

HOUSE BILL NO. 5404

January 23, 2020, Introduced by Reps. Warren, Calley, Pohutsky, LaGrand, Rabhi, Sneller, Leutheuser, Berman, Kahle, Eisen, Mueller, Wozniak, Cherry, Brann and Whitsett and referred to the Committee on Judiciary.

A bill to amend 1990 PA 250, entitled
"DNA identification profiling system act,"
by amending section 6 (MCL 28.176), as amended by 2018 PA 310.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (a) The individual is arrested for committing or attempting to
6 commit a felony offense or an offense that would be a felony



1 offense if committed by an adult.

2 (b) The individual is convicted of or found responsible for a
3 felony or attempted felony, or any of the following misdemeanors,
4 or local ordinances that are substantially corresponding to the
5 following misdemeanors:

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

10 (ii) A violation of section 335a(1) of the Michigan penal code,
11 1931 PA 328, MCL 750.335a, indecent exposure.

12 (iii) A violation punishable under section 451(1), ~~or (2)~~, **(9)**,
13 **(10)**, **or (11)** of the Michigan penal code, 1931 PA 328, MCL 750.451.
14 ~~, first and second prostitution violations.~~

15 (iv) A violation of section 454 of the Michigan penal code,
16 1931 PA 328, MCL 750.454, leasing a house for purposes of
17 prostitution.

18 (2) The DNA identification profiles of DNA samples received
19 under this act must only be disclosed as follows:

20 (a) To a criminal justice agency for law enforcement
21 identification purposes.

22 (b) In a judicial proceeding as authorized or required by a
23 court.

24 (c) To a defendant in a criminal case if the DNA
25 identification profile is used in conjunction with a charge against
26 the defendant.

27 (d) For an academic, research, statistical analysis, or
28 protocol developmental purpose only if personal identifications are
29 removed.

1 (3) Notwithstanding subsection (1), if at the time the
2 individual is arrested, convicted of, or found responsible for the
3 violation the investigating law enforcement agency or the
4 department already has a sample from the individual that meets the
5 requirements of this act, the individual is not required to provide
6 another sample or pay the assessment required under subsection (5).

7 (4) The county sheriff or the investigating law enforcement
8 agency as ordered by the court shall provide for collecting the
9 samples required to be provided under subsection (1) in a medically
10 approved manner by qualified persons using supplies provided by the
11 department and shall forward those samples and any samples
12 described in subsection (1) that were already in the agency's
13 possession to the department after the individual from whom the
14 sample was taken has been arraigned in the district court. However,
15 the individual's DNA sample must not be forwarded to the department
16 if the individual is not charged with committing or attempting to
17 commit a felony offense or an offense that would be a felony if
18 committed by an adult. If the individual's DNA sample is forwarded
19 to the department despite the individual not having been charged as
20 described in this subsection, the law enforcement agency shall
21 notify the department to destroy that sample. The collecting and
22 forwarding of samples must be done in the manner required under
23 this act. A sample must be collected by the county sheriff or the
24 investigating law enforcement agency after arrest but before
25 sentencing or disposition as ordered by the court and promptly
26 transmitted to the department of state police after the individual
27 is charged with committing or attempting to commit a felony offense
28 or an offense that would be a felony if committed by an adult. This
29 subsection does not preclude a law enforcement agency or state



1 agency from obtaining a sample at or after sentencing or
2 disposition. At the time a DNA sample is taken from an individual
3 under this section, the individual ~~shall~~**must** be notified in
4 writing of all of the following:

5 (a) That, except as otherwise provided by law, the
6 individual's DNA sample or DNA identification profile, or both,
7 shall be destroyed or expunged, as appropriate, if the charge for
8 which the sample was obtained has been dismissed or resulted in
9 acquittal, or no charge was filed within the limitations period.

10 (b) That the individual's DNA sample or DNA identification
11 profile, or both, will not be destroyed or expunged, as
12 appropriate, if the department determines that the individual from
13 whom the sample is taken is otherwise obligated to submit a sample
14 or if it is evidence relating to another individual that would
15 otherwise be retained under this section.

16 (c) That the burden is on the arresting law enforcement agency
17 and the prosecution to request the destruction or expunction of a
18 DNA sample or DNA identification profile as required under this
19 section, not on the individual.

20 (5) The court shall order each individual found responsible
21 for or convicted of 1 or more crimes listed in subsection (1) to
22 pay an assessment of \$60.00. The assessment required under this
23 subsection is in addition to any fine, costs, or other assessments
24 imposed by the court.

25 (6) An assessment required under subsection (5) must be
26 ordered on the record and must be listed separately in the
27 adjudication order, judgment of sentence, or order of probation.

28 (7) After reviewing a verified petition by an individual
29 against whom an assessment is imposed under subsection (5), the



1 court may suspend payment of all or part of the assessment if it
2 determines the individual is unable to pay the assessment.

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

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

13 (b) Sixty-five percent to the state treasurer for deposit in
14 the justice system fund created in section 181 of the revised
15 judicature act of 1961, 1961 PA 236, MCL 600.181.

16 (9) If a sample was collected under subsection (1) from an
17 individual who does not have more than 1 conviction, and that
18 conviction was reversed by an appellate court, the sentencing court
19 shall order the disposal of the sample collected and DNA
20 identification profile record for that conviction in the manner
21 provided in subsections (12) and (13).

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



1 (a) The department receives a written request for disposal
2 from the investigating police agency or prosecutor indicating that
3 the sample or profile is no longer necessary for a criminal
4 investigation or criminal prosecution.

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

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

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

15 (b) Subsection (15) applies.

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

19 (a) Not more than 60 days after the department receives notice
20 under subsection (10), the laboratory shall dispose of the sample
21 in compliance with section 13811 of the public health code, 1978 PA
22 368, MCL 333.13811.

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

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

28 (14) An identification, warrant, detention, probable cause to
29 arrest, arrest, or conviction based upon a DNA match or DNA



1 information is not invalidated if it is later determined that 1 or
2 more of the following errors occurred in good faith:

3 (a) A DNA sample was erroneously obtained.

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

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

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

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

15 (16) The department shall send written notice to the
16 requesting law enforcement agency, court, or prosecutor when the
17 individual's DNA sample or DNA identification profile has been
18 destroyed under this act.

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Bill No. ____ or House Bill No. 5403(request no.
23 03403'19) of the 100th Legislature is enacted into law.

