

Legislative Analysis



DNA PROFILING OF PRISONERS & PROBATIONERS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 346 as enrolled
Public Act 127 of 2011
Sponsor: Sen. Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 8-24-11

A SUMMARY OF SENATE BILL 346 AS PASSED BY THE HOUSE AND ENROLLED

The bill would require a prisoner serving a sentence in a state correctional facility or a probationer placed at the Special Alternative Incarceration program to provide a sample for DNA profiling by January 1, 2012, or before being released on parole or placed in a community placement facility. For prisoners incarcerated after June 1, 2011, the bill would require a sample to be obtained within 90 days of the prisoner or probationer being committed to the jurisdiction of the Department of Corrections.

BACKGROUND INFORMATION:

Public Acts 84-91 of 2001 amended various statutes to require that DNA samples be obtained from adults (and from juveniles tried as adults) who are convicted of a felony or attempted felony or certain misdemeanor offenses and also from juveniles found responsible for certain felony and misdemeanor offenses. Public Act 380 of 2008 required a DNA sample to be collected from each individual arrested for a violent felony. From the DNA sample, a profile is obtained of 13 genetic markers unique to each individual. The profile itself consists of a digital readout of numbers and letters. It does not contain information from which a person's sex, race, or health status can be determined. A DNA profile can be stored electronically in a searchable database. The Department of State Police is required to permanently retain these DNA profiles.

CODIS, the DNA database operated by the FBI (and in which states can elect to share DNA profiles), originally consisted of two indexes: one with DNA profiles of convicted offenders and one with DNA profiles from samples obtained from crime scenes. More recently, CODIS added an Arrestee Index, a Missing or Unidentified Persons Index, and a Missing Persons Reference Index. Local, state, and federal law enforcement agencies can upload and run DNA profiles collected from crime scenes or obtained from offenders against any of these indexes to see if a match occurs. For example, a DNA profile obtained from a sample at a crime scene that matches profiles from other crime scenes may alert investigators to crimes that are linked; for example, it may tell them that they are looking for a serial murderer. A match of DNA from a crime scene with an offender in the Convicted Offender Index or Arrestee Index may give law enforcement investigators a lead to a suspect.

DETAILED CONTENT OF THE BILL:

Currently, various laws require DNA sampling and profiling at the time of conviction of a crime and upon arrest for a violent felony. In addition, the Corrections Code requires a prisoner to provide a DNA sample for testing prior to being released on parole, placed in a community placement facility of any kind, or discharged upon completion of his her maximum sentence.

Senate Bill 346 would amend the provision in the Corrections Code (MCL 791.233d) to instead require that each prisoner serving a sentence in a state correctional facility, as well as each probationer placed at the Special Alternative Incarceration Program (SAI), provide a sample for DNA identification profiling. If a valid sample had not already been collected under provisions of the DNA Identification Profiling System Act (for example, upon conviction) and recorded on the prisoner's or probationer's criminal history record, the sample would have to be obtained within the following time periods, as applicable:

- For a prisoner serving a sentence in a state correctional facility or a probationer in an SAI program on June 1, 2011, the samples would have to be obtained not later than January 1, 2012. A prisoner or probationer released on parole, placed in a community placement facility of any kind, or discharged upon completion of a maximum sentence before that date would have to provide the sample prior to the date of release, placement, or discharge.
- For a prisoner or probationer in an SAI program whose sentence began after June 1, 2011, the sample would have to be obtained within 90 days after the date the prisoner was committed to the jurisdiction of the DOC.

The bill would also amend a provision that currently permits the DOC to collect a sample under this section of law regardless of whether the prisoner consents to the collection, to instead require the sample to be taken. Further, provisions in the section referencing a "prisoner" would be expanded to reference both a prisoner and a probationer.

FISCAL IMPACT:

The bill would change current law to require the collection of DNA samples from state prisoners at intake rather than before their release. In addition, the bill requires the collection of DNA samples from probationers housed at the Department of Correction's Special Alternative Incarceration (SAI) facility. Current law does not require DNA collection from these individuals.

The bill could increase workload and state costs to the Department of Corrections related to database coordination with the Department of State Police to identify prisoners that still need a sample collected as well as the collection of additional DNA samples beyond the number collected under current policies. However, these costs are likely to be manageable and met out of existing resources. The bill will require the collection of new DNA samples from any of the 450-500 probationers per year that serve terms at the SAI facility for whom samples are not already available. Furthermore, it would require the Department to collect samples from all current prisoners that have not already submitted

a sample by January 1, 2011, and from all new prisoners within 90 days of intake. This provision will require the Department to obtain samples from another 4,703 prisoners who have avoided submitting to DNA sampling to date.

Current department policy calls for the collection of DNA samples from state prisoners during a prisoner's annual health examination if a sample has not already been collected. While consent is not required to obtain the sample, if prisoners refuse to agree to the sample, guidance from the Attorney General prohibits the Department from taking the sample by force. Current law requires the collection of a DNA sample prior to release from prison. Thus, most prisoners will eventually have to submit to a DNA sample. However, the MDOC reports that 5,034 current prisoners are serving active life sentences, with 3,586 of these prisoners serving life without possibility of parole. Except for the few prisoners paroled from a life sentence, most of these prisoners will not be released and thus would not be affected by the current law requirement for collection at release. Thus, DNA samples would not be collected from these prisoners without their consent.

Finally, the bill would increase costs for the Department of State Police to process the increased number of DNA samples collected (or the acceleration of collections) under the bill. The department indicates that the estimated cost to process a DNA sample for inclusion in the Combined DNA Index System (CODIS) is \$36.00. (This estimate does not include overhead costs, such as building, utilities, storage, maintenance, or personnel management.) Assuming that the \$60.00 assessment required under the Corrections Code can be collected from all affected prisoners and probationers, however, the department's costs should be roughly offset by the \$39.00 portion of that assessment the department receives for processing costs.

POSITIONS:

The Michigan Department of Corrections indicated support for the bill. (6-30-11)

The Office of Attorney General indicated support for the bill. (6-30-11)

The Michigan Domestic Violence Prevention and Treatment Board indicated support for the bill. (6-30-11)

The Michigan State Police indicated support for the bill. (6-30-11)

The Prosecuting Attorneys Association of Michigan (PAAM) indicated support for the bill. (6-30-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Bob Schneider
Kyle Jen

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.