

SUBSTITUTE FOR
SENATE BILL NO. 105

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending the title and sections 2, 3, 3a, 5, and 6 (MCL 28.172,
28.173, 28.173a, 28.175, and 28.176), the title and section 3 as
amended by 1998 PA 522, sections 2 and 6 as amended and section 5
as added by 2008 PA 535, and section 3a as amended by 2008 PA 533.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

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

1 to prescribe the powers and duties of certain state departments and
2 county agencies.

3 Sec. 2. As used in this act:

4 (A) "CONVICTION" MEANS A PLEA OF GUILTY, GUILTY BUT MENTALLY
5 ILL, OR NOLO CONTENDERE IF ACCEPTED BY THE COURT, OR A JURY VERDICT
6 OR COURT FINDING THAT A DEFENDANT IS GUILTY OR GUILTY BUT MENTALLY
7 ILL FOR A CRIMINAL LAW VIOLATION, OR A JUVENILE ADJUDICATION OR
8 DISPOSITION FOR A CRIMINAL LAW VIOLATION THAT IF COMMITTED BY AN
9 ADULT WOULD BE A CRIME.

10 (B) ~~(a)~~—"Department" means the department of state police.

11 (C) ~~(b)~~—"DNA identification profile" or "profile" means the
12 results of the DNA identification profiling of a sample, including
13 a paper, electronic, or digital record.

14 (D) ~~(c)~~—"DNA identification profiling" means a validated
15 scientific method of analyzing components of deoxyribonucleic acid
16 molecules in a biological specimen to determine a match or a
17 nonmatch between a reference sample and an evidentiary sample.

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

22 (F) ~~(e)~~—"Investigating law enforcement agency" means the law
23 enforcement agency responsible for the investigation of the offense
24 for which the individual is **ARRESTED OR** convicted. Investigating
25 law enforcement agency includes the county sheriff but does not
26 include a probation officer employed by the department of
27 corrections.

1 (G) ~~(f)~~ "Sample" means a portion of an individual's blood,
2 saliva, or tissue collected from the individual.

3 Sec. 3. The department shall promulgate rules under the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328, to implement this act, including, but not limited to, rules
6 governing all of the following:

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

10 (i) The department of corrections from certain prisoners under
11 section 33d of **THE CORRECTIONS CODE OF 1953**, 1953 PA 232, MCL
12 791.233d.

13 (ii) Law enforcement agencies ~~from certain convicted offenders~~
14 **AS PROVIDED** under section 520m of the Michigan penal code, 1931 PA
15 328, MCL 750.520m, or certain juveniles under section 18k of
16 chapter XIIIA of **THE PROBATE CODE OF 1939**, 1939 PA 288, MCL
17 712A.18k.

18 (iii) The ~~family independence agency~~ **DEPARTMENT OF HUMAN**
19 **SERVICES** or a county juvenile agency, as applicable, from certain
20 juveniles under section 7a of the youth rehabilitation services
21 act, 1974 PA 150, MCL 803.307a, or section 5a of the juvenile
22 facilities act, 1988 PA 73, MCL 803.225a. As used in this
23 subparagraph, "county juvenile agency" means that term as defined
24 in section 2 of the county juvenile agency act, **1998 PA 518, MCL**
25 **45.622**.

26 (b) Distributing ~~blood specimen vials, mailing tubes, and~~
27 ~~labels~~ **DNA DATABASE COLLECTION KITS** and instructions for collecting

1 samples.

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

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

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

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

12 Sec. 3a. (1) An individual required by law to provide samples
13 for DNA identification profiling who refuses to provide or resists
14 providing those samples is guilty of a misdemeanor punishable by
15 imprisonment for not more than 1 year or a fine of not more than
16 \$1,000.00, or both. The individual shall be advised that his or her
17 resistance or refusal to provide samples described in this
18 subsection is a misdemeanor.

19 (2) If at the time an individual who is required by law to
20 provide samples for DNA identification profiling is **ARRESTED FOR**
21 **COMMITTING OR ATTEMPTING TO COMMIT A FELONY OFFENSE OR IS** convicted
22 **OR FOUND RESPONSIBLE** the investigating law enforcement agency or
23 the department already has a sample from the individual that meets
24 the requirements of the rules promulgated under this act, the
25 individual is not required to provide another sample. However, if
26 an individual's DNA sample is inadequate for purposes of analysis,
27 the individual shall provide another DNA sample that is adequate

1 for analysis.

2 Sec. 5. (1) An individual shall not disseminate, receive, or
3 otherwise use or attempt to use information in the DNA
4 identification profile record knowing that the dissemination,
5 receipt, or use of that information is for a purpose not authorized
6 by law. ~~An individual who violates this subsection is guilty of a~~
7 ~~misdemeanor punishable by imprisonment for not more than 1 year or~~
8 ~~a fine of not more than \$1,000.00, or both.~~

9 (2) An individual shall not willfully remove, destroy, tamper
10 with, or attempt to tamper with a DNA sample, record, or other DNA
11 information obtained or retained under this act without lawful
12 authority. ~~An individual who violates this subsection is guilty of~~
13 ~~a misdemeanor punishable by imprisonment for not more than 1 year~~
14 ~~or a fine of not more than \$1,000.00, or both.~~

15 (3) AN INDIVIDUAL SHALL NOT, WITHOUT PROPER AUTHORITY, OBTAIN
16 A DNA IDENTIFICATION PROFILE FROM THE DNA IDENTIFICATION PROFILING
17 SYSTEM.

18 (4) AN INDIVIDUAL SHALL NOT, WITHOUT PROPER AUTHORITY, TEST A
19 DNA SAMPLE OBTAINED UNDER THIS ACT.

20 (5) AN INDIVIDUAL SHALL NOT WILLFULLY FAIL TO DESTROY A DNA
21 SAMPLE OR PROFILE THAT HAS BEEN REQUIRED OR ORDERED TO BE DESTROYED
22 UNDER THIS ACT.

23 (6) NOTHING IN THIS SECTION SHALL BE CONSIDERED TO PROHIBIT
24 THE COLLECTION OF A DNA SAMPLE IN THE COURSE OF A CRIMINAL
25 INVESTIGATION BY A LAW ENFORCEMENT AGENCY.

26 (7) AN INDIVIDUAL WHO VIOLATES THIS SECTION IS GUILTY OF A
27 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR

1 **A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.**

2 Sec. 6. (1) ~~The~~**EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION,**
 3 **THE** department shall permanently retain a DNA identification
 4 profile of an individual obtained from a sample in the manner
 5 prescribed by the department under this act if any of the following
 6 apply:

7 ~~—— (a) The individual is found responsible for a violation of~~
 8 ~~section 83, 91, 316, 317, or 321 of the Michigan penal code, 1931~~
 9 ~~PA 328, MCL 750.83, 750.91, 750.316, 750.317, and 750.321, or a~~
 10 ~~violation or attempted violation of section 349, 520b, 520c, 520d,~~
 11 ~~520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.349,~~
 12 ~~750.520b, 750.520c, 750.520d, 750.520e, and 750.520g, or a~~
 13 ~~violation of section 167(1)(c) or (f) or 335a of the Michigan penal~~
 14 ~~code, 1931 PA 328, MCL 750.167 and 750.335a, or a local ordinance~~
 15 ~~substantially corresponding to section 167(1)(c) or (f) or 335a of~~
 16 ~~the Michigan penal code, 1931 PA 328, MCL 750.167 and 750.335a.~~

17 **(A) THE INDIVIDUAL IS ARRESTED FOR COMMITTING OR ATTEMPTING TO**
 18 **COMMIT A FELONY OFFENSE OR AN OFFENSE THAT WOULD BE A FELONY**
 19 **OFFENSE IF COMMITTED BY AN ADULT.**

20 (b) The individual is convicted of **OR FOUND RESPONSIBLE FOR** a
 21 felony or attempted felony, or any of the following misdemeanors,
 22 or local ordinances that are substantially corresponding to the
 23 following misdemeanors:

24 ~~—— (i) A violation of section 145a of the Michigan penal code,~~
 25 ~~1931 PA 328, MCL 750.145a, enticing a child for immoral purposes.~~

26 **(i) (ii)** A violation of section 167(1)(c), (f), or (i) of the
 27 Michigan penal code, 1931 PA 328, MCL 750.167, disorderly person by

1 window peeping, engaging in indecent or obscene conduct in public,
2 or loitering in a house of ill fame or prostitution.

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

5 (iii) ~~(iv)~~ A violation of ~~section 451~~ **PUNISHABLE UNDER** section ~~451~~ **451(1) OR**
6 **(2)** of the Michigan penal code, 1931 PA 328, MCL 750.451, first and
7 second prostitution violations.

8 (iv) ~~(v)~~ A violation of section 454 of the Michigan penal code,
9 1931 PA 328, MCL 750.454, leasing a house for purposes of
10 prostitution.

11 ~~—— (vi) A violation of section 462 of the Michigan penal code,~~
12 ~~1931 PA 328, MCL 750.462, female under the age of 17 in a house of~~
13 ~~prostitution.~~

14 (2) The DNA profiles of DNA samples received under this
15 ~~section~~ **ACT** shall only be disclosed as follows:

16 (a) To a criminal justice agency for law enforcement
17 identification purposes.

18 (b) In a judicial proceeding as authorized or required by a
19 court.

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

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

25 (3) Notwithstanding subsection (1), if at the time the
26 individual is **ARRESTED**, convicted of, or found responsible for the
27 violation the investigating law enforcement agency or the

1 department ~~of state police~~ already has a sample from the individual
2 that meets the requirements of this act, the individual is not
3 required to provide another sample or pay the ~~fee~~ **ASSESSMENT**
4 required under subsection (5).

5 (4) The county sheriff or the investigating law enforcement
6 agency as ordered by the court shall provide for collecting the
7 samples required to be provided under subsection (1) in a medically
8 approved manner by qualified persons using supplies provided by the
9 department ~~of state police~~ and shall forward those samples and any
10 samples described in subsection (1) that were already in the
11 agency's possession to the department ~~of state police~~. **AFTER THE**
12 **INDIVIDUAL FROM WHOM THE SAMPLE WAS TAKEN HAS BEEN ARRAIGNED IN THE**
13 **DISTRICT COURT. HOWEVER, THE INDIVIDUAL'S DNA SAMPLE SHALL NOT BE**
14 **FORWARDED TO THE DEPARTMENT IF THE INDIVIDUAL IS NOT CHARGED WITH**
15 **COMMITTING OR ATTEMPTING TO COMMIT A FELONY OFFENSE OR AN OFFENSE**
16 **THAT WOULD BE A FELONY IF COMMITTED BY AN ADULT. IF THE**
17 **INDIVIDUAL'S DNA SAMPLE IS FORWARDED TO THE DEPARTMENT DESPITE THE**
18 **INDIVIDUAL NOT HAVING BEEN CHARGED AS DESCRIBED IN THIS SUBSECTION,**
19 **THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE DEPARTMENT TO DESTROY**
20 **THAT SAMPLE.** The collecting and forwarding of samples shall be done
21 in the manner required under this act. A sample shall be collected
22 by the county sheriff or the investigating law enforcement agency
23 after ~~conviction or a finding of responsibility~~ **ARREST** but before
24 sentencing or disposition as ordered by the court and promptly
25 transmitted to the department of state police **AFTER THE INDIVIDUAL**
26 **IS CHARGED WITH COMMITTING OR ATTEMPTING TO COMMIT A FELONY OFFENSE**
27 **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) Until October 1, 2003, the~~ **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

1 adjudication order, judgment of sentence, or order of probation.

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

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

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

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

20 (B) ~~(c) Beginning October 1, 2003, 65%~~ **SIXTY-FIVE PERCENT** to
21 the state treasurer for deposit in the justice system fund created
22 in section 181 of the revised judicature act of 1961, 1961 PA 236,
23 MCL 600.181.

24 (9) ~~Beginning December 31, 2002, the~~ **THE** director of the
25 department shall report by December 31 of each year concerning the
26 rate of DNA sample collection, DNA identification profiling,
27 retention and compilation of DNA identification profiles, and the

1 collection of assessments required under subsection (5) to all of
2 the following:

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

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

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

8 (10) If a sample was collected under subsection (1) from an
9 individual who does not have more than 1 conviction, and that
10 conviction was reversed by an appellate court, ~~the individual may~~
11 ~~petition the sentencing court to~~ **SHALL** order the ~~disposing~~ **DISPOSAL**
12 of the sample collected and DNA identification profile record for
13 that conviction in the manner provided in subsections (13) and
14 (14). ~~The sentencing court shall only enter the order upon a~~
15 ~~finding that the individual has proven by clear and convincing~~
16 ~~evidence that the conviction was reversed based upon the great~~
17 ~~weight of the evidence, specifically, that there was overwhelming~~
18 ~~evidence against the verdict resulting in a miscarriage of justice.~~

19 (11) Any other DNA identification profile obtained by the
20 department shall not be permanently retained by the department but
21 shall be retained only as long as it is needed for a criminal
22 investigation or criminal prosecution. Except as provided in
23 subsection (12), the state police forensic laboratory shall dispose
24 of a DNA sample collected under subsection (1) or a DNA
25 identification profile, or both, if any of the following
26 circumstances occur:

27 (a) The department receives a written request for disposal

1 from the investigating police agency or prosecutor indicating that
2 the sample or profile is no longer necessary for a criminal
3 investigation or criminal prosecution.

4 (b) The department receives a written request for disposal and
5 a certified copy of a final court order establishing that the
6 charge for which the sample was obtained has been dismissed or has
7 resulted in an acquittal or that no charge was filed within the
8 applicable limitations period.

9 (12) Subsection (11) does not apply if either of the following
10 circumstances exists:

11 (a) The department determines that the individual from whom
12 the sample is taken has otherwise become obligated to submit a
13 sample.

14 (b) Subsection (16) applies.

15 (13) The state police forensic laboratory shall dispose of a
16 sample and a DNA identification profile record in the following
17 manner:

18 (a) ~~The~~ **NOT MORE THAN 60 DAYS AFTER THE DEPARTMENT RECEIVES**
19 **NOTICE UNDER SUBSECTION (11), THE** laboratory shall dispose of the
20 sample in compliance with section 13811 of the public health code,
21 1978 PA 368, MCL 333.13811.

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

24 (14) After disposal in accordance with subsection (13), the
25 laboratory shall make and keep a written record of the disposal,
26 signed by the individual who witnessed the disposal.

27 (15) An identification, warrant, detention, probable cause to

1 arrest, arrest, or conviction based upon a DNA match or DNA
2 information is not invalidated if it is later determined that 1 or
3 more of the following errors occurred in good faith:

4 (a) A DNA sample was erroneously obtained.

5 (b) A DNA identification profile was erroneously retained.

6 (c) A DNA sample was not disposed of or there was a delay in
7 disposing of the sample.

8 (d) A DNA identification profile was not disposed of or there
9 was a delay in disposing of the profile.

10 (16) Notwithstanding any other provision of this act, the
11 department is not required to dispose of physical evidence or data
12 obtained from a sample if evidence relating to an individual other
13 than the individual from whom the sample was taken would be
14 destroyed and the evidence or data relating to the other individual
15 would otherwise be retained under this section.

16 **(17) THE DEPARTMENT SHALL SEND WRITTEN NOTICE TO THE**
17 **REQUESTING LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTOR WHEN THE**
18 **INDIVIDUAL'S DNA SAMPLE OR PROFILE HAS BEEN DESTROYED UNDER THIS**
19 **ACT.**

20 Enacting section 1. This amendatory act takes effect July 1,
21 2015.

22 Enacting section 2. This amendatory act does not take effect
23 unless all of the following bills of the 97th Legislature are
24 enacted into law:

25 (a) Senate Bill No. 106.

26 (b) Senate Bill No. 107.