



# MICHIGAN STATE POLICE LEGAL UPDATE

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This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to [MSPLegal@michigan.gov](mailto:MSPLegal@michigan.gov). Past editions can be found at [www.michigan.gov/msp-legal](http://www.michigan.gov/msp-legal).

## D.N.A. LAW

### **DNA Samples must be collected at arrest for certain violent felonies**

Effective: July 1, 2009

Public Act 380 of 2008 amended the Penal Code (MCL 750.520m) to require the collection of DNA samples from persons *arrested* for a violent felony listed in MCL 791.236. Previously, samples were only collected upon conviction for certain offenses.

The collection of a DNA sample is now required upon arrest for the following offenses:

- Felonious assault (MCL 750.82)
- Assault with intent to murder (MCL 750.83)
- Assault with intent to do great bodily harm less than murder (MCL 750.84)
- Assault with intent to maim (MCL 750.86)
- Assault with intent to commit a felony (MCL 750.87)
- Assault with intent to commit robbery (MCL 750.88 & 750.89)
- First and second degree murder (MCL 750.316 & 750.317)
- Manslaughter (MCL 750.321)
- Kidnapping (MCL 750.349)
- Prisoner taking hostage (MCL 750.349a)
- Leading, taking, carrying, or enticing a child under 14 (MCL 750.350)
- Mayhem (MCL 750.397)
- Criminal sexual conduct (MCL 750.520b – 750.520e)
- Assault with intent to commit CSC (MCL 750.520g)
- Robbery or carjacking (MCL 750.529, 750.529a, 750.530)

The MSP Forensic Science Division (FSD) mailed a brochure to each police department

describing the law and proper collection procedures.

Additional brochures, FAQ sheets, and sample collection training can be requested by contacting the FSD's CODIS Unit at [MSPCODIS@michigan.gov](mailto:MSPCODIS@michigan.gov) or 517-636-0465.

### **There is no Constitutional right to have post-conviction DNA testing of evidence held by the government**

In *District Attorney's Office v. Osborne*, the defendant was convicted in state court of several violent crimes. Several years after his conviction, he sought to have evidence re-tested using newly advanced DNA testing techniques.

The defendant filed a federal civil rights lawsuit seeking to gain access to evidence for testing, essentially claiming that *Brady v. Maryland* should be extended to evidence post-conviction (*Brady* is the case requiring the government to provide the defense with all evidence before trial). The United States Supreme Court held that a defendant does not have a Constitutional right to post-conviction access to evidence for testing, especially when state law contains a method by which a defendant can obtain such testing to exonerate himself or herself.

While this case does not have a direct impact on police officers in Michigan, it is important to note it does require that state post-conviction requirements be followed. Michigan's statute allowing for a post-conviction petition to obtain DNA testing (MCL 770.16) includes the requirement that evidence be stored even after conviction.

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