

HOUSE BILL No. 5323

December 6, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

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
9 felony or attempted felony, or any of the following misdemeanors,

1 or local ordinances that are substantially corresponding to the
2 following misdemeanors:

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

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

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

12 (iv) A violation of section 454 of the Michigan penal code,
13 1931 PA 328, MCL 750.454, leasing a house for purposes of
14 prostitution.

15 (2) The DNA **IDENTIFICATION** profiles of DNA samples received
16 under this act ~~shall~~**MUST** only be disclosed as follows:

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

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

21 (c) To a defendant in a criminal case if the DNA
22 **IDENTIFICATION** profile is used in conjunction with a charge against
23 the defendant.

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

27 (3) Notwithstanding subsection (1), if at the time the

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

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

1 an adult. This subsection does not preclude a law enforcement
2 agency or state agency from obtaining a sample at or after
3 sentencing or disposition. At the time a DNA sample is taken from
4 an individual under this section, the individual ~~shall~~**MUST** be
5 notified in 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) ~~shall~~**MUST** be
27 ordered ~~upon~~**ON** the record and ~~shall~~**MUST** be listed separately in

1 the adjudication order, judgment of sentence, or order of
2 probation.

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

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

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

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

20 (9) The director of the department shall report by December 31
21 of each year concerning the rate of DNA sample collection, DNA
22 identification profiling, retention and compilation of DNA
23 identification profiles, and the collection of assessments required
24 under subsection (5) to all of the following:

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

27 (b) The house of representatives appropriations subcommittee

1 on state police and military affairs.

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

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

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

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

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

26 **(C) THE DEPARTMENT RECEIVES A CERTIFIED COPY OF A COURT ORDER**
27 **ENTERED UNDER SECTION 26A OF CHAPTER IV OF THE CODE OF CRIMINAL**

1 **PROCEDURE, 1927 PA 175, MCL 764.26A.**

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

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

7 (b) Subsection (16) applies.

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

11 (a) Not more than 60 days after the department receives notice
12 under subsection (11), the laboratory shall dispose of the sample
13 in compliance with section 13811 of the public health code, 1978 PA
14 368, MCL 333.13811.

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

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

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

24 (a) A DNA sample was erroneously obtained.

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

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

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

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

9 (17) The department shall send written notice to the
10 requesting law enforcement agency, court, or prosecutor when the
11 individual's DNA sample or **DNA IDENTIFICATION** profile has been
12 destroyed under this act.

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

15 Enacting section 2. This amendatory act does not take effect
16 unless all of the following bills of the 99th Legislature are
17 enacted into law:

18 (a) House Bill No. 4536.

19 (b) House Bill No. 4537.

20 (c) House Bill No. 4538.