

DNA IDENTIFICATION PROFILING SYSTEM ACT (EXCERPT)
Act 250 of 1990

***** 28.176.amended THIS AMENDED SECTION IS EFFECTIVE OCTOBER 1, 2024 *****

28.176.amended DNA identification profile; retention; requirements; disposal of sample or profile; good-faith error; disposal of physical evidence or data obtained from sample; notice.

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

(a) The individual is arrested for committing or attempting to commit a felony offense or an offense that would be a felony offense if committed by an adult.

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

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

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

(iii) A violation punishable under section 451(1) or (2) of the Michigan penal code, 1931 PA 328, MCL 750.451, first and second prostitution violations.

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

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

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

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

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

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

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

(4) The county sheriff or the investigating law enforcement agency as ordered by the court shall provide for collecting the samples required to be provided under subsection (1) in a medically approved manner by qualified persons using supplies provided by the department and shall forward those samples and any samples described in subsection (1) that were already in the agency's possession to the department after the individual from whom the sample was taken has been arraigned in the district court. However, the individual's DNA sample must not be forwarded to the department if the individual is not charged with committing or attempting to commit a felony offense or an offense that would be a felony if committed by an adult. If the individual's DNA sample is forwarded to the department despite the individual not having been charged as described in this subsection, the law enforcement agency shall notify the department to destroy that sample. The collecting and forwarding of samples must be done in the manner required under this act. A sample must be collected by the county sheriff or the investigating law enforcement agency after arrest but before sentencing or disposition as ordered by the court and promptly transmitted to the department of state police after the individual is charged with committing or attempting to commit a felony offense 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 must be notified in writing of all of the following:

(a) That, except as otherwise provided by law, the individual's DNA sample or DNA identification profile, or both, must 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 DNA identification 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 DNA identification profile as required under this section, not on the individual.

(5) 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. This subsection does not apply to a juvenile, or a parent, guardian, or legal custodian of a juvenile, within the jurisdiction of the court under section 2 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2.

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

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

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

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

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

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

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

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

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

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

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

(b) Subsection (15) applies.

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

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

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

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

(14) An identification, warrant, detention, probable cause to arrest, arrest, or conviction based upon a DNA match or DNA information is not invalidated if it is later determined that 1 or more of the following errors occurred in good faith:

(a) A DNA sample was erroneously obtained.

(b) A DNA identification profile was erroneously retained.

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

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

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

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

History: 1990, Act 250, Eff. Sept. 1, 1994;—Am. 1996, Act 508, Imd. Eff. Jan. 9, 1997;—Am. 2000, Act 30, Imd. Eff. Mar. 15, 2000;—Am. 2001, Act 87, Eff. Jan. 1, 2002;—Am. 2003, Act 76, Eff. Oct. 1, 2003;—Am. 2008, Act 535, Imd. Eff. Jan. 13, 2009;—Am. 2014, Act 457, Eff. July 1, 2015;—Am. 2018, Act 310, Imd. Eff. June 29, 2018;—Am. 2023, Act 302, Eff. Oct. 1, 2024.