

SENATE BILL No. 1395

September 28, 2000, Introduced by Senators SCHUETTE, SIKKEMA, HAMMERSTROM, GOUGEON and HOFFMAN and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled "The code of criminal procedure," by amending sections 2 and 3 of chapter X (MCL 770.2 and 770.3), as amended by 1998 PA 407, and by adding section 16 to chapter X.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 2. (1) ~~In~~ EXCEPT AS PROVIDED IN SECTION 16, IN a case appealable as of right to the court of appeals, a motion for a new trial shall be made within 60 days after entry of the judgment or within any further time allowed by the trial court during the 60-day period.

(2) In a misdemeanor or ordinance violation case appealable as of right from a municipal court in a city that adopts a resolution of approval under section 23a of the Michigan UNIFORM

1 municipal court act, 1956 PA 5, MCL ~~730.523~~ 730.523A, or from a
2 court of record to the circuit court or to the recorder's court
3 of the city of Detroit, a motion for a new trial shall be made
4 within 20 days after entry of the judgment.

5 (3) In a misdemeanor or ordinance violation case appealable
6 de novo to the circuit court, a motion for a new trial shall be
7 made within 20 days after entry of the judgment.

8 (4) If the applicable period of time prescribed in subsec-
9 tion (1) or (2) has expired, a court of record may grant a motion
10 for a new trial for good cause shown. If the applicable time
11 period prescribed in subsection (3) has expired and the defendant
12 has not appealed, a municipal court may grant a motion for new
13 trial for good cause shown.

14 Sec. 3. (1) Subject to the limitations imposed by section
15 12 of this chapter AND EXCEPT AS PROVIDED IN SECTION 16, an
16 aggrieved party shall have a right of appeal from a final judg-
17 ment or trial order as follows:

18 (a) Except as otherwise provided in subdivision (e), in a
19 felony or misdemeanor case tried in the circuit court or
20 recorder's court of the city of Detroit, there shall be a right
21 of appeal to the court of appeals.

22 (b) Except as otherwise provided in subdivision (e), in a
23 misdemeanor or ordinance violation case tried in a municipal
24 court in a city that adopts a resolution of approval under sec-
25 tion 23a of the Michigan UNIFORM municipal court act, 1956 PA 5,
26 MCL ~~730.523~~ 730.523A, or tried in the district court in
27 districts other than the thirty-sixth district, there shall be a

1 right of appeal to the circuit court in the county in which the
2 misdemeanor or ordinance violation was committed.

3 (c) Except as otherwise provided in subdivision (e), in a
4 misdemeanor or ordinance violation case tried in the district
5 court in the thirty-sixth district, or in a felony case over
6 which the district court in the thirty-sixth district has juris-
7 diction before trial, there shall be a right of appeal to the
8 recorder's court of the city of Detroit.

9 (d) In a misdemeanor or ordinance violation case tried in a
10 municipal court in a city that does not adopt a resolution of
11 approval under section 23a of the Michigan UNIFORM municipal
12 court act, 1956 PA 5, MCL ~~730.523~~ 730.523A, there shall be a
13 right of appeal as provided in chapter XIV.

14 (e) All appeals from final orders and judgments based upon
15 pleas of guilty or nolo contendere shall be by application for
16 leave to appeal.

17 (2) An appeal from an interlocutory judgment or order in a
18 felony, misdemeanor, or ordinance violation may be taken, in the
19 manner provided by court rules, by application for leave to
20 appeal to the same court of which a final judgment in that case
21 would be appealable as a matter of right under subsection (1).

22 (3) After expiration of the period prescribed for timely
23 appeal, the appellate court may grant leave to appeal from any
24 order or judgment from which timely appeal would have been avail-
25 able as of right, or by leave, upon conditions prescribed by
26 court rules.

1 (4) Further appellate review of matters appealed to the
2 circuit court under subsection (1)(b), (1)(d), or (2) may be had
3 only upon application for leave to appeal granted by the court of
4 appeals.

5 (5) Further appellate review of matters appealed to the
6 recorder's court under subsection (1)(c) may be had only upon
7 application for leave to appeal granted by the court of appeals.

8 (6) Further review of any matter appealed to the court of
9 appeals under this section may be had only upon application for
10 leave to appeal granted by the supreme court.

11 (7) An appeal as of right and an appeal by application for
12 leave to appeal provided for in this section shall be taken pur-
13 suant to and within the time prescribed by court rules.

14 SEC. 16. (1) NOTWITHSTANDING THE LIMITATIONS OF SECTION 2
15 OF THIS CHAPTER, A DEFENDANT CONVICTED OF A FELONY AT TRIAL
16 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
17 SECTION WHO IS SERVING A PRISON SENTENCE FOR THE FELONY CONVIC-
18 TION MAY PETITION THE CIRCUIT COURT TO ORDER DNA TESTING OF GENE-
19 TIC MATERIAL IDENTIFIED DURING THE INVESTIGATION LEADING TO HIS
20 OR HER CONVICTION, AND FOR A NEW TRIAL BASED ON THE RESULTS OF
21 THAT TESTING. THE PETITION SHALL BE FILED NOT LATER THAN 180
22 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
23 THIS SECTION.

24 (2) A PETITION UNDER THIS SECTION SHALL BE FILED IN THE CIR-
25 CUIT COURT IN WHICH THE DEFENDANT WAS SENTENCED AND SHALL BE
26 ASSIGNED TO THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR. THE

1 PETITION SHALL BE SERVED ON THE PROSECUTING ATTORNEY OF THE
2 COUNTY WHERE THE DEFENDANT WAS CONVICTED.

3 (3) THE COURT MAY ORDER DNA TESTING IF THE DEFENDANT ESTAB-
4 LISHES ALL OF THE FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

5 (A) A SAMPLE OF GENETIC MATERIAL DESCRIBED IN SUBSECTION (1)
6 IS AVAILABLE FOR DNA TESTING.

7 (B) THE GENETIC MATERIAL DESCRIBED IN SUBSECTION (1) WAS NOT
8 PREVIOUSLY SUBJECTED TO DNA TESTING.

9 (C) THE IDENTITY OF THE DEFENDANT AS THE PERPETRATOR OF THE
10 CRIME WAS AT ISSUE DURING HIS OR HER TRIAL.

11 (D) ONLY THE PERPETRATOR OF THE CRIME OR CRIMES FOR WHICH
12 THE DEFENDANT WAS CONVICTED COULD BE THE SOURCE OF THE GENETIC
13 MATERIAL FOR WHICH DNA TESTING IS BEING SOUGHT.

14 (E) THE GENETIC MATERIAL FOR WHICH DNA TESTING IS BEING
15 SOUGHT WAS COLLECTED, HANDLED, AND PRESERVED BY PROCEDURES SUCH
16 THAT THE GENETIC MATERIAL IS NOT CONTAMINATED OR IS NOT SO
17 DEGRADED THAT THE DNA PROFILE OF THE CURRENT SAMPLE OF THE GENE-
18 TIC MATERIAL CANNOT BE DETERMINED TO BE IDENTICAL TO THE DNA PRO-
19 FILE OF THE SAMPLE INITIALLY COLLECTED DURING THE INVESTIGATION
20 DESCRIBED IN SUBSECTION (1).

21 (4) THE COURT SHALL STATE ITS FINDINGS OF FACT ON THE RECORD
22 OR SHALL MAKE WRITTEN FINDINGS OF FACT SUPPORTING ITS DECISION TO
23 GRANT OR DENY A PETITION BROUGHT UNDER THIS SECTION.

24 (5) IF THE COURT GRANTS A PETITION FOR DNA TESTING UNDER
25 THIS SECTION, THE GENETIC MATERIAL AND A GENETIC SAMPLE OBTAINED
26 FROM THE DEFENDANT SHALL BE SUBJECTED TO DNA TESTING BY A
27 LABORATORY APPROVED BY THE COURT. THE RESULTS OF THE DNA TESTING

1 SHALL BE PROVIDED TO THE COURT AND TO THE DEFENDANT AND THE
2 PROSECUTING ATTORNEY. UPON MOTION BY EITHER PARTY, THE COURT MAY
3 ORDER THAT THE TESTING PROTOCOLS, LABORATORY PROCEDURES, LABORA-
4 TORY NOTES, AND OTHER RELEVANT RECORDS COMPILED BY THE TESTING
5 LABORATORY BE PROVIDED TO THE COURT AND TO ALL PARTIES.

6 (6) IF THE RESULTS OF THE DNA TESTING ARE INCONCLUSIVE OR
7 SHOW THAT THE DEFENDANT IS THE SOURCE OF THE GENETIC MATERIAL,
8 THE COURT SHALL DENY THE MOTION FOR NEW TRIAL. IF THE DNA TEST
9 RESULTS SHOW THAT THE DEFENDANT IS THE SOURCE OF THE GENETIC
10 MATERIAL, THE DEFENDANT'S DNA PROFILE SHALL BE PROVIDED TO THE
11 MICHIGAN STATE POLICE FOR INCLUSION UNDER THE DNA IDENTIFICATION
12 PROFILING SYSTEM ACT.

13 (7) IF THE RESULTS OF THE DNA TESTING SHOW THAT THE
14 DEFENDANT IS NOT THE SOURCE OF THE GENETIC MATERIAL, THE COURT
15 SHALL HOLD A HEARING TO DETERMINE BY CLEAR AND CONVINCING EVI-
16 DENCE IF THAT LONE FACT, BALANCED AGAINST THE OTHER EVIDENCE IN
17 THE CASE, IS SUFFICIENT TO JUSTIFY THE GRANT OF A NEW TRIAL.
18 UPON MOTION OF THE PROSECUTOR, THE COURT SHALL ORDER RETESTING OF
19 THE GENETIC MATERIAL AND SHALL STAY THE DEFENDANT'S MOTION FOR
20 NEW TRIAL PENDING THE RESULTS OF THE DNA RETESTING. THE COURT
21 SHALL STATE ITS FINDINGS OF FACT ON THE RECORD OR MAKE WRITTEN
22 FINDINGS OF FACT SUPPORTING ITS DECISION TO GRANT OR DENY THE
23 DEFENDANT A NEW TRIAL UNDER THIS SECTION.

24 (8) NOTWITHSTANDING THE PROVISIONS OF SECTION 3 OF THIS
25 CHAPTER, AN AGGRIEVED PARTY MAY APPEAL THE COURT'S DECISION TO
26 GRANT OR DENY THE PETITION FOR DNA TESTING AND FOR NEW TRIAL BY
27 APPLICATION FOR LEAVE GRANTED BY THE COURT OF APPEALS.

1 (9) IF THE NAME OF THE VICTIM OF THE FELONY CONVICTION
2 DESCRIBED IN SUBSECTION (1) IS KNOWN, THE PROSECUTING ATTORNEY
3 SHALL GIVE WRITTEN NOTICE OF A PETITION UNDER THIS SECTION TO THE
4 VICTIM AND SHALL FORWARD A COPY OF THAT PETITION TO THE VICTIM.
5 THE NOTICE SHALL BE BY FIRST-CLASS MAIL TO THE VICTIM'S LAST
6 KNOWN ADDRESS. UPON THE VICTIM'S REQUEST, THE PROSECUTING ATTOR-
7 NEY SHALL GIVE THE VICTIM NOTICE OF THE TIME AND PLACE OF ANY
8 HEARING ON THE PETITION AND SHALL INFORM THE VICTIM OF THE
9 COURT'S GRANT OR DENIAL OF A NEW TRIAL TO THE DEFENDANT.
10 Enacting section 1. This amendatory act takes effect
11 January 1, 2001.