

HOUSE BILL No. 4092

(As amended February 19, 2008)

January 23, 2007, Introduced by Reps. Vagnozzi, Byrnes, Gonzales, Lemmons, Corriveau, LeBlanc, Brown, Gillard, Condino, Dean and Cushingberry and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 520m (MCL 750.520m), as amended by 2003 PA 100.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 520m. (1) A person shall provide samples for chemical
2 testing for DNA identification profiling or a determination of the
3 sample's genetic markers and shall provide samples for chemical
4 testing [~~for a determination of his or her secretor status~~] if any of
5 the following apply:

6 (A) **THE INDIVIDUAL IS ARRESTED FOR A VIOLENT FELONY AS THAT**
7 **TERM IS DEFINED IN SECTION 36 OF THE CORRECTIONS CODE OF 1953, 1953**
8 **PA 232, MCL 791.236.**

9 (B) ~~(a)~~The person is found responsible for a violation of

House Bill No. 4092 as amended February 19, 2008

1 section 83, 91, 316, 317, or 321, a violation or attempted
2 violation of section 349, 520b, 520c, 520d, 520e, or 520g, or a
3 violation of section 167(1)(c) or (f) or 335a, or a local ordinance
4 substantially corresponding to section 167(1)(c) or (f) or 335a.

5 (C) ~~(b)~~—The person is convicted of a felony or attempted
6 felony, or any of the following misdemeanors, or local ordinances
7 that are substantially corresponding to the following misdemeanors:

8 (i) A violation of section 145a, enticing a child for immoral
9 purposes.

10 (ii) A violation of section 167(1)(c), (f), or (i), disorderly
11 person by window peeping, engaging in indecent or obscene conduct
12 in public, or loitering in a house of ill fame or prostitution.

13 (iii) A violation of section 335a, indecent exposure.

14 (iv) A violation of section 451, first and second prostitution
15 violations.

16 (v) A violation of section 454, leasing a house for purposes
17 of prostitution.

18 (vi) A violation of section 462, female under the age of 17 in
19 a house of prostitution.

20 (2) Notwithstanding subsection (1), if at the time the person
21 is [ARRESTED FOR,] convicted of[,] or found responsible for the violation
22 the
23 investigating law enforcement agency or the department of state
24 police already has a sample from the person that meets the
25 requirements of the DNA identification profiling system act, 1990
26 PA 250, MCL 28.171 to 28.176, the person is not required to provide
27 another sample or pay the fee required under subsection (6).

(3) The county sheriff or the investigating law enforcement

House Bill No. 4092 as amended February 19, 2008

1 agency shall collect and transmit the samples in the manner
2 required under the DNA identification profiling system act, 1990 PA
3 250, MCL 28.171 to 28.176. **[HOWEVER, A SAMPLE TAKEN UNDER SUBSECTION
(1) (A) MAY BE TRANSMITTED TO THE DEPARTMENT OF STATE POLICE UPON
COLLECTION.]**

4 (4) An investigating law enforcement agency, prosecuting
5 agency, or court that has in its possession a DNA identification
6 profile obtained from a sample of a person ~~pursuant to~~ **UNDER**
7 subsection (1) shall forward the DNA identification profile to the
8 department of state police at or before the time of the person's
9 sentencing or disposition upon that conviction or finding of
10 responsibility unless the department of state police already has a
11 DNA identification profile of the person.

12 (5) The DNA profiles of DNA samples received under this
13 section shall only be disclosed as follows:

14 (a) To a criminal justice agency for law enforcement
15 identification purposes.

16 (b) In a judicial proceeding as authorized or required by a
17 court.

18 (c) To a defendant in a criminal case if the DNA profile is
19 used in conjunction with a charge against the defendant.

20 (d) For an academic, research, statistical analysis, or
21 protocol developmental purpose only if personal identifications are
22 removed.

23 (6) Until October 1, 2003, the court shall order each person
24 found responsible for or convicted of 1 or more crimes listed in
25 subsection (1) to pay an assessment of \$60.00. The assessment
26 required under this subsection is in addition to any fine, costs,
27 or other assessments imposed by the court.

1 (7) An assessment required under subsection (6) shall be
2 ordered upon the record, and shall be listed separately in the
3 adjudication order, judgment of sentence, or order of probation.

4 (8) After reviewing a verified petition by a person against
5 whom an assessment is imposed under subsection (6), the court may
6 suspend payment of all or part of the assessment if it determines
7 the person is unable to pay the assessment.

8 (9) The court that imposes the assessment prescribed under
9 subsection (6) may retain 10% of all assessments or portions of
10 assessments collected for costs incurred under this section and
11 shall transmit that money to its funding unit. On the last day of
12 each month, the clerk of the court shall transmit the assessments
13 or portions of assessments collected under this section as follows:

14 (a) Twenty-five percent to the county sheriff or other
15 investigating law enforcement agency that collected the DNA sample
16 as designated by the court to defray the costs of collecting DNA
17 samples.

18 (b) Until October 1, 2003, 65% to the department of treasury
19 for the department of state police forensic science division to
20 defray the costs associated with the requirements of DNA profiling
21 and DNA retention prescribed under the DNA identification profiling
22 system act, 1990 PA 250, MCL 28.171 to 28.176.

23 (c) Beginning October 1, 2003, 65% to the state treasurer for
24 deposit in the justice system fund created in section 181 of the
25 revised judicature act of 1961, 1961 PA 236, MCL 600.181.

26 (10) Beginning December 31, 2002, the director of the
27 department of state police shall report by December 31 of each year

House Bill No. 4092 as amended February 19, 2008

1 concerning the rate of DNA sample collection, DNA identification
2 profiling, retention and compilation of DNA identification
3 profiles, and the collection of assessments required under
4 subsection (6) to all of the following:

5 (a) The standing committees of the senate and house of
6 representatives concerned with DNA sample collection and retention.

7 (b) The house of representatives appropriations subcommittee
8 on state police and military affairs.

9 (c) The senate appropriations subcommittee on state police.

10 (11) As used in this section:

11 (a) "DNA identification profile" and "DNA identification
12 profiling" mean those terms as defined in section 2 of the DNA
13 identification profiling system act, 1990 PA 250, MCL 28.172.

14 (b) "Investigating law enforcement agency" means the law
15 enforcement agency responsible for the investigation of the offense
16 for which the person is convicted. Investigating law enforcement
17 agency includes the county sheriff but does not include a probation
18 officer employed by the department of corrections.

19 (c) "Felony" means a violation of a penal law of this state
20 for which the offender may be punished by imprisonment for more
21 than 1 year or an offense expressly designated by law to be a
22 felony.

23 (d) "Sample" means a portion of a person's blood, saliva, or
24 tissue collected from the person.

[Enacting section 1. This amendatory act takes effect October 1,
2008.]