



MICHIGAN STATE POLICE LEGAL UPDATE

No. 80
JUNE 22, 2009

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to MSPLegal@michigan.gov. Past editions can be found at 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 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.

SUBSCRIPTIONS

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This update is provided for informational purposes only. Officers should contact their local prosecutor for an interpretation before applying the information contained in this update.