

SENATE BILL No. 361

May 5, 2011, Introduced by Senators BIEDA, SCHUITMAKER, ANDERSON, KOWALL and JONES and referred to the Committee on Judiciary.

(As amended October 6, 2011)

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending section 16 of chapter X (MCL 770.16), as amended by 2008 PA 410.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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CHAPTER X

Sec. 16. (1) Notwithstanding the limitations of section 2 of this chapter, a defendant convicted of a felony at trial before January 8, 2001 who is serving a prison sentence for the felony conviction may petition the circuit court to order DNA testing of biological material identified during the investigation 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, 2012.~~ **—A NOTWITHSTANDING THE LIMITATIONS OF SECTION 2 OF THIS CHAPTER, A]** defendant convicted of a felony at trial on or after

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1 January 8, 2001 who establishes that all of the following apply may
2 petition the circuit court to order DNA testing of biological
3 material identified during the investigation leading to his or her
4 conviction, and for a new trial based on the results of that
5 testing:

6 (a) That DNA testing was done in the case or under this act.

7 (b) That the results of the testing were inconclusive.

8 (c) That testing with current DNA technology is likely to
9 result in conclusive results.

10 (2) A petition under this section **[SHALL BE FILED NOT LATER THAN**
JANUARY 1, 2016. THE PETITION] shall be filed in the
11 circuit court for the county in which the defendant was sentenced
12 and shall be assigned to the sentencing judge or his or her
13 successor. The petition shall be served on the prosecuting attorney
14 of the county in which the defendant was sentenced.

15 (3) A petition under this section shall allege that biological
16 material was collected and identified during the investigation of
17 the defendant's case. If the defendant, after diligent
18 investigation, is unable to discover the location of the identified
19 biological material or to determine whether the biological material
20 is no longer available, the defendant may petition the court for a
21 hearing to determine whether the identified biological material is
22 available. If the court determines that identified biological
23 material was collected during the investigation, the court shall
24 order appropriate police agencies, hospitals, or the medical
25 examiner to search for the material and to report the results of
26 the search to the court.

27 (4) The court shall order DNA testing if the defendant does

1 all of the following:

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

6 (b) Establishes all of the following by clear and convincing
7 evidence:

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

10 (ii) The identified biological material described in subsection
11 (1) was not previously subjected to DNA testing or, if previously
12 tested, will be subject to DNA testing technology that was not
13 available when the defendant was convicted.

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

16 (5) The court shall state its findings of fact on the record
17 or shall make written findings of fact supporting its decision to
18 grant or deny a petition brought under this section.

19 (6) If the court grants a petition for DNA testing under this
20 section, the identified biological material and a biological sample
21 obtained from the defendant shall be subjected to DNA testing by a
22 laboratory approved by the court. If the court determines that the
23 applicant is indigent, the cost of DNA testing ordered under this
24 section shall be borne by the state. The results of the DNA testing
25 shall be provided to the court and to the defendant and the
26 prosecuting attorney. Upon motion by either party, the court may
27 order that copies of the testing protocols, laboratory procedures,

1 laboratory notes, and other relevant records compiled by the
2 testing laboratory be provided to the court and to all parties.

3 (7) If the results of the DNA testing are inconclusive or show
4 that the defendant is the source of the identified biological
5 material, ~~the~~ **BOTH OF THE FOLLOWING APPLY:**

6 (A) **THE** court shall deny the motion for new trial. ~~If the DNA~~
7 ~~test results show that the defendant is the source of the~~
8 ~~identified biological material, the~~

9 (B) **THE** defendant's DNA profile shall be provided to the
10 Michigan **DEPARTMENT OF** state police for inclusion under the DNA
11 identification profiling system act, 1990 PA 250, MCL 28.171 to
12 28.176.

13 (8) If the results of the DNA testing show that the defendant
14 is not the source of the identified biological material, the court
15 shall appoint counsel pursuant to MCR 6.505(a) and hold a hearing
16 to determine by clear and convincing evidence all of the following:

17 (a) That only the perpetrator of the crime or crimes for which
18 the defendant was convicted could be the source of the identified
19 biological material.

20 (b) That the identified biological material was collected,
21 handled, and preserved by procedures that allow the court to find
22 that the identified biological material is not contaminated or is
23 not so degraded that the DNA profile of the tested sample of the
24 identified biological material cannot be determined to be identical
25 to the DNA profile of the sample initially collected during the
26 investigation described in subsection (1).

27 (c) That the defendant's purported exclusion as the source of

1 the identified biological material, balanced against the other
2 evidence in the case, is sufficient to justify the grant of a new
3 trial.

4 (9) Upon motion of the prosecutor, the court shall order
5 retesting of the identified biological material and shall stay the
6 defendant's motion for new trial pending the results of the DNA
7 retesting.

8 (10) The court shall state its findings of fact on the record
9 or make written findings of fact supporting its decision to grant
10 or deny the defendant a new trial under this section.
11 Notwithstanding section 3 of this chapter, an aggrieved party may
12 appeal the court's decision to grant or deny the petition for DNA
13 testing and for new trial by application for leave granted by the
14 court of appeals.

15 (11) If the name of the victim of the felony conviction
16 described in subsection (1) is known, the prosecuting attorney
17 shall give written notice of a petition under this section to the
18 victim. The notice shall be by first-class mail to the victim's
19 last known address. Upon the victim's request, the prosecuting
20 attorney shall give the victim notice of the time and place of any
21 hearing on the petition and shall inform the victim of the court's
22 grant or denial of a new trial to the defendant.

23 (12) ~~Effective January 1, 2001, the~~ **THE** investigating law
24 enforcement agency shall preserve any biological material
25 identified during the investigation of a crime or crimes for which
26 any person may file a petition for DNA testing under this section.
27 The identified biological material shall be preserved for the

- 1 period of time that any person is incarcerated in connection with
- 2 that case.