



**House  
Legislative  
Analysis  
Section**

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**DNA PROFILING**

**Senate Bill 469 (Substitute H-2)  
Senate Bill 470 (Substitute H-2)  
Senate Bill 471 as passed by the Senate**

**First Analysis (6-29-90)**

**RECEIVED**

**Sponsor: Senator John M. Engler  
Senate Committee: Health Policy  
House Committee: Appropriations Mich. State Law Library**

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***THE APPARENT PROBLEM:***

The molecules of deoxyribonucleic acid (DNA) contained in the chromosomes of every cell hold the genetic code that makes one person genetically unique from every other, except for his or her identical twin. The technology of DNA analysis has advanced to the point where, say forensic scientists, a DNA profile can be developed on a person that sufficiently distinguishes him or her from the general population for the purposes of criminal investigation. DNA in blood or saliva collected from a suspect in a sexual assault, for example, can be compared with DNA in semen left on the victim using standardized segments of DNA molecules that link with and mark complementary segments of DNA in the samples. When several different genetic markers, or "probes," are used on the DNA samples and the results compared to those obtained from a reference population, strong evidence can be obtained linking a suspect to a crime. A good deal of research has already been done on the development of a genetic data base reflective of the general population; while such research continues, what is needed, say law enforcement experts, is legislation that will authorize the collection of samples from criminals and help to develop a DNA data base that can be used to solve crimes in much the way that fingerprints are used now.

***THE CONTENT OF THE BILLS:***

Senate Bills 469 through 471 would provide for the development of a DNA profile data base and for the collection of samples for DNA profiles from convicted sexual offenders and sexual offenders scheduled for parole or release from prison. Senate Bills 469 and 470 could not take effect without sufficient funding; Senate Bill 469 could not take effect unless the other two were enacted, and Senate Bills 470 and 471 could not take effect unless Senate Bill 469 was enacted. A more detailed explanation follows.

Senate Bill 469 would create the DNA Identification Profiling System Act to provide for the collection and analysis of blood and saliva samples from sexual offenders. It would require the Department of State Police to promulgate rules on sample collection, storage, and analysis by January 1, 1991. The rules also would have to provide for the development, in cooperation with the Federal Bureau of Investigation (FBI) and others, of a system of cataloging and retrieval of DNA profiles, and for the protection of the privacy interests of individuals whose blood, saliva, or tissue samples were analyzed under the bill.

The department would work with the FBI to develop the capability of conducting DNA identification and genetic

marker profiling at state police crime laboratories. For this purpose, the department would develop the appropriate facilities, acquire necessary equipment and supplies, evaluate and select analytic techniques, and train personnel.

The governor could appoint an advisory committee with the advice and consent of the Senate. The committee would consist of law enforcement officials, forensic scientists, defense attorneys, and members of the judiciary. The advisory committee would advise the legislature on coordination between various agencies, availability of reliable DNA testing at governmental laboratories, protection of individual privacy rights, and checks on laboratory accuracy.

The state police would keep permanent records of the DNA profiles of convicted sexual offenders; other profiles would be kept only as long as needed for criminal investigation or prosecution.

The bill would not take effect unless its sponsor provided an enacted source of revenue to fully fund the program and the legislature appropriated sufficient money to fund the program it created, nor could the bill take effect unless both Senate Bills 470 and 471 were enacted.

Senate Bill 470 would amend the corrections code to make DNA testing a condition of parole or release for sexual offenders. The bill would not take effect unless its sponsor provided an enacted source of revenue to fully fund the program and the legislature appropriated sufficient money to fund it, nor could the bill take effect unless Senate Bill 469 was enacted.

MCL 791.233d

Senate Bill 471 would amend the Michigan Penal Code to require a DNA profile to be developed on each person convicted of a sexual offense. The offender would have to provide blood and saliva samples.

MCL 750.520m

***HOUSE COMMITTEE ACTION:***

The House Appropriations Committee adopted substitutes to Senate Bills 469 and 470 that differed from the Senate versions in not requiring the system to be computerized and operational by October 1, 1991, and in conditioning the bills on adequate funding.

***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, rules promulgation would cost the state \$25,000 for one year; staff, equipment, and laboratory supplies would cost about \$1.5

**OVER**

million in the first year and about \$850,000 annually thereafter; and the Department of Corrections would incur sample collection and transportation costs in an unknown amount. Local law enforcement agencies would incur the costs of collecting samples from the nearly 2,000 offenders convicted of criminal sexual conduct each year; those costs would depend on the fees charged by the local physicians, hospitals, or laboratories that collected the samples. (6-22-90)

## **ARGUMENTS:**

### **For:**

The bills would provide the statutory authorization necessary to obtain DNA samples from convicted sex offenders and develop a data base of DNA profiles for use in criminal investigations. Sex offenders, who often commit multiple offenses, and whose crimes by their nature mean that bodily fluids often are left as evidence, constitute an especially appropriate group for DNA profiling and recordkeeping. By coordinating efforts with the FBI, the bills would aid in the development of standardized procedures for testing and data retrieval that could lead to a nationwide criminal data base of DNA profiles. A number of other states have legislatively recognized the use of DNA profiling in criminal cases, and DNA matching has been used to obtain several convictions in Michigan, some of which are making their way through the appeals process. With DNA profiling coming into increased use, the legislature should act promptly to create a DNA data base on sexual offenders and ensure that the data base is developed with recognized and standardized methodology. However, new programs should not be developed without regard to their cost; thus, enactment of the bills prudently would be made contingent on the provision of adequate funding.

### **Against:**

The bills are open to criticism on a number of points, including:

- making the provision of DNA samples a condition of parole or release from prison. For one thing, making testing a condition of parole or release raises issues of self-incrimination. In addition, if a person has served his or her full sentence, the state may not hold him or her any longer; Senate Bill 470 oversteps itself in attempting to make testing a condition of release. The bills fail to recognize the realities of the criminal justice system, and would exacerbate prison overcrowding.
- the lack of independent oversight and evaluation. While each person's genetic make-up is unique, forensic DNA testing uses DNA fragments obtained from samples collected under less-than-ideal conditions, such as being scraped off a car seat. Questions linger over the accuracy of the testing; critics say that forensic methods have not yet been independently validated. The development of the data base also raises issues regarding its use; there should be stronger safeguards to ensure that it is used only for relevant criminal investigations and not, for example, genetic screening of employment applicants. In the face of such issues, the legislation should at least mandate the creation of an independent oversight body, rather than simply allow the appointment of an advisory committee.
- funding issues. While it may be a good idea to be sure the program has adequate funding, language requiring a sponsor to provide an enacted source of revenue is unusual. It may be better for funding sources to be

identified through the appropriations process or through more specific language in the bills themselves.

- the limitation to sexual offenders. While sexual assaults are serious crimes that merit attention, the DNA methodology can be equally useful for other assaultive crimes, and could be instrumental in bringing murderers to justice. If DNA profiling is as useful as its proponents assert, there seems little reason to limit the legislation to sexual offenders.

## **POSITIONS:**

The Department of State Police supports the bills. (6-28-90)

The Department of Corrections has no position on Senate Bills 469 and 471, but has concerns about Senate Bill 470. (6-28-90)

The State Appellate Defender's Office opposes the provision in Senate Bill 469 that would make the creation of an advisory committee optional; the office would support a provision that would make creation of the committee mandatory, but otherwise takes no position on the creation of the DNA data base. (6-28-90)

SENATE ANALYSIS SECTION

SENATE BILL 470

ANALYSIS First

SEE SB 469

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 470

Analysis First (6-29-90)

See SB469

SENATE ANALYSIS SECTION

SENATE BILL 471

ANALYSIS First

SEE SB 469

HOUSE LEGISLATIVE ANALYSIS SECTION

Senate Bill 471

Analysis First (6-29-90)

See SB 469