

CRIMINAL ISSUES INITIATIVE

Respectfully submits the following position on:

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SB 0105 – SB 0107

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The Criminal Issues Initiatives is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Criminal Issues Initiatives 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 oppose.

The total membership of the Criminal Issues Initiatives 15.

The position was adopted after discussion at a scheduled meeting and an e-vote. The number of members in the decision-making body is 15. The number who voted in favor to this position was 9. The number who voted opposed to this position was 0. The number who abstained was 1.

Report on Public Policy Position

Name of Committee:

Criminal Issues Initiative

Contact persons:

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Bill Number:

[SB 0105](#) (Schuitmaker) Criminal procedure; DNA; collection of DNA samples at time of arrest for committing or attempting to commit a felony offense; provide for in DNA identification profiling system. Amends title & sec. 2, 3, 3a & 6 of [1990 PA 250](#) (MCL [28.172](#) et seq.).

[SB 0106](#) (Schuitmaker) Criminal procedure; DNA; collection of DNA samples at time of arrest for committing or attempting to commit a felony offense; provide for in probate code of 1939. Amends sec. 18k, ch. XIA of [1939 PA 288](#) (MCL 712A.18k).

[SB 0107](#) (Jones) Criminal procedure; DNA; collection of DNA samples at time of arrest for committing a felony or attempting to commit a felony offense; provide for in Michigan penal code. Amends sec. 520m of [1931 PA 328](#) (MCL [750.520m](#)).

Date position was adopted:

March 27, 2013

Process used to take the ideological position:

Position adopted after discussion at a scheduled meeting and electronic vote

Number of members in the decision-making body:

15

Number who voted in favor and opposed to the position:

9 Voted for position

0 Voted against position

1 Abstained from vote

5 Did not vote

Position:

Oppose the bills for the reasons set forth in the draft policy position.

Explanation of the position, including any recommended amendments:

Currently pending in the US Supreme Court is *Maryland v. King*. It involves the constitutional validity of the law enforcement practice of collecting DNA samples from individuals who are arrested for, but not yet convicted of, violent crimes and some other felonies. The committee is concerned that keeping the DNA of a law-abiding citizen, i.e. someone who may have been arrested but is presumed innocent, in a federal databank is a violation of that citizen’s privacy rights. These bills should not be passed until it is determined by the Supreme Court whether such laws would be constitutional.

In addition, Michigan should have a fair and balanced approach to the use of DNA evidence, meaning that it should be available not only to convict the guilty but also to exonerate the innocent. Currently it is extremely difficult for individuals who have claims of innocence to access the DNA testing and evidence that could prove their innocence, and lead to the conviction of those who are actually guilty. The committee opposes any DNA legislation that seeks only to use DNA for convictions, without recognizing their critical importance for exonerations.

The committee is also concerned about public safety and the continued ability of our law enforcement agencies to do the good work. The maintenance of an innocent person’s DNA in a databank could potentially undermine criminal investigations by encouraging valuable time and resources to be spent typing DNA from people who have not and quite possibly will never commit a crime.

Further, the committee was concerned that individuals who are acquitted or have their cases dismissed, would be required to petition the court to have the DNA destroyed. This same problem affects the current law (2008 PA 535, MCL 28.172 and 28.176) with respect to innocent individuals. That law places the burden on the innocent individual, rather than the state, to expunge the DNA profile and destroy any biological samples upon proof of innocence or a reversal of charges. Any legislation should ensure that all individuals who are acquitted, whose cases are dismissed, or who are later found to be innocent automatically have their DNA destroyed without the need to petition.

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?2013-sB-0105>
- <http://legislature.mi.gov/doc.aspx?2013-sB-0106>
- <http://legislature.mi.gov/doc.aspx?2013-sB-0107>

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:

This bill affects 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.

This could impact the court's busyness. In addition, the lack of a fair and balanced approach to DNA impact access to the courts, since without access to DNA evidence, innocent individuals have great difficulty bringing their innocence claims to court.