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BILL ANALYSIS



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Senate Bills 105, 106, and 107 (as enacted) **PUBLIC ACTS 457, 458, & 459 of 2014**
Sponsor: Senator Tonya Schuitmaker (S.B. 105 & 106)
Senator Rick Jones (S.B. 107)
Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 6-25-15

CONTENT

Senate Bill 105 amends the DNA Identification Profiling System Act to do the following:

- Require the collection of a DNA sample from anyone arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.
- Require a DNA sample to be forwarded to the Michigan Department of State Police (MSP) after the individual from whom it was collected was arraigned.
- Prohibit a person's DNA sample from being forwarded if the person is not charged with committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.
- Prohibit the unauthorized obtaining of a DNA ID profile or testing of a DNA sample, and the willful failure to destroy a DNA sample or profile as required or ordered.
- Require the court to order the disposal of a DNA sample and profile record if the sample was collected from a person who does not have more than one conviction and that conviction was reversed by an appellate court

Senate Bill 106 amends the juvenile code to do the following:

- Require an individual to provide samples for DNA profiling and for a determination of his or her secretor status, if the person is arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.
- Delete a requirement that the MSP report annually to the Legislature regarding DNA collection and identification.
- Delete provisions specifying the purposes for which DNA samples may be disclosed.

Senate Bill 107 amends the Michigan Penal Code to do the following:

- Require the collection of a DNA sample from anyone arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.
- Delete a requirement that the MSP report annually to the Legislature regarding DNA collection and identification.
- Delete provisions specifying the purposes for which DNA samples may be disclosed.

All three bills reinstate a \$60 assessment that courts were required to order before October 1, 2003, for each individual found responsible for or convicted of a crime for which DNA sample collection is required, and retain a requirement that 65% of the revenue from that assessment go to the State Treasurer for deposit in the Justice System Fund.

The bills will take effect on July 1, 2015.

Senate Bill 105

Collection of DNA Sample upon Arrest

The DNA Identification Profiling System Act provides for the collection of samples from certain prisoners, convicted offenders, and juvenile offenders, and the analysis of those samples. The bill also provides for the collection of samples for DNA identification profiling from individuals arrested for committing or attempting to commit a felony and from those found responsible for an act that would be a crime if committed by an adult.

The Act requires the MSP to promulgate rules to implement it, including rules governing the method of collecting samples in a medically approved manner by qualified people and the type and number of samples to be collected by law enforcement agencies from certain convicted offenders or juveniles. The rules also must govern distributing blood specimen vials, mailing tubes, and labels and instructions for collecting samples. The bill refers to distributing DNA database collection kits and instructions for collecting samples.

The Act requires the county sheriff or the investigating law enforcement agency, as ordered by the court, to provide for collecting the required samples in a medically approved manner by qualified people using supplies provided by the MSP. The sheriff or law enforcement agency then must forward those samples and any samples that were already in the agency's possession to the MSP. Under the bill, the samples must be forwarded to the MSP after the individual from whom the sample was taken has been arraigned in the district court. The sample may not be forwarded, however, if the person is not charged with committing or attempting to commit a felony or an offense that would be a felony if committed by an adult. If a person's DNA sample is forwarded to the MSP even though the person is not charged, the law enforcement agency must notify the MSP to destroy the sample.

Currently, a sample must be collected after conviction or a finding of responsibility but before sentencing or disposition and be promptly transmitted to the MSP. Under the bill, the sample must be collected after arrest but before sentencing or disposition and be promptly transmitted to the MSP after the person is charged.

The bill requires that, at the time a DNA sample is taken from an individual, he or she be notified in writing of all of the following:

- Except as otherwise provided by law, the DNA sample and/or profile will be destroyed or expunged, as appropriate, if the charge for which the sample was obtained has been dismissed or resulted in acquittal, or no charge was filed within the period of limitations.
- The DNA sample and/or profile will not be destroyed or expunged if the MSP determines that the person from whom it was taken is otherwise obligated to submit a sample or if it is evidence relating to another person that would otherwise be retained.
- The burden is on the arresting law enforcement agency and the prosecution, not on the individual, to request the destruction or expunction of a DNA sample or profile.

If, at the time an individual who is required by law to provide samples for DNA profiling is convicted, the investigating law enforcement agency or the MSP already has a sample from the individual, he or she is not required to provide another sample. Under the bill, this

provision also applies to an individual who is arrested for committing or attempting to commit a felony or is found responsible.

Under the Act, the MSP must permanently retain a DNA profile of an individual that is obtained from a sample in manner prescribed by the Department if the individual is found responsible for violating a specified section of the Penal Code or is convicted of a felony or attempted felony or a misdemeanor listed in the Act. The bill requires retention of the profile if the individual is convicted or found responsible for a felony or attempted felony or a specified misdemeanor, and requires retention of the sample if the individual is arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.

(Under the Act, any other DNA profile obtained by the MSP may be retained only as long as it is needed for a criminal investigation or criminal prosecution. Except as otherwise provided, the MSP forensic laboratory must dispose of a DNA sample collected under the Act or a DNA profile, or both, if the Department receives either a written request for disposal from the investigating police agency or prosecutor indicating that the sample or profile is no longer needed or 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.)

Unauthorized Actions

The Act prohibits an individual from doing either of the following, both of which are misdemeanors punishable by up to one year's imprisonment and/or a maximum fine of \$1,000:

- Disseminating, receiving, or otherwise using or attempting to use information in the DNA ID profile record, knowing that the dissemination, receipt, or use of the information is for a purpose not authorized by law.
- Willfully removing, destroying, tampering with, or attempting to tamper with a DNA sample, record, or other DNA information obtained or retained under the Act, without lawful authority.

The bill also prohibits an individual from doing any of the following:

- Obtaining a DNA ID profile from the DNA ID profiling system, without proper authority.
- Testing a DNA sample obtained under the Act, without proper authority.
- Willfully failing to destroy a DNA sample or profile that has been required or ordered to be destroyed under the Act.

A violation is a misdemeanor subject to the same penalty.

The bill specifies that nothing in these prohibitions may be considered to prohibit the collection of a DNA sample in the course of a criminal investigation by a law enforcement agency.

Disposal of DNA Sample

Currently, if a sample was collected from an individual who does not have more than one conviction, and that conviction was reversed by an appellate court, the person may petition the sentencing court to order the disposal of the sample and DNA profile record for that conviction. The sentencing court may enter the order upon a finding that the person 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.

Under the bill, instead, if a sample was collected from an individual who does not have more than one conviction, and that conviction was reversed on appeal, the sentencing court *must* order the disposal of the sample and profile. The bill deletes the provisions allowing the person to petition the court and requiring clear and convincing evidence of the reversal.

The Act requires the MSP forensic laboratory to dispose of a DNA sample and profile after the Department receives either of the following:

- A written notice requesting disposal from the investigating police agency or prosecutor indicating that the sample or profile is no longer necessary for a criminal investigation or prosecution.
- 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.

The bill requires the disposal to occur within 60 days after the MSP receives either of those documents.

The bill also requires the MSP to send written notice to the requesting law enforcement agency, court, or prosecutor when an individual's DNA sample or profile has been destroyed.

Assessment & Distribution of Revenue

Under the Act, until October 1, 2003, the court was required to order each individual found responsible for or convicted of one or more of the crimes for which DNA sample collection is required to pay a \$60 assessment, in addition to any fine, costs, or other assessments imposed by the court. The bill reinstates that provision.

The bill also retains a requirement that 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund.

Senate Bill 106

Collection of DNA Sample upon Arrest

The bill requires an individual to provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and to provide samples for chemical testing for a determination of his or her secretor status if the individual is arrested for committing or attempting to commit a felony or an offense that would be a felony if committed by an adult, or is convicted of or found responsible for a felony or attempted felony or a specified misdemeanor.

Currently, the requirements to provide samples for chemical testing apply to an individual found responsible for violating a specified section of the Penal Code or convicted of a felony or attempted felony or a specified misdemeanor.

Under the juvenile code, if the Department of Health and Human Services or a county juvenile agency, investigating law enforcement agency, prosecuting agency, or court has in its possession a DNA profile obtained from a sample of an individual convicted of or found responsible for an offense for which collection of a DNA sample is required, the Department, agency, or court must forward that DNA profile to the MSP at or before the time the court imposes sentence or enters an order of disposition, unless the MSP already has a DNA profile of the individual. Under the bill, those entities must forward the DNA profile of an arrested person to the MSP when a petition is filed or the court issues a summons, unless the MSP already has the person's DNA profile.

Assessment & Distribution of Revenue

Under the code, until October 1, 2003, the court was required to order each individual found responsible for or convicted of one or more of the crimes for which DNA sample collection is required to pay a \$60 assessment, in addition to any fine, costs, or other assessments imposed by the court. The bill reinstates that provision.

The bill also retains a requirement that 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund.

MSP Report

The juvenile code requires the MSP Director to report annually by December 31 concerning the rate of DNA sample collection, DNA ID profiling, retention and compilation of DNA ID profiles, and the collection of assessments required for DNA sample collection. The report must be submitted to the Senate and House standing committees concerned with DNA sample collection and retention and to the Senate and House Appropriations subcommittees on State Police and Military Affairs. The bill deletes these requirements.

Disclosure of DNA Samples

Currently, DNA profiles of DNA samples received as described above may be disclosed only as follows:

- To a criminal justice agency for law enforcement identification purposes.
- In a judicial proceeding as authorized or required by a court.
- To a defendant in a criminal case, if the DNA profile is used in conjunction with a charge against the defendant.
- For an academic, research, statistical analysis, or protocol developmental purpose, only if personal IDs are removed.

The bill deletes that provision.

Senate Bill 107

Collection of DNA Sample upon Arrest

The Penal Code requires a person to provide samples for chemical testing for DNA identification profiling or a determination of the sample's genetic markers and to provide samples for chemical testing if the individual is arrested for a violent felony as defined in the Corrections Code. (Under the Corrections Code, "violent felony" includes various assault offenses; first-degree murder, second-degree murder, and manslaughter; kidnapping; hostage-taking by a prisoner; mayhem; first-, second-, third-, or fourth-degree criminal sexual conduct (CSC); assault with intent to commit CSC; carjacking; and use of force or violence or possession of a weapon, during the course of committing larceny.)

The bill requires instead that a person provide the samples if he or she is arrested for committing or attempting to commit any felony or an offense that would be a felony if committed by an adult.

The Penal Code also requires a person to provide samples if he or she is found responsible for violating a specified section of the Penal Code or is convicted of a felony or attempted felony, or any of certain misdemeanors. The bill requires the samples to be provided if the person is convicted of or found responsible for a felony or attempted felony, or any of certain misdemeanors.

The Code requires an investigating law enforcement agency, prosecuting agency, or court that has a DNA profile obtained from a sample of an individual convicted of or found responsible for an offense for which collection of a DNA sample is required, to forward that DNA profile to the MSP at or before the time of the person's sentencing or disposition, unless the MSP already has a DNA profile of the individual. Under the bill, those entities must forward the DNA sample to the MSP after the person from whom the sample was taken has been charged with committing or attempting to commit a felony or an offense that would be a felony if committed by an adult.

Assessment & Distribution of Revenue

Under the Penal Code, until October 1, 2003, the court was required to order each individual found responsible for or convicted of one or more of the crimes for which DNA sample collection is required to pay a \$60 assessment, in addition to any fine, costs, or other assessments imposed by the court. The bill reinstates that provision.

The bill retains a requirement that 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund.

MSP Report

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- To a defendant in a criminal case, if the DNA profile is used in conjunction with a charge against the defendant.
- For an academic, research, statistical analysis, or protocol developmental purpose, only if personal IDs are removed.

The bill deletes that provision.

MCL 28.172 et al. (S.B. 105)
712A.18k (S.B. 106)
750.520m (S.B. 107)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate, yet minor fiscal impact on State and local law enforcement agencies. Under current law, the 23 violent felony arrests that require the collection of DNA samples generate approximately 3,000 samples annually. The bills require the collection of a DNA sample from anyone arrested for committing or attempting to commit any felony. The MSP estimates that in 2012 there were approximately 12,000 individuals arrested for all felonies who did not already have a DNA sample on file. The MSP is unable to determine how many of these arrestees were ultimately convicted, which, under current law, would require collection of DNA samples.

Of the approximately 12,000 individuals arrested in 2012 for all felonies who had not yet had DNA samples taken, 3,000 were already subject to collection under current law, others would be subject to collection upon conviction, and yet others would be counted more than once if a person had been arrested for more than one felony in a year. Therefore, it is possible to estimate that an additional 7,000 to 8,000 felony arrestees will be subject to DNA collection under the bills.

The costs associated with these additional DNA collections will include the cost of a DNA collection kit; the labor, primarily at the local law enforcement level, to obtain the sample; and laboratory workers at the MSP lab to process and analyze (and in certain instances remove and destroy) the sample. The DNA kits cost \$7.50 each and are provided without charge by the MSP to law enforcement agencies. The additional kits could cost the MSP up to \$60,000, although the Department has stated that it is confident it will be able to pay for most, if not all of these costs with Federal grant funds, which have funded kit purchases in the past. Local law enforcement agencies will be required to administer additional mouth-swab DNA collections, a simple procedure that should not significantly increase their costs. Regarding the additional State crime lab processing and analysis that will be required, the Department has stated that it can handle the additional workload with current resources.

Fiscal Analyst: Bruce Baker