

Act No. 410
Public Acts of 2008
Approved by the Governor
January 5, 2009
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**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Condino, Donigan, Vagnozzi, Alma Smith, Scott, Virgil Smith, Warren, Bieda, Wenke and Meadows

ENROLLED HOUSE BILL No. 5089

AN ACT to amend 1927 PA 175, entitled "An act to revise, consolidate, and codify the laws relating to criminal procedure and to define the jurisdiction, powers, and duties of courts, judges, and other officers of the court under the provisions of this act; to provide laws relative to the rights of persons accused of criminal offenses and ordinance violations; to provide for the arrest of persons charged with or suspected of criminal offenses and ordinance violations; to provide for bail of persons arrested for or accused of criminal offenses and ordinance violations; to provide for the examination of persons accused of criminal offenses; to regulate the procedure relative to grand juries, indictments, informations, and proceedings before trial; to provide for trials of persons complained of or indicted for criminal offenses and ordinance violations and to provide for the procedure in those trials; to provide for judgments and sentences of persons convicted of criminal offenses and ordinance violations; to establish a sentencing commission and to prescribe its powers and duties; to provide for procedure relating to new trials and appeals in criminal and ordinance violation cases; to provide a uniform system of probation throughout this state and the appointment of probation officers; to prescribe the powers, duties, and compensation of probation officers; to provide penalties for the violation of the duties of probation officers; to provide for procedure governing proceedings to prevent crime and proceedings for the discovery of crime; to provide for fees of officers, witnesses, and others in criminal and ordinance violation cases; to set forth miscellaneous provisions as to criminal procedure in certain cases; to provide penalties for the violation of certain provisions of this act; and to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act," 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 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 that testing. The petition shall be filed not later than January 1, 2012. A defendant convicted of a felony at trial on or after January 8, 2001 who establishes that all of the following apply 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 that testing:

- (a) That DNA testing was done in the case or under this act.
- (b) That the results of the testing were inconclusive.
- (c) That testing with current DNA technology is likely to result in conclusive results.

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

(3) A petition under this section shall allege that biological material was collected and identified during the investigation of the defendant's case. If the defendant, after diligent investigation, is unable to discover the location of the identified biological material or to determine whether the biological material is no longer available, the defendant may petition the court for a hearing to determine whether the identified biological material is available. If the court determines that identified biological material was collected during the investigation, the court shall order appropriate police agencies, hospitals, or the medical examiner to search for the material and to report the results of the search to the court.

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

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

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

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

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

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

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

(6) If the court grants a petition for DNA testing under this section, the identified biological material and a biological sample obtained from the defendant shall be subjected to DNA testing by a laboratory approved by the court. If the court determines that the applicant is indigent, the cost of DNA testing ordered under this section shall be borne by the state. The results of the DNA testing shall be provided to the court and to the defendant and the prosecuting attorney. Upon motion by either party, the court may order that copies of the testing protocols, laboratory procedures, laboratory notes, and other relevant records compiled by the testing laboratory be provided to the court and to all parties.

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

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

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

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

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

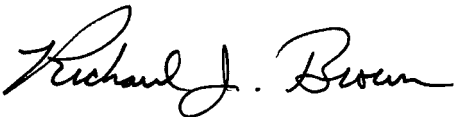
(9) Upon motion of the prosecutor, the court shall order retesting of the identified biological material and shall stay the defendant's motion for new trial pending the results of the DNA retesting.

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

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

(12) Effective January 1, 2001, the investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file a petition for DNA testing under this section. The identified biological material shall be preserved for the period of time that any person is incarcerated in connection with that case.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor