



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1549 (as enacted)
Sponsor: Senator Alan L. Cropsey
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 535 of 2008

Date Completed: 7-24-09

CONTENT

The bill amended the DNA Identification Profiling System Act to do all the following:

- **Prohibit a person from taking certain actions regarding the use of information, samples, or records in the DNA identification profile record.**
- **Require the State Police Forensic Laboratory to dispose of a DNA sample or identification profile under specific circumstances.**
- **Provide that an identification, arrest, or conviction is not invalidated if particular errors occur in good faith.**

The bill took effect on January 13, 2009.

Unlawful Use of DNA Information

The bill prohibits a person from doing any of the following:

- Disseminating, receiving, or otherwise using or attempting to use information in the DNA identification profile record, knowing that it is for a purpose not authorized by law.
- Willfully removing, destroying, tampering with, or attempting to tamper with a DNA sample, record, or other DNA information obtained or retained under the Act without lawful authority.

A violation is a misdemeanor punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both.

Disposal of Sample

The Act requires the Michigan Department of State Police (MSP) to retain permanently a DNA identification profile obtained from a sample (a portion of blood, saliva, or tissue) of an individual who is convicted of a felony, convicted of a misdemeanor specified in the Act, or found responsible for violating a section of the Michigan Penal Code listed in the Act. The Department may retain any other DNA identification profile it obtained only as long as the sample is needed for a criminal investigation or prosecution.

The bill requires the State Police Forensic Laboratory to dispose of a DNA sample or a DNA identification profile, or both, if either of the following circumstances occurs:

- The MSP receives a written request for disposal from the investigating police agency or prosecutor indicating that the sample or profile is no longer necessary for a criminal investigation or criminal prosecution.
- The MSP receives a written request for disposal and a certified copy of a final court order establishing that the charge for which the sample is obtained has been dismissed or has resulted in an acquittal or that no charge was filed within the applicable limitations period.

This disposal requirement does not apply if the MSP determines that the individual from whom the sample was taken has otherwise become obligated to submit a sample, or if a

provision allowing the MSP to retain evidence (described below) applies.

As previously required, the State Police Forensic Laboratory must dispose of a sample in compliance with Section 13811 of the Public Health Code (concerning the disposal of medical waste), and must dispose of a sample and the DNA identification profile in the presence of a witness. Previously, these requirements applied if the lab determined that a sample had been submitted by an individual who had been eliminated as a criminal suspect; the bill deleted that language.

Retention of Evidence

The bill specifies that, notwithstanding any other provision of the Act, the MSP is not required to dispose of physical evidence or data obtained from a sample if evidence relating to an individual other than the one from whom the sample was taken would be destroyed and the evidence or data relating to the other individual would otherwise be retained under the Act.

Good Faith Error

Under the bill, an identification, warrant, detention, arrest, conviction, or probable cause to arrest based upon a DNA match or DNA information is not invalidated if it is later determined that one or more of the following errors occurred in good faith:

- A DNA sample was erroneously obtained.
- A DNA identification profile was erroneously retained.
- A DNA sample was not disposed of or there was a delay in disposing of the sample.
- A DNA identification profile was not disposed of or there was a delay in disposing of the profile.

DNA Identification Profile

The Act defines "DNA identification profile" as the results of the DNA identification profiling of a sample. The bill added, "including a paper, electronic, or digital record".

MCL 28.172 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on local government. There are no data to indicate how many offenders will be convicted of the new offense. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Bruce Baker
Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.