

HOUSE BILL NO. 4216

February 11, 2021, Introduced by Reps. Mueller and LaGrand 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

1 commit a felony offense or an offense that would be a felony
2 offense if committed by an adult.

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

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

11 (ii) A violation of section 335a(1) of the Michigan penal code,
12 1931 PA 328, MCL 750.335a, indecent exposure.

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

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

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

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

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

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

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

1 removed.

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

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

1 subsection does not preclude a law enforcement agency or state
2 agency from obtaining a sample at or after sentencing or
3 disposition. At the time a DNA sample is taken from an individual
4 under this section, the individual ~~shall~~**must** be notified in
5 writing of all of the following:

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

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

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

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

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

29 (7) After reviewing a verified petition by an individual

1 against whom an assessment is imposed under subsection (5), the
2 court may suspend payment of all or part of the assessment if it
3 determines the individual is unable to pay the assessment.

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

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

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

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

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

1 circumstances occur:

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

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

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

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

16 (b) Subsection (15) applies.

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

20 (a) Not more than 60 days after the department receives notice
21 under subsection (10), the laboratory shall dispose of the sample
22 in compliance with section 13811 of the public health code, 1978 PA
23 368, MCL 333.13811.

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

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

29 (14) 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 (15) 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 (16) The department shall send written notice to the
17 requesting law enforcement agency, court, or prosecutor when the
18 individual's DNA sample or DNA identification profile has been
19 destroyed under this act.

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

22 Enacting section 2. This amendatory act does not take effect
23 unless Senate Bill No. ____ or House Bill No. 4215 (request no.
24 01497'21) of the 101st Legislature is enacted into law.