

HOUSE BILL No. 5387

December 17, 2003, Introduced by Reps. Bieda, Lipsey and Gleason and referred to the Committee on Criminal Justice.

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending section 6 (MCL 28.176), as amended by 2003 PA 76.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6. (1) The department shall permanently retain a DNA
2 identification profile of an individual obtained from a sample in
3 the manner prescribed by the department under this act if any of
4 the following apply:

5 (a) The individual is found responsible for a violation of
6 section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931
7 PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a
8 violation or attempted violation of section 349, 520b, 520c,
9 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL
10 750.349, 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or
11 a violation of section 167(1)(c) or (f) or 335a of the Michigan

1 penal code, 1931 PA 328, MCL 750.167 and 750.335a, or a local
2 ordinance substantially corresponding to section 167(1)(c) or (f)
3 or 335a of the Michigan penal code, 1931 PA 328, MCL 750.167 and
4 750.335a.

5 (b) The individual 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
8 misdemeanors:

9 (i) A violation of section 145a of the Michigan penal code,
10 1931 PA 328, MCL 750.145a, enticing a child for immoral
11 purposes.

12 (ii) A violation of section 167(1)(c), (f), or (i) of the
13 Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person
14 by window peeping, engaging in indecent or obscene conduct in
15 public, or loitering in a house of ill fame or prostitution.

16 (iii) A violation of section 335a of the Michigan penal code,
17 1931 PA 328, MCL 750.335a, indecent exposure.

18 (iv) A violation of section 451 of the Michigan penal code,
19 1931 PA 328, MCL 750.451, first and second prostitution
20 violations.

21 (v) A violation of section 454 of the Michigan penal code,
22 1931 PA 328, MCL 750.454, leasing a house for purposes of
23 prostitution.

24 (vi) A violation of section 462 of the Michigan penal code,
25 1931 PA 328, MCL 750.462, female under the age of 17 in a house
26 of prostitution.

27 (2) The DNA profiles of DNA samples received under this

1 section shall only be disclosed as follows:

2 (a) To a criminal justice agency for law enforcement
3 identification purposes.

4 (b) In a judicial proceeding as authorized or required by a
5 court.

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

8 (d) For an academic, research, statistical analysis, or
9 protocol developmental purpose only if personal identifications
10 are removed.

11 (3) Notwithstanding subsection (1), if at the time the
12 individual is convicted of or found responsible for the violation
13 the investigating law enforcement agency or the department of
14 state police already has a sample from the individual that meets
15 the requirements of this act, the individual is not required to
16 provide another sample or pay the fee required under subsection
17 (5).

18 (4) The county sheriff or the investigating law enforcement
19 agency as ordered by the court shall provide for collecting the
20 samples required to be provided under subsection (1) in a
21 medically approved manner by qualified persons using supplies
22 provided by the department of state police and shall forward
23 those samples and any samples described in subsection (1) that
24 were already in the agency's possession to the department of
25 state police. The collecting and forwarding of samples shall be
26 done in the manner required under this act. A sample shall be
27 collected by the county sheriff or the investigating law

1 enforcement agency after conviction or a finding of
2 responsibility but before sentencing or disposition as ordered by
3 the court and promptly transmitted to the department of state
4 police. This subsection does not preclude a law enforcement
5 agency or state agency from obtaining a sample at or after
6 sentencing or disposition.

7 (5) ~~Until October 1, 2003, the~~ **The** court shall order each
8 individual found responsible for or convicted of 1 or more crimes
9 listed in subsection (1) to pay an assessment of \$60.00. The
10 assessment required under this subsection is in addition to any
11 fine, costs, or other assessments imposed by the court.

12 (6) An assessment required under subsection (5) shall be
13 ordered upon the record and shall be listed separately in the
14 adjudication order, judgment of sentence, or order of probation.

15 (7) After reviewing a verified petition by an individual
16 against whom an assessment is imposed under subsection (5), the
17 court may suspend payment of all or part of the assessment if it
18 determines the individual is unable to pay the assessment.

19 (8) The court that imposes the assessment prescribed under
20 subsection (5) may retain 10% of all assessments or portions of
21 assessments collected for costs incurred under this section and
22 shall transmit that money to its funding unit. On the last day
23 of each month, the clerk of the court shall transmit the
24 assessments or portions of assessments collected under this
25 section as follows:

26 (a) Twenty-five percent to the county sheriff or other
27 investigating law enforcement agency that collected the DNA

1 sample as designated by the court to defray the costs of
2 collecting DNA samples.

3 ~~(b) Until October 1, 2003, 65% to the department of treasury~~
4 ~~for the department's forensic science division to defray the~~
5 ~~costs associated with the requirements of DNA profiling and DNA~~
6 ~~retention prescribed under this act.~~

7 **(b) —(c) Beginning October 1, 2003, 65% Sixty-five percent**
8 to the state treasurer for deposit in the justice system fund
9 created in section 181 of the revised judicature act of 1961,
10 1961 PA 236, MCL 600.181.

11 (9) Beginning December 31, 2002, the director of the
12 department shall report by December 31 of each year concerning
13 the rate of DNA sample collection, DNA identification profiling,
14 retention and compilation of DNA identification profiles, and the
15 collection of assessments required under subsection (5) to all of
16 the following:

17 (a) The standing committees of the senate and house of
18 representatives concerned with DNA sample collection and
19 retention.

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

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

23 (10) If a sample was collected under subsection (1) from an
24 individual who does not have more than 1 conviction, and that
25 conviction was reversed by an appellate court, the individual may
26 petition the sentencing court to order the disposing of the
27 sample collected and DNA identification profile record for that

1 conviction in the manner provided in subsections (12) and (13).
2 The sentencing court shall only enter the order upon a finding
3 that the individual has proven by clear and convincing evidence
4 that the conviction was reversed based upon the great weight of
5 the evidence, specifically, that there was overwhelming evidence
6 against the verdict resulting in a miscarriage of justice.

7 (11) Any other DNA identification profile obtained by the
8 department shall not be permanently retained by the department
9 but shall be retained only as long as it is needed for a criminal
10 investigation or criminal prosecution.

11 (12) If the state police forensic laboratory determines after
12 analysis that a sample has been submitted by an individual who
13 has been eliminated as a suspect in a crime, the laboratory shall
14 dispose of the sample and the DNA identification profile record
15 in the following manner:

16 (a) The laboratory shall dispose of the sample in compliance
17 with section 13811 of the public health code, 1978 PA 368, MCL
18 333.13811.

19 (b) The laboratory shall dispose of the sample and the DNA
20 identification profile record in the presence of a witness.

21 (13) After disposal in accordance with subsection (12), the
22 laboratory shall make and keep a written record of the disposal,
23 signed by the individual who witnessed the disposal.