

# HOUSE BILL No. 4092

(As amended February 19, 2008)

January 23, 2007, Introduced by Reps. Vagnozzi, Byrnes, Gonzales, Lemmons, Corriveau, LeBlanc, Brown, Gillard, Condino, Dean and Cushingberry and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 520m (MCL 750.520m), as amended by 2003 PA 100.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 520m. (1) A person shall provide samples for chemical  
2 testing for DNA identification profiling or a determination of the  
3 sample's genetic markers and shall provide samples for chemical  
4 testing [~~for a determination of his or her secretor status~~] if any of  
5 the following apply:

6           (A) THE INDIVIDUAL IS ARRESTED FOR A VIOLENT FELONY AS THAT  
7 TERM IS DEFINED IN SECTION 36 OF THE CORRECTIONS CODE OF 1953, 1953  
8 PA 232, MCL 791.236.

9           (B) ~~(a)~~The person is found responsible for a violation of

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1 section 83, 91, 316, 317, or 321, a violation or attempted  
2 violation of section 349, 520b, 520c, 520d, 520e, or 520g, or a  
3 violation of section 167(1)(c) or (f) or 335a, or a local ordinance  
4 substantially corresponding to section 167(1)(c) or (f) or 335a.

5 (C) ~~(b)~~—The person is convicted of a felony or attempted  
6 felony, or any of the following misdemeanors, or local ordinances  
7 that are substantially corresponding to the following misdemeanors:

8 (i) A violation of section 145a, enticing a child for immoral  
9 purposes.

10 (ii) A violation of section 167(1)(c), (f), or (i), disorderly  
11 person by window peeping, engaging in indecent or obscene conduct  
12 in public, or loitering in a house of ill fame or prostitution.

13 (iii) A violation of section 335a, indecent exposure.

14 (iv) A violation of section 451, first and second prostitution  
15 violations.

16 (v) A violation of section 454, leasing a house for purposes  
17 of prostitution.

18 (vi) A violation of section 462, female under the age of 17 in  
19 a house of prostitution.

20 (2) Notwithstanding subsection (1), if at the time the person  
21 is [ARRESTED FOR,] convicted of[, ] or found responsible for the violation  
22 the  
23 investigating law enforcement agency or the department of state  
24 police already has a sample from the person that meets the  
25 requirements of the DNA identification profiling system act, 1990  
26 PA 250, MCL 28.171 to 28.176, the person is not required to provide  
27 another sample or pay the fee required under subsection (6).

(3) The county sheriff or the investigating law enforcement

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1 agency shall collect and transmit the samples in the manner  
2 required under the DNA identification profiling system act, 1990 PA  
3 250, MCL 28.171 to 28.176. **[HOWEVER, A SAMPLE TAKEN UNDER SUBSECTION  
(1) (A) MAY BE TRANSMITTED TO THE DEPARTMENT OF STATE POLICE UPON  
COLLECTION.]**

4 (4) An investigating law enforcement agency, prosecuting  
5 agency, or court that has in its possession a DNA identification  
6 profile obtained from a sample of a person ~~pursuant to~~ **UNDER**  
7 subsection (1) shall forward the DNA identification profile to the  
8 department of state police at or before the time of the person's  
9 sentencing or disposition upon that conviction or finding of  
10 responsibility unless the department of state police already has a  
11 DNA identification profile of the person.

12 (5) The DNA profiles of DNA samples received under this  
13 section shall only be disclosed as follows:

14 (a) To a criminal justice agency for law enforcement  
15 identification purposes.

16 (b) In a judicial proceeding as authorized or required by a  
17 court.

18 (c) To a defendant in a criminal case if the DNA profile is  
19 used in conjunction with a charge against the defendant.

20 (d) For an academic, research, statistical analysis, or  
21 protocol developmental purpose only if personal identifications are  
22 removed.

23 (6) Until October 1, 2003, the court shall order each person  
24 found responsible for or convicted of 1 or more crimes listed in  
25 subsection (1) to pay an assessment of \$60.00. The assessment  
26 required under this subsection is in addition to any fine, costs,  
27 or other assessments imposed by the court.

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

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

8 (9) The court that imposes the assessment prescribed under  
9 subsection (6) may retain 10% of all assessments or portions of  
10 assessments collected for costs incurred under this section and  
11 shall transmit that money to its funding unit. On the last day of  
12 each month, the clerk of the court shall transmit the assessments  
13 or portions of assessments collected under this section as follows:

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

18 (b) Until October 1, 2003, 65% to the department of treasury  
19 for the department of state police forensic science division to  
20 defray the costs associated with the requirements of DNA profiling  
21 and DNA retention prescribed under the DNA identification profiling  
22 system act, 1990 PA 250, MCL 28.171 to 28.176.

23 (c) Beginning October 1, 2003, 65% to the state treasurer for  
24 deposit in the justice system fund created in section 181 of the  
25 revised judicature act of 1961, 1961 PA 236, MCL 600.181.

26 (10) Beginning December 31, 2002, the director of the  
27 department of state police shall report by December 31 of each year

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1 concerning the rate of DNA sample collection, DNA identification  
2 profiling, retention and compilation of DNA identification  
3 profiles, and the collection of assessments required under  
4 subsection (6) to all of the following:

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

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

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

10 (11) As used in this section:

11 (a) "DNA identification profile" and "DNA identification  
12 profiling" mean those terms as defined in section 2 of the DNA  
13 identification profiling system act, 1990 PA 250, MCL 28.172.

14 (b) "Investigating law enforcement agency" means the law  
15 enforcement agency responsible for the investigation of the offense  
16 for which the person is convicted. Investigating law enforcement  
17 agency includes the county sheriff but does not include a probation  
18 officer employed by the department of corrections.

19 (c) "Felony" means a violation of a penal law of this state  
20 for which the offender may be punished by imprisonment for more  
21 than 1 year or an offense expressly designated by law to be a  
22 felony.

23 (d) "Sample" means a portion of a person's blood, saliva, or  
24 tissue collected from the person.

[Enacting section 1. This amendatory act takes effect <<July 1,  
2009.>>]