUBSECTION (1) OR A DNA**  
26 **IDENTIFICATION PROFILE, OR BOTH, IF ANY OF THE FOLLOWING**  
27 **CIRCUMSTANCES OCCUR:**

1 (A) THE DEPARTMENT RECEIVES A WRITTEN REQUEST FOR DISPOSAL  
2 FROM THE INVESTIGATING POLICE AGENCY OR PROSECUTOR INDICATING THAT  
3 THE SAMPLE OR PROFILE IS NO LONGER NECESSARY FOR A CRIMINAL  
4 INVESTIGATION OR CRIMINAL PROSECUTION.

5 (B) THE DEPARTMENT RECEIVES A WRITTEN REQUEST FOR DISPOSAL AND  
6 A CERTIFIED COPY OF A FINAL COURT ORDER ESTABLISHING THAT THE  
7 CHARGE FOR WHICH THE SAMPLE WAS OBTAINED HAS BEEN DISMISSED OR HAS  
8 RESULTED IN AN ACQUITTAL OR THAT NO CHARGE WAS FILED WITHIN THE  
9 APPLICABLE LIMITATIONS PERIOD.

10 (12) SUBSECTION (11) DOES NOT APPLY IF EITHER OF THE FOLLOWING  
11 CIRCUMSTANCES EXISTS:

12 (A) THE DEPARTMENT DETERMINES THAT THE INDIVIDUAL FROM WHOM  
13 THE SAMPLE IS TAKEN HAS OTHERWISE BECOME OBLIGATED TO SUBMIT A  
14 SAMPLE.

15 (B) SUBSECTION (16) APPLIES.

16 (13) ~~(12) If the state police forensic laboratory determines~~  
17 ~~after analysis that a sample has been submitted by an individual~~  
18 ~~who has been eliminated as a suspect in a crime, the~~ **THE STATE**  
19 **POLICE FORENSIC** laboratory shall dispose of ~~the~~ **A** sample and ~~the~~ **A**  
20 DNA identification profile record in the following manner:

21 (a) The laboratory shall dispose of the sample in compliance  
22 with section 13811 of the public health code, 1978 PA 368, MCL  
23 333.13811.

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

26 (14) ~~(13)~~ After disposal in accordance with subsection ~~(12)~~  
27 (13), the laboratory shall make and keep a written record of the

1 disposal, signed by the individual who witnessed the disposal.

2 (15) AN IDENTIFICATION, WARRANT, DETENTION, PROBABLE CAUSE TO  
3 ARREST, ARREST, OR CONVICTION BASED UPON A DNA MATCH OR DNA  
4 INFORMATION IS NOT INVALIDATED IF IT IS LATER DETERMINED THAT 1 OR  
5 MORE OF THE FOLLOWING ERRORS OCCURRED IN GOOD FAITH:

6 (A) A DNA SAMPLE WAS ERRONEOUSLY OBTAINED.

7 (B) A DNA IDENTIFICATION PROFILE WAS ERRONEOUSLY RETAINED.

8 (C) A DNA SAMPLE WAS NOT DISPOSED OF OR THERE WAS A DELAY IN  
9 DISPOSING OF THE SAMPLE.

10 (D) A DNA IDENTIFICATION PROFILE WAS NOT DISPOSED OF OR THERE  
11 WAS A DELAY IN DISPOSING OF THE PROFILE.

12 (16) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE  
13 DEPARTMENT IS NOT REQUIRED TO DISPOSE OF PHYSICAL EVIDENCE OR DATA  
14 OBTAINED FROM A SAMPLE IF EVIDENCE RELATING TO AN INDIVIDUAL OTHER  
15 THAN THE INDIVIDUAL FROM WHOM THE SAMPLE WAS TAKEN WOULD BE  
16 DESTROYED AND THE EVIDENCE OR DATA RELATING TO THE OTHER INDIVIDUAL  
17 WOULD OTHERWISE BE RETAINED UNDER THIS SECTION.