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BILL



ANALYSIS

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Senate Bill 1083 (as introduced 9-20-16)
Sponsor: Senator Dale W. Zorn
Committee: Judiciary

Date Completed: 10-18-16

CONTENT

The bill would amend the DNA Identification Profiling System Act to revise procedures for seeking the destruction and/or expunction of a DNA sample or DNA identification profile. The bill would do the following:

- Specify that a person from whom a DNA sample was collected would have the burden of requesting that a DNA sample or profile be destroyed or expunged, or both, if the law enforcement agency that collected the sample or the prosecutor did not request destruction and/or expunction.**
- Require information about that burden to be provided in writing along with other information that must be given to a person from whom a DNA sample is obtained.**
- Establish procedures for a person from whom a DNA sample was obtained to request the destruction and/or expunction of a DNA sample or profile.**
- Require the Michigan Department of State Police (MSP) forensic laboratory to dispose of a DNA sample or profile if it received a request or court order for destruction or expunction under the bill.**

The bill would take effect 90 days after its enactment.

Burden to Request Destruction/Expunction

The Act provides for the collection of DNA samples from certain prisoners, convicted offenders, and juvenile offenders, and the analysis of those samples. The Act also provides for the collection of samples for DNA identification profiling from individuals arrested for committing or attempting to commit a felony and from those found responsible for an act that would be a crime if committed by an adult.

At the time a DNA sample is taken from an individual by a sheriff, law enforcement agency, or State agency, the person must be notified in writing of certain information regarding the handling and disposition of the DNA sample or DNA identification profile.

Among the information required to be provided is 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. Under the bill, a person from whom a DNA sample was collected would have to be notified instead that the investigating law enforcement agency or the prosecution could request the destruction or expunction of a DNA sample or DNA identification profile, or both, but the burden would be on that person to request the destruction or expunction of a DNA sample or DNA identification profile, or both, if the law enforcement agency or prosecutor did not request destruction and/or expunction.

Request for Destruction/Expunction

If a person were charged with committing or attempting to commit a felony or an offense that would be a felony if committed by an adult, and the charge for which the sample was obtained or DNA identification profile was created had been dismissed or resulted in acquittal, the person could request the destruction and/or expunction of the sample and/or profile by filing a motion in the court in which he or she was arraigned. The court would have to grant the motion unless the sample or profile, or both, were otherwise required by law to be retained. If the court granted the motion, the court clerk would have to forward a certified copy of the court's order to the prosecuting attorney, the investigating law enforcement agency, and the MSP.

If no charge were filed within the limitations period against an individual from whom a DNA sample was collected, he or she could request the destruction or expunction of the DNA sample and/or DNA identification profile by submitting a written request to the investigating law enforcement agency. Upon receiving the request, the agency would have to either destroy the sample if it remained in the agency's possession or submit the written request to the MSP if the sample had already been forwarded to the Department.

Disposal of Sample/Profile

Under the Act, a DNA identification profile obtained by the MSP generally may not be permanently retained by the Department but may be retained only as long as it is needed for a criminal investigation or criminal prosecution. Except as otherwise provided in the Act, the MSP forensic laboratory must dispose of a DNA sample or a DNA identification profile, or both, if the laboratory receives either of the following:

- A written request from the investigating law enforcement agency or prosecutor indicating that the sample or profile is no longer necessary for an investigation or prosecution.
- 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.

Under the bill, the MSP forensic lab also would have to dispose of a sample and/or profile, if the MSP received either of the following:

- A certified copy of a court order granting an individual's motion to have his or her DNA sample and/or DNA identification profile disposed of.
- A written request from a law enforcement agency made to the agency by an individual whose sample was collected by the agency but against whom no charge was filed within the applicable limitations period.

The Act requires the MSP to send written notice to the requesting law enforcement agency, court, or prosecutor when a person's DNA sample or profile has been destroyed. The bill also would require the MSP to send written notice to a requesting individual when his or her sample or profile was destroyed.

MCL 28.176

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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