

***** Act 250 of 1990 THIS TITLE, BEGINNING WITH THE FIRST INSTANCE OF "AN ACT", IS AMENDED EFFECTIVE JULY 1, 2015; THIS AMENDED TITLE, BEGINNING WITH THE SECOND INSTANCE OF "AN ACT", IS EFFECTIVE JULY 1, 2015 *****

DNA IDENTIFICATION PROFILING SYSTEM ACT

Act 250 of 1990

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. AN ACT to provide for a DNA identification profiling system; to provide for the collection of samples from individuals arrested for committing or attempting to commit a felony offense or an offense that would be a felony if committed by an adult, certain prisoners, convicted offenders, and juvenile offenders and the analysis of those samples; to provide for retention, disposal, and expunction of samples and profiles under certain circumstances; and to prescribe the powers and duties of certain state departments and county agencies.

History: 1990, Act 250, Eff. June 17, 1994;—Am. 1996, Act 508, Imd. Eff. Jan. 9, 1997;—Am. 1998, Act 522, Imd. Eff. Jan. 12, 1999;—Am. 2014, Act 457, Eff. July 1, 2015.

The People of the State of Michigan enact:

28.171 Short title.

Sec. 1. This act shall be known and may be cited as the "DNA identification profiling system act".

History: 1990, Act 250, Eff. June 17, 1994.

28.172 Definitions.

Sec. 2. As used in this act:

(a) "Conviction" means a plea of guilty, guilty but mentally ill, or nolo contendere if accepted by the court, or a jury verdict or court finding that a defendant is guilty or guilty but mentally ill for a criminal law violation, or a juvenile adjudication or disposition for a criminal law violation that if committed by an adult would be a crime.

(b) "Department" means the department of state police.

(c) "DNA identification profile" or "profile" means the results of the DNA identification profiling of a sample, including a paper, electronic, or digital record.

(d) "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.

(e) "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.

(f) "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the individual is arrested or convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections.

(g) "Sample" means a portion of an individual's blood, saliva, or tissue collected from the individual.

History: 1990, Act 250, Eff. June 17, 1994;—Am. 1996, Act 508, Imd. Eff. Jan. 9, 1997;—Am. 2001, Act 88, Eff. Jan. 1, 2002;—Am. 2008, Act 535, Imd. Eff. Jan. 13, 2009;—Am. 2014, Act 457, Eff. July 1, 2015.

28.173 Rules.

Sec. 3. The department shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement this act, including, but not limited to, rules governing all of the following:

(a) The method of collecting samples in a medically approved manner by qualified persons and the types and number of samples to be collected by the following:

(i) The department of corrections from certain prisoners under section 33d of the corrections code of 1953, 1953 PA 232, MCL 791.233d.

(ii) Law enforcement agencies as provided under section 520m of the Michigan penal code, 1931 PA 328, MCL 750.520m, or certain juveniles under section 18k of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18k.

(iii) The department of human services or a county juvenile agency, as applicable, from certain juveniles

under section 7a of the youth rehabilitation services act, 1974 PA 150, MCL 803.307a, or section 5a of the juvenile facilities act, 1988 PA 73, MCL 803.225a. As used in this subparagraph, "county juvenile agency" means that term as defined in section 2 of the county juvenile agency act, 1998 PA 518, MCL 45.622.

(b) Distributing DNA database collection kits and instructions for collecting samples.

(c) Storing and transmitting to the department the samples described in subdivision (a).

(d) The DNA identification or genetic marker profiling of samples described in subdivision (a).

(e) The development, in cooperation with the federal bureau of investigation and other appropriate persons, of a system of filing, cataloging, retrieving, and comparing DNA identification profiles and computerizing this system.

(f) Protecting the privacy interests of individuals whose samples are analyzed under this act.

History: 1990, Act 250, Eff. Sept. 1, 1994;—Am. 1994, Act 166, Imd. Eff. June 17, 1994;—Am. 1996, Act 508, Imd. Eff. Jan. 9, 1997;—Am. 1998, Act 522, Imd. Eff. Jan. 12, 1999;—Am. 2014, Act 457, Eff. July 1, 2015.

Administrative rules: R 28.5051 et seq. of the Michigan Administrative Code.

28.173a DNA identification profiling; refusal to supply samples as misdemeanor; existing sample; inadequate sample.

Sec. 3a. (1) An individual required by law to provide samples for DNA identification profiling who refuses to provide or resists providing those samples 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. The individual shall be advised that his or her resistance or refusal to provide samples described in this subsection is a misdemeanor.

(2) If at the time an individual who is required by law to provide samples for DNA identification profiling is arrested for committing or attempting to commit a felony offense or is convicted or found responsible the investigating law enforcement agency or the department already has a sample from the individual that meets the requirements of the rules promulgated under this act, the individual is not required to provide another sample. However, if an individual's DNA sample is inadequate for purposes of analysis, the individual shall provide another DNA sample that is adequate for analysis.

History: Add. 2001, Act 88, Eff. Jan. 1, 2002;—Am. 2008, Act 533, Imd. Eff. Jan. 13, 2009;—Am. 2014, Act 457, Eff. July 1, 2015.

28.174 Developing capability of conducting DNA identification and genetic marker profiling.

Sec. 4. The department of state police shall work with the federal bureau of investigation and other appropriate persons to develop the capability of conducting DNA identification and genetic marker profiling at department of state police crime laboratories. For this purpose, the department shall acquire, adapt, or construct the appropriate facilities, acquire the necessary equipment and supplies, evaluate and select analytic techniques and validate the chosen techniques, and obtain training for department of state police personnel.

History: 1990, Act 250, Eff. June 17, 1994.

28.175 DNA profile or sample; unauthorized dissemination, receipt, or use of information; removal, destruction, or tampering; obtaining, testing, or destroying; violation; penalty.

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.

(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.

(3) An individual shall not, without proper authority, obtain a DNA identification profile from the DNA identification profiling system.

(4) An individual shall not, without proper authority, test a DNA sample obtained under this act.

(5) An individual shall not willfully fail to destroy a DNA sample or profile that has been required or ordered to be destroyed under this act.

(6) Nothing in this section shall be considered to prohibit the collection of a DNA sample in the course of a criminal investigation by a law enforcement agency.

(7) An individual who violates this section 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.

History: Add. 2008, Act 535, Imd. Eff. Jan. 13, 2009;—Am. 2014, Act 457, Eff. July 1, 2015.

Compiler's note: Former MCL 28.175, which pertained to appointment, composition, and duties of DNA advisory committee, was repealed by Act 508 of 1996, Imd. Eff. Jan. 9, 1997.

28.175a DNA profiles; authorized use; analyses for identification of medical or genetic disorder prohibited.

Sec. 5a. (1) The department shall only use the DNA profiles of DNA samples authorized to be provided under this act for 1 or more of the following purposes:

- (a) Law enforcement identification purposes.
- (b) To assist in the recovery or identification of human remains or missing persons.
- (c) Academic, research, statistical analysis, or protocol development purposes only if personal identifiers are removed.

(2) DNA samples provided under this act shall not be analyzed for identification of any medical or genetic disorder.

History: Add. 2008, Act 534, Imd. Eff. Jan. 13, 2009.

28.176 DNA identification profile; retention; requirements; disposal of sample or profile; good-faith error; disposal of physical evidence or data obtained from sample; notice.

Sec. 6. (1) Except as otherwise provided in this section, 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 arrested for committing or attempting to commit a felony offense or an offense that would be a felony offense if committed by an adult.

(b) The individual is convicted of or found responsible for 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 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.

(ii) A violation of section 335a(1) of the Michigan penal code, 1931 PA 328, MCL 750.335a, indecent exposure.

(iii) A violation punishable under section 451(1) or (2) of the Michigan penal code, 1931 PA 328, MCL 750.451, first and second prostitution violations.

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

(2) The DNA profiles of DNA samples received under this act 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 identifiers are removed.

(3) Notwithstanding subsection (1), if at the time the individual is arrested, convicted of, or found responsible for the violation the investigating law enforcement agency or the department 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 assessment 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 and shall forward those samples and any samples described in subsection (1) that were already in the agency's possession to the department after the individual from whom the sample was taken has been arraigned in the district court. However, the individual's DNA sample shall not be forwarded to the department if the individual is not charged with committing or attempting to commit a felony offense or an offense that would be a felony if committed by an adult. If the individual's DNA sample is forwarded to the department despite the individual not having been charged as described in this subsection, the law enforcement agency shall notify the department to destroy that sample. 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 arrest but before sentencing or disposition as ordered by the court and promptly transmitted to the department of state police after the individual is charged with committing or attempting to commit a felony offense or an offense that would be a felony if committed by an adult. This subsection does not preclude a law enforcement agency or state agency from obtaining a sample at or after sentencing or disposition. At the time a DNA sample is taken from an individual under this section, the individual shall be notified in writing of all of the following:

(a) That, except as otherwise provided by law, the individual's DNA sample or DNA profile, or both, shall 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 limitations period.

(b) That the individual's DNA sample or profile, or both, will not be destroyed or expunged, as appropriate, if the department determines that the individual from whom the sample is taken is otherwise obligated to submit a sample or if it is evidence relating to another individual that would otherwise be retained under this section.

(c) That the burden is on the arresting law enforcement agency and the prosecution to request the destruction or expunction of a DNA sample or profile as required under this section, not on the individual.

(5) 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) Sixty-five percent to the state treasurer for deposit in the justice system fund created in section 181 of the revised judicature act of 1961, 1961 PA 236, MCL 600.181.

(9) 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 sentencing court shall order the disposal of the sample collected and DNA identification profile record for that conviction in the manner provided in subsections (13) and (14).

(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) Not more than 60 days after the department receives notice under subsection (11), 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.

(17) The department shall send written notice to the requesting law enforcement agency, court, or prosecutor when the individual's DNA sample or profile has been destroyed under this act.

History: 1990, Act 250, Eff. Sept. 1, 1994;—Am. 1996, Act 508, Imd. Eff. Jan. 9, 1997;—Am. 2000, Act 30, Imd. Eff. Mar. 15, 2000;—Am. 2001, Act 87, Eff. Jan. 1, 2002;—Am. 2003, Act 76, Eff. Oct. 1, 2003;—Am. 2008, Act 535, Imd. Eff. Jan. 13, 2009;—Am. 2014, Act 457, Eff. July 1, 2015.

28.177, 28.178 Repealed. 1994, Act 166, Imd. Eff. June 17, 1994.

Compiler's note: The repealed sections pertained to conditional effective dates.

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