



# SENATE BILL No. 1083

September 20, 2016, Introduced by Senator ZORN 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 2014 PA 457.

## 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  
7       offense if committed by an adult.

8           (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 shall 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.

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 shall not be forwarded to the  
16 department if the individual is not charged with committing or  
17 attempting to commit a felony offense or an offense that would be a  
18 felony if committed by an adult. If the individual's DNA sample is  
19 forwarded to the department despite the individual not having been  
20 charged as described in this subsection, the **INVESTIGATING** law  
21 enforcement agency shall notify the department to destroy that  
22 sample. The collecting and forwarding of samples shall be done in  
23 the manner required under this act. A sample shall be collected by  
24 the county sheriff or the investigating law enforcement agency  
25 after arrest but before sentencing or disposition as ordered by the  
26 court and promptly transmitted to the department ~~of state police~~  
27 after the individual is charged with committing or attempting to

1 commit a felony offense or an offense that would be a felony if  
2 committed by an adult. This subsection does not preclude a law  
3 enforcement agency or state agency from obtaining a sample at or  
4 after sentencing or disposition. At the time a DNA sample is taken  
5 from an individual under this section, the individual shall be  
6 notified in writing of all of the following:

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

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

18 (c) That **THE INVESTIGATING LAW ENFORCEMENT AGENCY OR THE**  
19 **PROSECUTION MAY REQUEST THE DESTRUCTION OR EXPUNCTION OF A DNA**  
20 **SAMPLE OR DNA IDENTIFICATION PROFILE, OR BOTH, BUT** the burden is on  
21 ~~the arresting law enforcement agency and the prosecution~~ **INDIVIDUAL**  
22 to request the destruction or expunction of a DNA sample or **DNA**  
23 **IDENTIFICATION** profile, ~~as required under this section, not on the~~  
24 ~~individual.~~ **OR BOTH, IF THE INVESTIGATING LAW ENFORCEMENT AGENCY OR**  
25 **PROSECUTOR DOES NOT REQUEST THE DESTRUCTION OR EXPUNCTION OF A DNA**  
26 **SAMPLE OR DNA IDENTIFICATION PROFILE, OR BOTH. THE INDIVIDUAL MAY**  
27 **REQUEST THE DESTRUCTION OR EXPUNCTION OF A DNA SAMPLE OBTAINED**

1 UNDER SUBSECTION (1) OR A DNA IDENTIFICATION PROFILE, OR BOTH, IN  
2 THE FOLLOWING MANNER:

3 (i) IF THE INDIVIDUAL WAS CHARGED WITH COMMITTING OR  
4 ATTEMPTING TO COMMIT A FELONY OFFENSE OR AN OFFENSE THAT WOULD BE A  
5 FELONY IF COMMITTED BY AN ADULT AND THE CHARGE FOR WHICH THE SAMPLE  
6 WAS OBTAINED OR DNA IDENTIFICATION PROFILE WAS CREATED HAS BEEN  
7 DISMISSED OR RESULTED IN ACQUITTAL, BY FILING A MOTION IN THE COURT  
8 IN WHICH HE OR SHE WAS ARRAIGNED FOR DESTRUCTION OR EXPUNCTION OF  
9 THE DNA SAMPLE OR PROFILE, OR BOTH. THE COURT SHALL GRANT A MOTION  
10 FILED UNDER THIS SUBPARAGRAPH UNLESS THE DNA SAMPLE OR DNA  
11 IDENTIFICATION PROFILE, OR BOTH, ARE OTHERWISE REQUIRED TO BE  
12 RETAINED BY LAW. IF THE COURT GRANTS A MOTION MADE UNDER THIS  
13 SUBPARAGRAPH, THE CLERK OF THE COURT SHALL FORWARD A CERTIFIED COPY  
14 OF THE COURT'S ORDER TO THE PROSECUTING ATTORNEY, THE INVESTIGATING  
15 LAW ENFORCEMENT AGENCY, AND THE DEPARTMENT.

16 (ii) IF NO CHARGE WAS FILED WITHIN THE LIMITATIONS PERIOD  
17 AGAINST THE INDIVIDUAL, HE OR SHE MAY REQUEST THE DESTRUCTION OR  
18 EXPUNCTION OF THE DNA SAMPLE OR DNA IDENTIFICATION PROFILE, OR  
19 BOTH, BY SUBMITTING A WRITTEN REQUEST TO THE INVESTIGATING LAW  
20 ENFORCEMENT AGENCY. UPON RECEIPT OF A REQUEST UNDER THIS  
21 SUBPARAGRAPH, THE INVESTIGATING LAW ENFORCEMENT AGENCY SHALL EITHER  
22 DESTROY A DNA SAMPLE COLLECTED UNDER SUBSECTION (1) AND THAT  
23 REMAINED IN THE INVESTIGATING LAW ENFORCEMENT AGENCY'S POSSESSION,  
24 OR SUBMIT THE WRITTEN REQUEST TO THE DEPARTMENT IF THE SAMPLE HAS  
25 ALREADY BEEN FORWARDED TO THE DEPARTMENT.

26 (5) The court shall order each individual found responsible  
27 for or convicted of 1 or more crimes listed in subsection (1) to

1 pay an assessment of \$60.00. The assessment required under this  
2 subsection is in addition to any fine, costs, or other assessments  
3 imposed by the court.

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

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

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

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

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

24 (9) The director of the department shall report by December 31  
25 of each year concerning the rate of DNA sample collection, DNA  
26 identification profiling, retention and compilation of DNA  
27 identification profiles, and the collection of assessments required

1 under subsection (5) to all of the following:

2 (a) The standing committees of the senate and house of  
3 representatives concerned with DNA sample collection and retention.

4 (b) The house of representatives appropriations subcommittee  
5 on state police and military affairs.

6 (c) The senate appropriations subcommittee on state police.

7 (10) If a sample was collected under subsection (1) from an  
8 individual who does not have more than 1 conviction, and that  
9 conviction was reversed by an appellate court, the sentencing court  
10 shall order the disposal of the sample collected and DNA  
11 identification profile record for that conviction in the manner  
12 provided in subsections (13) and (14).

13 (11) Any other DNA identification profile obtained by the  
14 department shall not be permanently retained by the department but  
15 shall be retained only as long as it is needed for a criminal  
16 investigation or criminal prosecution. Except as provided in  
17 subsection (12), the state police forensic laboratory shall dispose  
18 of a DNA sample collected under subsection (1) or a DNA  
19 identification profile, or both, if any of the following  
20 circumstances occur:

21 (a) The department receives a written request for disposal  
22 from the investigating ~~police~~ **LAW ENFORCEMENT** agency or prosecutor  
23 indicating that the sample or profile is no longer necessary for a  
24 criminal investigation or criminal prosecution.

25 (b) The department receives a written request for disposal and  
26 a certified copy of a final court order establishing that the  
27 charge for which the sample was obtained has been dismissed or has

1 resulted in an acquittal or that no charge was filed within the  
2 applicable limitations period.

3 (C) THE DEPARTMENT RECEIVES A CERTIFIED COPY OF A COURT ORDER  
4 GRANTING AN INDIVIDUAL'S MOTION TO HAVE HIS OR HER DNA SAMPLE OR  
5 DNA IDENTIFICATION PROFILE, OR BOTH, DISPOSED OF UNDER SUBSECTION  
6 (4) (C) (i) .

7 (D) THE DEPARTMENT RECEIVES A WRITTEN REQUEST FROM A LAW  
8 ENFORCEMENT AGENCY MADE TO THE LAW ENFORCEMENT AGENCY BY AN  
9 INDIVIDUAL UNDER SUBSECTION (4) (C) (ii) WHOSE SAMPLE WAS COLLECTED  
10 UNDER SUBSECTION (1) BY THE LAW ENFORCEMENT AGENCY BUT AGAINST WHOM  
11 NO CHARGE WAS FILED WITHIN THE APPLICABLE LIMITATIONS PERIOD.

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

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

17 (b) Subsection (16) applies.

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

21 (a) Not more than 60 days after the department receives notice  
22 under subsection (11), the laboratory shall dispose of the sample  
23 in compliance with section 13811 of the public health code, 1978 PA  
24 368, MCL 333.13811.

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

27 (14) After disposal in accordance with subsection (13), the



1 laboratory shall make and keep a written record of the disposal,  
2 signed by the individual who witnessed the disposal.

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

7 (a) A DNA sample was erroneously obtained.

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

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

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

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

19 (17) The department shall send written notice to the  
20 requesting law enforcement agency, court, **INDIVIDUAL**, or prosecutor  
21 when the individual's DNA sample or **DNA IDENTIFICATION** profile has  
22 been destroyed under this act.

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