SENATE BILL NO. 1035

June 11, 2026, Introduced by Senators IRWIN, CHANG, CAVANAGH, GEISS and SHINK and referred to Committee on Civil Rights, Judiciary, and Public Safety.

A bill to amend 1927 PA 175, entitled

"The code of criminal procedure,"

by amending section 16 of chapter X (MCL 770.16), as amended by 2015 PA 229.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER X

Sec. 16. (1) Notwithstanding the limitations of section 2 of this chapter **and subject to subsection (13)**, a defendant convicted of a felony ~~at trial before January 8, 2001 who is serving a prison sentence for the felony conviction~~ may petition the circuit court to order DNA testing of biological material identified during the

investigation leading to ~~his or her~~ **the defendant's** conviction, and for a new trial based on the results of that testing.

~~Notwithstanding the limitations of section 2 of this chapter, a defendant convicted of a felony at trial on or after January 8, 2001 who establishes that all of the following apply may petition the circuit court to order DNA testing of biological material identified during the investigation leading to his or her conviction, and for a new trial based on the results of that testing:~~**A petition filed under this subsection must establish that either of the following circumstances apply to the biological material:**

~~(a) That DNA testing was done in the case or under this act.~~

~~(b) That the results of the testing were inconclusive.~~

~~(c) That testing with current DNA technology is likely to result in conclusive results.~~

(a) It was not subjected to DNA testing.

(b) It was subjected to DNA testing and 1 or both of the following circumstances apply:

(*i*) The defendant is requesting DNA testing using a method or technology that provides a reasonable likelihood of results that are more accurate and probative than the results of the previous test.

(*ii*) The court determines that granting the petition is in the interest of justice.

(2) A petition under this section ~~shall~~ **must** be filed in the circuit court for the county in which the defendant was sentenced and ~~shall~~ **must** be assigned to the sentencing judge or ~~his or her~~ **the judge's** successor. The petition ~~shall~~ **must** be served on the prosecuting attorney of the county in which the defendant was

sentenced.

(3) A petition under this section ~~shall~~ **must** allege that biological material was collected and identified during the investigation of the defendant's case. If the defendant, after diligent investigation, is unable to discover the location of the identified biological material or to determine whether the biological material is no longer available, the defendant may petition the court for a hearing to determine whether the identified biological material is available. If the court determines that identified biological material was collected during the investigation, the court shall order appropriate police agencies, hospitals, or the medical examiner to search for the material and to report the results of the search to the court.

(4) The court shall order DNA testing if the defendant ~~does all~~ **presents prima facie evidence of both** of the following:

~~(a) Presents prima facie proof that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction.~~

~~(b) Establishes all of the following by clear and convincing evidence:~~

~~(*i*) A sample of identified biological material described in subsection (1) is available for DNA testing.~~

~~(*ii*) The identified biological material described in subsection (1) was not previously subjected to DNA testing or, if previously tested, will be subject to DNA testing technology that was not available when the defendant was convicted.~~

~~(*iii*) The identity of the defendant as the perpetrator of the crime was at issue during his or her trial.~~

(a) The biological material sought to be tested is material to the issue of the convicted defendant's identity as the perpetrator of, or accomplice to, the crime that resulted in the conviction.

(b) A sample of identified biological material is available for DNA testing.

(5) The court shall state its findings of fact on the record or shall make written findings of fact supporting its decision to grant or deny a petition brought under this section.

(6) If the court grants a petition for DNA testing under this section, the identified biological material and a biological sample obtained from the defendant ~~shall~~ **must** be subjected to DNA testing by a laboratory approved by the court. If the court determines that the applicant is indigent, the cost of DNA testing ordered under this section ~~shall~~ **must** be borne by the state. The results of the DNA testing ~~shall~~ **must** be provided to the court and to the defendant and the prosecuting attorney. ~~Upon~~ **On** motion by either party, the court may order that copies of the testing protocols, laboratory procedures, laboratory notes, and other relevant records compiled by the testing laboratory be provided to the court and to all parties.

(7) If the results of the DNA testing are inconclusive or show that the defendant is the source of the identified biological material, both of the following apply:

(a) The court shall deny the motion for new trial.

(b) The defendant's DNA profile ~~shall~~ **must** be provided to the department of state police for inclusion under the DNA identification profiling system act, 1990 PA 250, MCL 28.171 to 28.176.

(8) If the results of the DNA testing ~~show that the defendant~~

~~is not the source of the identified biological material, the court shall appoint counsel pursuant to MCR 6.505(A) and hold a hearing to determine by clear and convincing evidence all of the following:~~**call into question the defendant's identity as the perpetrator, the court shall appoint counsel as provided in MCR 6.505(A) and hold a hearing to determine whether the results of the testing, along with any other new evidence, make a different result probable on retrial.**

~~(a) That only the perpetrator of the crime or crimes for which the defendant was convicted could be the source of the identified biological material.~~

~~(b) That the identified biological material was collected, handled, and preserved by procedures that allow the court to find that the identified biological material is not contaminated or is not so degraded that the DNA profile of the tested sample of the identified biological material cannot be determined to be identical to the DNA profile of the sample initially collected during the investigation described in subsection (1).~~

~~(c) That the defendant's purported exclusion as the source of the identified biological material, balanced against the other evidence in the case, is sufficient to justify the grant of a new trial.~~

(9) ~~Upon~~ **On** motion of the prosecutor, the court shall order retesting of the identified biological material and shall stay the defendant's motion for new trial pending the results of the DNA retesting.

(10) The court shall state its findings of fact on the record or make written findings of fact supporting its decision to grant or deny the defendant a new trial under this section.

Notwithstanding section 3 of this chapter, an aggrieved party may appeal the court's decision to grant or deny the petition for DNA testing and for new trial by application for leave granted by the court of appeals.

(11) If the name of the victim of the felony conviction described in subsection (1) is known, the prosecuting attorney shall give written notice of a petition under this section to the victim. The notice ~~shall~~ **must** be by first-class mail to the victim's last known address. ~~Upon~~ **On** the victim's request, the prosecuting attorney shall give the victim notice of the time and place of any hearing on the petition and shall inform the victim of the court's grant or denial of a new trial to the defendant.

(12) The investigating law enforcement agency shall preserve any biological material identified during the investigation of a crime or crimes for which any person may file a petition for DNA testing under this section. The identified biological material ~~shall~~ **must** be preserved for the period of time that ~~any person~~ **a defendant** is incarcerated ~~in connection with that case.~~**or is litigating a claim under this section.**

(13) A petition under this section must be filed with respect to a particular case while the defendant is housed within a correctional facility maintained and operated by the department of corrections. Once a defendant is released, an ongoing petition must be allowed to continue.

(14) As used in this section, "biological material" includes any evidence for which there is a reasonable probability of containing quantities of DNA from any human body product.