

EQUAL ACCESS INITIATIVE
Respectfully submits the following position on:

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SB 1083

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The Equal Access Initiative is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Equal Access Initiative only and is not an official position of the State Bar of Michigan, nor does it necessarily reflect the views of all members of the State Bar of Michigan.

The State Bar position on this matter is to oppose the bill.

The total membership of the Equal Access Initiative is 20.

The position was adopted after discussion and vote at a scheduled meeting and a further e-vote. The number of members in the decision-making body is 20. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of committee:

Equal Access Initiative

Contact person:

Kimberly Buddin
Hon. William J. Caprathe

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Bill Number:

[SB 1083](#) Law enforcement; records; procedure for destruction or expunction of a DNA sample or DNA identification profile; modify under certain circumstances. Amends sec. 6 of 1990 PA 250 (MCL 28.176).

Date position was adopted:

November 3, 2016

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting, and an e-vote.

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

12 Voted for position
0 Voted against position
0 Abstained from vote
8 Did not vote (absent)

Position:

Oppose as written

Explanation of the position, including any recommended amendments:

SB 1083 problematically amends the procedure for destruction or expunction of an individual's DNA collected during the investigation of a crime. The background surrounding the push for SB 1083, comes initially out of concerns from the prosecutor's office. Specifically, because prosecutors do not have a role in the collection, storing, or sharing of DNA, it does not make sense to subsequently place a requirement or responsibility on them to destroy the DNA sample or profile. Additionally, Senator Zorn's office

sought to explicitly outline the procedure by which an individual may request his or her DNA be destroyed and their profile expunged.

Although these are valid concerns, the current draft of the bill does not adequately address these matters. Instead of permitting an individual to request the destruction, it **REQUIRES** them to do so. This is unduly burdensome and costly for the individual, which is especially problematic for low-income people. Naturally, this will have a disproportionate impact on underrepresented populations, who are arrested, charged, and convicted more often than persons from other groups.

Moreover, this section of the DNA Identification Act was recently amended in 2014, specifically to put the onus of DNA destruction on law enforcement. Essentially, this amendment will undo the purpose of that portion of the 2014 amendment.

In its current form, EAI opposes the bill because it shifts the burden for DNA removal from the arresting law enforcement agency and prosecutor to the individual.

Accordingly, Sen. Zorn's office, ACLU of Michigan, and PAAM have been working on language for a substitute bill, which would address the prosecutors' and Sen. Zorn's concerns, while ensuring the responsibility for DNA destruction remains on law enforcement.

The substitute vastly overhauls this section of the DNA Identification Act. To address the concerns, the language has been amended to remove the burden provision of subsection (4) all together. In its place, the substitute proposes massive restructuring of the statute to now require law enforcement departments destroy DNA samples and profiles under a variety of circumstances *including* (but not requiring) where an individual submits a request. This amendment is significant because the current law simply requires that an individual be given notice of such requirements, but lacks actual provisions requiring action by law enforcement to this effect.

Finally, the proposed substitute's outlined procedures would encompass misdemeanors not just felonies.

The substitute is currently undergoing final revisions and approval.

If sufficient changes are not adopted through a substitute, EAI opposes the bill. However, if these revisions are adopted, EAI's concerns will be addressed and we would consider being in support of the bill.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2016-SB-1083>

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys**
- ✓ **The improvement of the functioning of the courts**
- ✓ **The availability of legal services to society**
- The regulation of attorney trust accounts**
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Keller-permissible explanation:

The bill is Keller permissible for two reasons:

- Affecting the functioning of the courts. If an individual's DNA is taken and entered into a database, and that person is later acquitted or the case is dismissed, the individual has to petition to court to have the DNA destroyed.
- Availability of legal services to society. If an individual's DNA is taken, he or she needs to know his or her rights in this area in order to petition the court.