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BILL



ANALYSIS

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Senate Bills 105, 106, and 107 (as introduced 1-29-13)
Sponsor: Senator Tonya Schuitmaker (S.B. 105 & 106)
Senator Rick Jones (S.B. 107)
Committee: Judiciary

Date Completed: 2-5-13

CONTENT

Senate Bills 105, 106, and 107 would amend the DNA identification Profiling System Act, the juvenile code, and the Michigan Penal Code, respectively, to do the following:

- **Require the collection of a DNA sample from anyone arrested for committing or attempting to commit a felony.**
- **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.**
- **Reinstate a requirement that 65% of the revenue from that assessment go to the Michigan Department of State Police (MSP) Forensic Science Division to defray the costs associated with DNA profiling and detention requirements.**

The bills are described in detail below.

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 would provide for the collection of samples from individuals arrested for committing or attempting to commit a felony.

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 bill also would refer to certain individuals charged with committing or attempting to commit a felony.

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 would apply to an individual who was charged with committing or attempting to commit a felony.

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 certain violations or is convicted of a felony or attempted felony or certain misdemeanors. The bill would extend that requirement to the DNA profile of an individual arrested for committing or attempting to commit a felony.

(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.)

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. Also, until October 1, 2003, 65% of the revenue from the \$60 assessment had to be transmitted to the Department of Treasury for the MSP Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention. The bill would reinstate those requirements.

The Act requires that, beginning October 1, 2003, 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund. The bill would delete that requirement.

Senate Bill 106

Collection of DNA Sample Upon Arrest

The bill would require 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 were arrested for committing or attempting to commit a felony.

Currently, the requirements to provide samples for chemical testing apply to an individual found responsible for certain violations and an individual convicted of a felony or a specified misdemeanor.

The juvenile code requires the Department of Human Services or a county juvenile agency, 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 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 would have to forward the DNA profile to the MSP at arrest or before the time the court imposed sentence or entered an order of disposition, unless the MSP already had 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. Also, until October 1, 2003, 65% of the revenue from the \$60 assessment had to be transmitted to the Department of Treasury for the MSP Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA Identification Profiling System Act. The bill would reinstate those requirements.

The code requires that, beginning October 1, 2003, 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund. The bill would delete that requirement.

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. The bill would require instead that a person provide the samples if he or she were arrested for committing or attempting to commit any felony. (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 requirements to provide samples for chemical testing also apply to an individual found responsible for certain violations and an individual convicted of a felony or a certain specified misdemeanor. The bill would extend the requirements to an individual arrested for committing or attempting to commit a felony.

The Penal 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 would have to forward the DNA profile to the MSP at or before the time of the person's arrest, sentencing, or disposition, unless the MSP already had the person's DNA profile.

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. Also, until October 1, 2003, 65% of the revenue from the \$60 assessment had to be transmitted to the Department of Treasury for the MSP Forensic Science Division to defray the costs associated with the requirements of DNA profiling and DNA retention prescribed under the DNA Identification Profiling System Act. The bill would reinstate those requirements.

The Penal Code requires that, beginning October 1, 2003, 65% of the \$60 assessment revenue be transmitted to the State Treasurer for deposit in the Justice System Fund. The bill would delete that requirement.

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 would 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 would 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 would be subject to DNA collection under the bills.

The cost associated with these additional DNA collections would 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 would be able to obtain most, if not all of these costs from Federal grant funds, which have funded kit purchases in the past. Local law enforcement agencies would 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 would be required, the Department has stated that it could handle the additional workload with current resources.

On the revenue side, the bill would redirect 65% of a current \$60 assessment on convictions in which DNA collection is required from deposit in the Justice system Fund to deposit for the MSP Forensic Science Division to defray costs associated with DNA processing and storage. According to the Department, the frequency of the actual assessment of this fee has been practically nonexistent, and the amount of additional revenue that would be collected cannot be expected to be of any significant assistance in defraying DNA costs at this time.

Fiscal Analyst: Bruce Baker

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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.