

Act No. 535
Public Acts of 2008
Approved by the Governor
January 12, 2009
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January 13, 2009
EFFECTIVE DATE: January 13, 2009

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Senator Cropsey

ENROLLED SENATE BILL No. 1549

AN ACT to amend 1990 PA 250, entitled "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 and the analysis of those samples; and to prescribe the powers and duties of certain state departments and county agencies," 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, and by adding section 5.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

- (a) "Department" means the department of state police.
- (b) "DNA identification profile" or "profile" means the results of the DNA identification profiling of a sample, including a paper, electronic, or digital record.
- (c) "DNA identification profiling" means a validated scientific method of analyzing components of deoxyribonucleic acid molecules in a biological specimen to determine a match or a nonmatch between a reference sample and an evidentiary sample.
- (d) "Felony" means a violation of a penal law of this state for which the offender may be punished by imprisonment for more than 1 year or an offense expressly designated by law to be a felony.
- (e) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the individual is convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections.
- (f) "Sample" means a portion of an individual's blood, saliva, or tissue collected from the individual.

Sec. 5. (1) An individual shall not disseminate, receive, or otherwise use or attempt to use information in the DNA identification profile record knowing that the dissemination, receipt, or use of that information is for a purpose not authorized by law. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(2) An individual shall not willfully remove, destroy, tamper with, or attempt to tamper with a DNA sample, record, or other DNA information obtained or retained under this act without lawful authority. An individual who violates this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

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

(a) The individual is found responsible for a violation of section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a violation or attempted violation of section 349, 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a violation of section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and

750.335a, or a local ordinance substantially corresponding to section 167(1)(c) or (f) or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.

(b) The individual is convicted of a felony or attempted felony, or any of the following misdemeanors, or local ordinances that are substantially corresponding to the following misdemeanors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Beginning December 31, 2002, the director of the department shall report by December 31 of each year concerning the rate of DNA sample collection, DNA identification profiling, retention and compilation of DNA identification profiles, and the collection of assessments required under subsection (5) to all of the following:

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

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

(c) The senate appropriations subcommittee on state police.

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

(11) Any other DNA identification profile obtained by the department shall not be permanently retained by the department but shall be retained only as long as it is needed for a criminal investigation or criminal prosecution. Except as provided in subsection (12), the state police forensic laboratory shall dispose of a DNA sample collected under subsection (1) or a DNA identification profile, or both, if any of the following circumstances occur:

(a) The department receives a written request for disposal from the investigating police agency or prosecutor indicating that the sample or profile is no longer necessary for a criminal investigation or criminal prosecution.

(b) The department receives a written request for disposal and a certified copy of a final court order establishing that the charge for which the sample was obtained has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable limitations period.

(12) Subsection (11) does not apply if either of the following circumstances exists:

(a) The department determines that the individual from whom the sample is taken has otherwise become obligated to submit a sample.

(b) Subsection (16) applies.

(13) The state police forensic laboratory shall dispose of a sample and a DNA identification profile record in the following manner:

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

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

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

(15) An identification, warrant, detention, probable cause to arrest, arrest, or conviction based upon a DNA match or DNA information is not invalidated if it is later determined that 1 or more of the following errors occurred in good faith:

(a) A DNA sample was erroneously obtained.

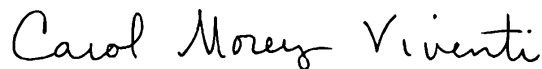
(b) A DNA identification profile was erroneously retained.

(c) A DNA sample was not disposed of or there was a delay in disposing of the sample.

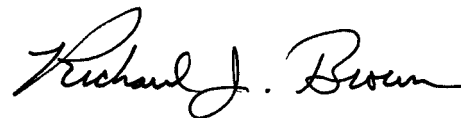
(d) A DNA identification profile was not disposed of or there was a delay in disposing of the profile.

(16) Notwithstanding any other provision of this act, the department is not required to dispose of physical evidence or data obtained from a sample if evidence relating to an individual other than the individual from whom the sample was taken would be destroyed and the evidence or data relating to the other individual would otherwise be retained under this section.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor