

HOUSE BILL NO. 5842

June 25, 2024, Introduced by Reps. Tyrone Carter, Breen, Brenda Carter, Hope, Rheingans, Weiss, Koleszar, Glanville, Hill, Mentzer, Xiong, Conlin, Pohutsky, Steckloff, Byrnes, Rogers, McFall, Witwer and Coffia 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 2023 PA 302.

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.~~**vehicle, or**
11 **other place in which commercial sexual activity is practiced,**
12 **encouraged, or allowed.**

13 (ii) A violation of section 335a(1) of the Michigan penal code,
14 1931 PA 328, MCL 750.335a, indecent exposure.

15 (iii) A violation punishable under section 451(1) or (2) of the
16 Michigan penal code, 1931 PA 328, MCL 750.451, ~~first and second~~
17 ~~prostitution~~**commercial sexual activity** violations.

18 (iv) A violation of section 454 of the Michigan penal code,
19 1931 PA 328, MCL 750.454, ~~leasing~~**renting** a house, **room, or vehicle**
20 for purposes of ~~prostitution.~~**commercial sexual activity.**

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

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

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

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

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

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

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

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

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

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

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

23 (5) The court shall order each individual found responsible
24 for or convicted of 1 or more crimes listed in subsection (1) to
25 pay an assessment of \$60.00. The assessment required under this
26 subsection is in addition to any fine, costs, or other assessments
27 imposed by the court. ~~This~~ **Beginning October 1, 2024, this**
28 subsection does not apply to a juvenile, or a parent, guardian, or
29 legal custodian of a juvenile, within the jurisdiction of the court

1 under section 2 of chapter XIIIA of the probate code of 1939, 1939
2 PA 288, MCL 712A.2.

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

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

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

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

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

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

29 (10) Any other DNA identification profile obtained by the

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

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

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

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

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

22 (b) Subsection (15) applies.

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

26 (a) Not more than 60 days after the department receives notice
27 under subsection (10), the laboratory shall dispose of the sample
28 in compliance with section 13811 of the public health code, 1978 PA
29 368, MCL 333.13811.

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

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

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

10 (a) A DNA sample was erroneously obtained.

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

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

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

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

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

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

28 Enacting section 2. This amendatory act does not take effect
29 unless Senate Bill No. ____ or House Bill No. 5841 (request no.

1 04081'23) of the 102nd Legislature is enacted into law.