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BILL



ANALYSIS

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Senate Bill 346 (as reported without amendment)
Sponsor: Senator Tonya Schuitmaker
Committee: Judiciary

Date Completed: 5-16-11

RATIONALE

The Corrections Code requires prisoners to provide samples of blood, saliva, or tissue for DNA identification profiling. A prisoner's DNA profile then is entered into the FBI's Combined DNA Index System (CODIS), a national database of DNA profiles for comparison with DNA evidence recovered from crime scenes. This can be an effective tool to identify or exclude suspects in criminal investigations. In Michigan, however, inmates are not required to provide DNA samples early in their sentence, because the Corrections Code specifies that a prisoner may not be *released* (on parole, community placement, or discharge upon completion of sentence) until he or she has provided a sample. Consequently, suspect identifications may take a long time, many years in some cases, and samples might never be collected from someone serving a life sentence. Some people believe that the time line for collection of DNA from prisoners should be revised so the samples are processed early in a prisoner's term.

CONTENT

The bill would amend the Corrections Code to revise requirements pertaining to the DNA identification profiling of prisoners, and to extend the DNA profiling requirement to probationers placed under the jurisdiction of the Department of Corrections (DOC) in the special alternative incarceration (SAI) program (which also is known as "boot camp").

Under the Code, a prisoner may not be released on parole, placed in a community placement facility of any kind, or discharged upon completion of his or her maximum

sentence until he or she has provided samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and has provided samples for a determination of his or her secretor status. Under the bill, instead, each prisoner serving a sentence in a State correctional facility, and each probationer placed at the SAI program, would have to provide a sample for DNA identification profiling.

In addition, if a valid sample had not already been collected in the manner prescribed under the DNA Identification Profiling System Act, and recorded on the prisoner's or probationer's criminal history record, the sample required under the bill would have to be obtained within the time periods described below.

For a prisoner serving a sentence in a State correctional facility or a probationer in an SAI program on June 1, 2011, the sample would have to be obtained by December 1, 2011. If the prisoner or probationer were released on parole, placed in a community placement facility of any kind (including a community corrections center or a community residential home), or discharged upon completion of his or her maximum sentence before December 1, 2011, the sample would have to be obtained before the date of release, placement, or discharge.

For a prisoner serving a sentence in a State correctional facility or a 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 on which the prisoner or probationer was committed to the DOC's jurisdiction.

The Code specifies that the DOC *may* collect a sample regardless of whether the prisoner consents to the collection. Under the bill, the DOC would be required to collect a sample regardless of whether the prisoner consented.

The Code requires a prisoner to pay a \$60 assessment, which the DOC must transmit to the Department of Treasury for the Department of State Police Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention. Under the bill, the DOC would have to collect the assessment from a prisoner or an SAI probationer.

MCL 791.233d

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A provision requiring certain prisoners under the DOC's jurisdiction to provide samples for DNA profiling was enacted in 1990 and took effect in 1994. A subsequent amendment extended the requirement to all prisoners under the DOC's jurisdiction. This requirement is flawed, however, because it prohibits a prisoner from being released without first giving a sample, rather than requiring a sample when a prisoner enters the system. This can result in long delays in collecting the samples and comparing them to DNA profiles in the CODIS database, and can mean that samples are never collected from some inmates, who might be the worst offenders.

The Senate Judiciary Committee heard testimony that illustrates the consequences of the current practice. A woman testified that she had been raped 13 years ago, at the age of 13, when a man broke into her parents' house, where she was home alone. Although the incident was reported immediately, and an investigation was begun right away, the case went cold. Some people reportedly questioned the veracity of the girl's report. The victim told of spending years terrified that her attacker would return, and of being frustrated that there was no progress in the investigation and that some doubted her story. In

January 2009, the victim was informed that a man who had recently been paroled for an unrelated offense was identified as her attacker through a DNA sample he was required to supply before his release from prison. The man apparently had spent 10 years behind bars, resisting giving his DNA sample until he had to, because he knew it would link him to the girl's rape. The victim told the Senate committee that her assailant was sentenced late in 2009 to 40-100 years in prison for raping her. If the man's DNA sample had been collected earlier, upon his incarceration for the other crime, he would have been identified as the rapist and the victim could have received some semblance of justice much sooner.

By requiring that prisoners currently under the DOC's jurisdiction, and probationers in a DOC boot camp, provide a sample for DNA profiling soon, and that those serving in the future give a sample within 90 days of the start of their incarceration, the bill would promote the timely investigation and prosecution of crimes and help other victims avoid long periods of uncertainty about their attackers.

Supporting Argument

The use of DNA profiles as evidence represents a significant technological advancement in the prosecution of criminal cases over the last 20 years or so. Evidence of a perpetrator's DNA can be used to secure a conviction, or eliminate a potential suspect, and has even been used to exonerate individuals convicted of crimes. Matching DNA profiles is a powerful tool for law enforcement and the courts and its availability and use should be maximized. To that end, State prisoners should be mandated to provide a sample for DNA profiling and comparison to profiles in the CODIS database on the front end of their term of incarceration, not when they are about to be released. The current practice results in delayed justice because it can take many years to identify a person imprisoned for something else as a suspect in an ongoing investigation, and a prisoner serving a life sentence may never be compelled to provide a DNA sample.

In addition, the bill would expand the pool of convicts who must provide a sample for DNA profiling by extending the requirement to

probationers placed in the DOC boot camp program.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Under current law, probationers enrolled in programming at the SAI facility are not required to submit DNA samples. To the extent that the Department of Corrections required added resources in order to collect DNA samples from every prisoner and every probationer housed at the SAI facility, additional expenditures could be incurred.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.