



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 1388 and 1389 (as introduced 6-17-08)
Sponsor: Senator Wayne Kuipers
Committee: Judiciary

Date Completed: 9-16-08

CONTENT

Senate Bill 1388 would amend the DNA Identification Profiling System Act to require the State Police Forensic Laboratory to dispose of a DNA sample or identification profile under specific circumstances; and provide that an identification, arrest, or conviction would not be invalidated if particular errors occurred in good faith.

Senate Bill 1389 would amend the Code of Criminal Procedure to specify that otherwise-admissible evidence based on a DNA sample or identification profile would not be made inadmissible because it had been retained in violation of the DNA Identification Profiling System Act.

Senate Bill 1389 is tie-barred to Senate Bill 1388. Both bills are described below.

Senate Bill 1388

Disposal of Sample

The Act requires the Michigan Department of State Police (MSP) to retain permanently a DNA identification profile obtained from a sample (a portion of blood, saliva, or tissue) of an individual who is convicted of a felony, convicted of a misdemeanor specified in the Act, or found responsible for violating a section of the Michigan Penal Code listed in the Act. The Department may retain any other DNA identification profile it obtained only as long as the sample is needed for a criminal investigation or prosecution.

The bill would require the State Police Forensic Laboratory to dispose of a DNA sample or a DNA identification profile, or both, if either of the following circumstances occurred:

- The MSP received a written request for disposal from the investigating police agency or prosecutor indicating that the sample or profile was no longer necessary for a criminal investigation or criminal prosecution.
- The MSP received a written request for disposal and a certified copy of a final court order establishing that the charge for which the sample was obtained had been dismissed or had resulted in an acquittal or that no charge was filed within the applicable limitations period.

This disposal requirement would not apply if the MSP determined that the individual from whom the sample was taken had otherwise become obligated to submit a sample, or if a provision allowing the MSP to retain evidence (described below) applied.

As currently required, the State Police Forensic Laboratory would have to dispose of a sample in compliance with Section 13811 of the Public Health Code (concerning the disposal of medical waste), and would have to dispose of a sample and the DNA identification profile in the presence of a witness. Under the Act, these requirements apply if the lab determines that a sample has been submitted by an individual who has been eliminated as a criminal suspect; the bill would delete that language.

Retention of Evidence

The bill specifies that, notwithstanding any other provision of the Act, the MSP would not be required to dispose of physical evidence or data obtained from a sample if evidence relating to an individual other than the one from whom the sample was taken would be destroyed and the evidence or data relating to the other individual would otherwise be retained under the Act.

Good Faith Error

Under the bill, an identification, warrant, detention, arrest, conviction, or probable cause to arrest based upon a DNA match or DNA information would not be invalidated if it were later determined that one or more of the following errors occurred in good faith:

- A DNA sample was erroneously obtained.
- A DNA identification profile was erroneously retained.
- A DNA sample was not disposed of or there was a delay in disposing of the sample.
- A DNA identification profile was not disposed of or there was a delay in disposing of the profile.

DNA Identification Profile

The Act defines "DNA identification profile" as the results of the DNA identification profiling of a sample. The bill would add, "including a paper, electronic, or digital record".

Senate Bill 1389

The bill specifies that evidence based on a DNA sample or DNA identification profile that was otherwise admissible in an investigative, pretrial, trial, or posttrial proceeding would not be rendered inadmissible because the State Police retained the sample or profile in violation of Section 6 of the DNA Identification Profiling System Act (which contains the requirements for disposal), if the sample or profile were retained in good faith as described in that section.

MCL 28.172 & 28.176 (S.B. 1388)
Proposed MCL 776.28 (S.B. 1389)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
Bill Bowerman

S0708\1388sa

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.