

SENATE BILL No. 1214

March 21, 2002, Introduced by Senator SCHUETTE and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending section 16 of chapter X (MCL 770.16), as added by
2000 PA 402.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 16. (1) Notwithstanding the limitations of section 2

of this chapter, a defendant convicted of a felony at trial
before ~~the effective date of the amendatory act that added this~~

~~section~~ JANUARY 8, 2001 who is serving a prison sentence for

~~the~~ A felony conviction may petition the circuit court to order
DNA testing of biological material identified during the investi-

gation leading to his or her conviction, and for a new trial

based on the results of that testing. The petition shall be

filed not later than January 1, 2006.

1 (2) A petition under this section shall be filed in the
2 circuit court for the county in which the defendant was sentenced
3 and shall be assigned to the sentencing judge or his or her
4 successor. The petition shall be served on the prosecuting
5 attorney of the county in which the defendant was sentenced.

6 (3) The court shall order DNA testing if the defendant does
7 all of the following:

8 (a) Presents prima facie proof that the evidence sought to
9 be tested is material to the issue of the convicted person's
10 identity as the perpetrator of, or accomplice to, the crime that
11 resulted in the conviction.

12 (b) Establishes all of the following by clear and convincing
13 evidence:

14 (i) A sample of identified biological material described in
15 subsection (1) is available for DNA testing.

16 (ii) The identified biological material described in subsec-
17 tion (1) was not previously subjected to DNA testing or, if pre-
18 viously tested, will be subject to DNA testing technology that
19 was not available when the defendant was convicted.

20 (iii) The identity of the defendant as the perpetrator of
21 the crime was at issue during his or her trial.

22 (4) The court shall state its findings of fact on the record
23 or shall make written findings of fact supporting its decision to
24 grant or deny a petition brought under this section.

25 (5) If the court grants a petition for DNA testing under
26 this section, the identified biological material and a biological
27 sample obtained from the defendant shall be subjected to DNA

1 testing by a laboratory approved by the court. If the court
2 determines that the applicant is indigent, the cost of DNA test-
3 ing ordered under this section shall be borne by the state, IF
4 THE DNA TESTING IS CONDUCTED BY THE DEPARTMENT OF STATE POLICE.
5 The results of the DNA testing shall be provided to the court and
6 to the defendant and the prosecuting attorney. Upon motion by
7 either party, the court may order that copies of the testing pro-
8 tocols, laboratory procedures, laboratory notes, and other rele-
9 vant records compiled by the testing laboratory be provided to
10 the court and to all parties.

11 (6) If the results of the DNA testing are inconclusive or
12 show that the defendant is the source of the identified biologi-
13 cal material, the court shall deny the motion for new trial. If
14 the DNA test results show that the defendant is the source of the
15 identified biological material, the defendant's DNA profile shall
16 be provided to the Michigan state police for inclusion under the
17 DNA identification profiling system act.

18 (7) If the results of the DNA testing show that the
19 defendant is not the source of the identified biological materi-
20 al, the court shall appoint counsel pursuant to MCR 6.505(a) and
21 hold a hearing to determine by clear and convincing evidence all
22 of the following:

23 (a) That only the perpetrator of the crime or crimes for
24 which the defendant was convicted could be the source of the
25 identified biological material.

26 (b) That the identified biological material was collected,
27 handled, and preserved by procedures that allow the court to find

1 that the identified biological material is not contaminated or is
2 not so degraded that the DNA profile of the tested sample of the
3 identified biological material cannot be determined to be identi-
4 cal to the DNA profile of the sample initially collected during
5 the investigation described in subsection (1).

6 (c) That the defendant's purported exclusion as the source
7 of the identified biological material, balanced against the other
8 evidence in the case, is sufficient to justify the grant of a new
9 trial.

10 (8) Upon motion of the prosecutor, the court shall order
11 retesting of the identified biological material and shall stay
12 the defendant's motion for new trial pending the results of the
13 DNA retesting.

14 (9) The court shall state its findings of fact on the record
15 or make written findings of fact supporting its decision to grant
16 or deny the defendant a new trial under this section.

17 Notwithstanding the provisions of section 3 of this chapter, an
18 aggrieved party may appeal the court's decision to grant or deny
19 the petition for DNA testing and for new trial by application for
20 leave granted by the court of appeals.

21 (10) If the name of the victim of the felony conviction
22 described in subsection (1) is known, the prosecuting attorney
23 shall give written notice of a petition under this section to the
24 victim. The notice shall be by first-class mail to the victim's
25 last known address. Upon the victim's request, the prosecuting
26 attorney shall give the victim notice of the time and place of

1 any hearing on the petition and shall inform the victim of the
2 court's grant or denial of a new trial to the defendant.

3 (11) Effective January 1, 2001, the investigating law
4 enforcement agency shall preserve any biological material identi-
5 fied during the investigation of a crime or crimes for which any
6 person may file a petition for DNA testing under this section.
7 The identified biological material shall be preserved for the
8 period of time that any person is incarcerated in connection with
9 that case.