

**SB 1395, As Passed Senate, November 29, 2000**

**SUBSTITUTE FOR  
SENATE BILL NO. 1395**

A bill to amend 1927 PA 175, entitled  
"The code of criminal procedure,"  
by amending sections 2 and 3 of chapter X (MCL 770.2 and 770.3),  
as amended by 1998 PA 407, and by adding section 16 to chapter  
X.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1

CHAPTER X

2

Sec. 2. (1) ~~In~~ EXCEPT AS PROVIDED IN SECTION 16, IN a

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case appealable as of right to the court of appeals, a motion for  
4 a new trial shall be made within 60 days after entry of the judg-  
5 ment or within any further time allowed by the trial court during  
6 the 60-day period.

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(2) In a misdemeanor or ordinance violation case appealable

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as of right from a municipal court in a city that adopts a

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resolution of approval under section 23a of the Michigan UNIFORM

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1 municipal court act, 1956 PA 5, MCL ~~730.523~~ 730.523A, or from a  
2 court of record to the circuit court, ~~or to the recorder's court~~  
3 ~~of the city of Detroit,~~ a motion for a new trial shall be made  
4 within 20 days after entry of the judgment.

5 (3) In a misdemeanor or ordinance violation case appealable  
6 de novo to the circuit court, a motion for a new trial shall be  
7 made within 20 days after entry of the judgment.

8 (4) If the applicable period of time prescribed in subsec-  
9 tion (1) or (2) has expired, a court of record may grant a motion  
10 for a new trial for good cause shown. If the applicable time  
11 period prescribed in subsection (3) has expired and the defendant  
12 has not appealed, a municipal court may grant a motion for new  
13 trial for good cause shown.

14 Sec. 3. (1) Subject to the limitations imposed by section  
15 12 of this chapter AND EXCEPT AS PROVIDED IN SECTION 16, an  
16 aggrieved party shall have a right of appeal from a final judg-  
17 ment or trial order as follows:

18 (a) Except as otherwise provided in subdivision ~~(e)~~ (D),  
19 in a felony or misdemeanor case tried in the circuit court, ~~or~~  
20 ~~recorder's court of the city of Detroit,~~ there shall be a right  
21 of appeal to the court of appeals.

22 (b) Except as otherwise provided in subdivision ~~(e)~~ (D),  
23 in a misdemeanor or ordinance violation case tried in a municipal  
24 court in a city that adopts a resolution of approval under sec-  
25 tion 23a of the Michigan UNIFORM municipal court act, 1956 PA 5,  
26 MCL ~~730.523~~ 730.523A, or tried in the district court, ~~in~~  
27 ~~districts other than the thirty-sixth district,~~ there shall be a

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1 right of appeal to the circuit court in the county in which the  
2 misdemeanor or ordinance violation was committed.

3 ~~(c) Except as otherwise provided in subdivision (e), in a~~  
4 ~~misdemeanor or ordinance violation case tried in the district~~  
5 ~~court in the thirty-sixth district, or in a felony case over~~  
6 ~~which the district court in the thirty-sixth district has juris-~~  
7 ~~diction before trial, there shall be a right of appeal to the~~  
8 ~~recorder's court of the city of Detroit.~~

9 (C) ~~(d)~~ In a misdemeanor or ordinance violation case tried  
10 in a municipal court in a city that does not adopt a resolution  
11 of approval under section 23a of the Michigan UNIFORM municipal  
12 court act, 1956 PA 5, MCL ~~730.523~~ 730.523A, there shall be a  
13 right of appeal as provided in chapter XIV.

14 (D) ~~(e)~~ All appeals from final orders and judgments based  
15 upon pleas of guilty or nolo contendere shall be by application  
16 for leave to appeal.

17 (2) An appeal from an interlocutory judgment or order in a  
18 felony, misdemeanor, or ordinance violation may be taken, in the  
19 manner provided by court rules, by application for leave to  
20 appeal to the same court of which a final judgment in that case  
21 would be appealable as a matter of right under subsection (1).

22 (3) After expiration of the period prescribed for timely  
23 appeal, the appellate court may grant leave to appeal from any  
24 order or judgment from which timely appeal would have been avail-  
25 able as of right, or by leave, upon conditions prescribed by  
26 court rules.

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1 (4) Further appellate review of matters appealed to the  
2 circuit court under subsection (1)(b), (1)(d), or (2) may be had  
3 only upon application for leave to appeal granted by the court of  
4 appeals.

5 (5) Further appellate review of matters appealed to the  
6 recorder's court under subsection (1)(c) may be had only upon  
7 application for leave to appeal granted by the court of appeals.

8 (6) Further review of any matter appealed to the court of  
9 appeals under this section may be had only upon application for  
10 leave to appeal granted by the supreme court.

11 (7) An appeal as of right and an appeal by application for  
12 leave to appeal provided for in this section shall be taken pur-  
13 suant to and within the time prescribed by court rules.

14 SEC. 16. (1) NOTWITHSTANDING THE LIMITATIONS OF SECTION 2  
15 OF THIS CHAPTER, A DEFENDANT CONVICTED OF A FELONY AT TRIAL  
16 BEFORE THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS  
17 SECTION WHO IS SERVING A PRISON SENTENCE FOR THE FELONY CONVIC-  
18 TION MAY PETITION THE CIRCUIT COURT TO ORDER DNA TESTING OF BIO-  
19 LOGICAL MATERIAL IDENTIFIED DURING THE INVESTIGATION LEADING TO  
20 HIS OR HER CONVICTION, AND FOR A NEW TRIAL BASED ON THE RESULTS  
21 OF THAT TESTING. THE PETITION SHALL BE FILED NOT LATER THAN  
22 JANUARY 1, 2006.

23 (2) A PETITION UNDER THIS SECTION SHALL BE FILED IN THE CIR-  
24 CUIT COURT FOR THE COUNTY IN WHICH THE DEFENDANT WAS SENTENCED  
25 AND SHALL BE ASSIGNED TO THE SENTENCING JUDGE OR HIS OR HER  
26 SUCCESSOR. THE PETITION SHALL BE SERVED ON THE PROSECUTING  
27 ATTORNEY OF THE COUNTY IN WHICH THE DEFENDANT WAS SENTENCED.

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1 (3) THE COURT SHALL ORDER DNA TESTING IF THE DEFENDANT DOES  
2 ALL OF THE FOLLOWING:

3 (A) PRESENTS PRIMA FACIE PROOF THAT THE EVIDENCE SOUGHT TO  
4 BE TESTED IS MATERIAL TO THE ISSUE OF THE CONVICTED PERSON'S  
5 IDENTITY AS THE PERPETRATOR OF, OR ACCOMPLICE TO, THE CRIME THAT  
6 RESULTED IN THE CONVICTION.

7 (B) ESTABLISHES ALL OF THE FOLLOWING BY CLEAR AND CONVINCING  
8 EVIDENCE:

9 (i) A SAMPLE OF IDENTIFIED BIOLOGICAL MATERIAL DESCRIBED IN  
10 SUBSECTION (1) IS AVAILABLE FOR DNA TESTING.

11 (ii) THE IDENTIFIED BIOLOGICAL MATERIAL DESCRIBED IN SUBSEC-  
12 TION (1) WAS NOT PREVIOUSLY SUBJECTED TO DNA TESTING OR, IF PRE-  
13 VIOUSLY TESTED, WILL BE SUBJECT TO DNA TESTING TECHNOLOGY THAT  
14 WAS NOT AVAILABLE WHEN THE DEFENDANT WAS CONVICTED.

15 (iii) THE IDENTITY OF THE DEFENDANT AS THE PERPETRATOR OF  
16 THE CRIME WAS AT ISSUE DURING HIS OR HER TRIAL.

17 (4) THE COURT SHALL STATE ITS FINDINGS OF FACT ON THE RECORD  
18 OR SHALL MAKE WRITTEN FINDINGS OF FACT SUPPORTING ITS DECISION TO  
19 GRANT OR DENY A PETITION BROUGHT UNDER THIS SECTION.

20 (5) IF THE COURT GRANTS A PETITION FOR DNA TESTING UNDER  
21 THIS SECTION, THE IDENTIFIED BIOLOGICAL MATERIAL AND A BIOLOGICAL  
22 SAMPLE OBTAINED FROM THE DEFENDANT SHALL BE SUBJECTED TO DNA  
23 TESTING BY A LABORATORY APPROVED BY THE COURT. THE RESULTS OF  
24 THE DNA TESTING SHALL BE PROVIDED TO THE COURT AND TO THE  
25 DEFENDANT AND THE PROSECUTING ATTORNEY. UPON MOTION BY EITHER  
26 PARTY, THE COURT MAY ORDER THAT THE TESTING PROTOCOLS, LABORATORY  
27 PROCEDURES, LABORATORY NOTES, AND OTHER RELEVANT RECORDS COMPILED

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1 BY THE TESTING LABORATORY BE PROVIDED TO THE COURT AND TO ALL  
2 PARTIES.

3       (6) IF THE RESULTS OF THE DNA TESTING ARE INCONCLUSIVE OR  
4 SHOW THAT THE DEFENDANT IS THE SOURCE OF THE IDENTIFIED BIOLOGI-  
5 CAL MATERIAL, THE COURT SHALL DENY THE MOTION FOR NEW TRIAL. IF  
6 THE DNA TEST RESULTS SHOW THAT THE DEFENDANT IS THE SOURCE OF THE  
7 IDENTIFIED BIOLOGICAL MATERIAL, THE DEFENDANT'S DNA PROFILE SHALL  
8 BE PROVIDED TO THE MICHIGAN STATE POLICE FOR INCLUSION UNDER THE  
9 DNA IDENTIFICATION PROFILING SYSTEM ACT.

10       (7) IF THE RESULTS OF THE DNA TESTING SHOW THAT THE  
11 DEFENDANT IS NOT THE SOURCE OF THE IDENTIFIED BIOLOGICAL MATERI-  
12 AL, THE COURT SHALL HOLD A HEARING TO DETERMINE BY CLEAR AND CON-  
13 VINCING EVIDENCE ALL OF THE FOLLOWING:

14       (A) THAT ONLY THE PERPETRATOR OF THE CRIME OR CRIMES FOR  
15 WHICH THE DEFENDANT WAS CONVICTED COULD BE THE SOURCE OF THE  
16 IDENTIFIED BIOLOGICAL MATERIAL.

17       (B) THAT THE IDENTIFIED BIOLOGICAL MATERIAL WAS COLLECTED,  
18 HANDLED, AND PRESERVED BY PROCEDURES THAT ALLOW THE COURT TO FIND  
19 THAT THE IDENTIFIED BIOLOGICAL MATERIAL IS NOT CONTAMINATED OR IS  
20 NOT SO DEGRADED THAT THE DNA PROFILE OF THE TESTED SAMPLE OF THE  
21 IDENTIFIED BIOLOGICAL MATERIAL CAN BE DETERMINED TO BE IDENTICAL  
22 TO THE DNA PROFILE OF THE SAMPLE INITIALLY COLLECTED DURING THE  
23 INVESTIGATION DESCRIBED IN SUBSECTION (1).

24       (C) THAT THE DEFENDANT'S PURPORTED EXCLUSION AS THE SOURCE  
25 OF THE IDENTIFIED BIOLOGICAL MATERIAL, BALANCED AGAINST THE OTHER  
26 EVIDENCE IN THE CASE, IS SUFFICIENT TO JUSTIFY THE GRANT OF A NEW  
27 TRIAL.

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1 (8) UPON MOTION OF THE PROSECUTOR, THE COURT SHALL ORDER  
2 RETESTING OF THE IDENTIFIED BIOLOGICAL MATERIAL AND SHALL STAY  
3 THE DEFENDANT'S MOTION FOR NEW TRIAL PENDING THE RESULTS OF THE  
4 DNA RETESTING.

5 (9) THE COURT SHALL STATE ITS FINDINGS OF FACT ON THE RECORD  
6 OR MAKE WRITTEN FINDINGS OF FACT SUPPORTING ITS DECISION TO GRANT  
7 OR DENY THE DEFENDANT A NEW TRIAL UNDER THIS SECTION.  
8 NOTWITHSTANDING THE PROVISIONS OF SECTION 3 OF THIS CHAPTER, AN  
9 AGGRIEVED PARTY MAY APPEAL THE COURT'S DECISION TO GRANT OR DENY  
10 THE PETITION FOR DNA TESTING AND FOR NEW TRIAL BY APPLICATION FOR  
11 LEAVE GRANTED BY THE COURT OF APPEALS.

12 (10) IF THE NAME OF THE VICTIM OF THE FELONY CONVICTION  
13 DESCRIBED IN SUBSECTION (1) IS KNOWN, THE PROSECUTING ATTORNEY  
14 SHALL GIVE WRITTEN NOTICE OF A PETITION UNDER THIS SECTION TO THE  
15 VICTIM. THE NOTICE SHALL BE BY FIRST-CLASS MAIL TO THE VICTIM'S  
16 LAST KNOWN ADDRESS. UPON THE VICTIM'S REQUEST, THE PROSECUTING  
17 ATTORNEY SHALL GIVE THE VICTIM NOTICE OF THE TIME AND PLACE OF  
18 ANY HEARING ON THE PETITION AND SHALL INFORM THE VICTIM OF THE  
19 COURT'S GRANT OR DENIAL OF A NEW TRIAL TO THE DEFENDANT.

20 (11) EFFECTIVE JANUARY 1, 2001, THE APPROPRIATE LAW ENFORCE-  
21 MENT AGENCY SHALL PRESERVE ANY BIOLOGICAL MATERIAL IDENTIFIED  
22 DURING THE INVESTIGATION OF A CRIME OR CRIMES FOR WHICH ANY  
23 PERSON MAY FILE A PETITION FOR DNA TESTING UNDER THIS SECTION.  
24 THE IDENTIFIED BIOLOGICAL MATERIAL SHALL BE PRESERVED FOR THE  
25 PERIOD OF TIME THAT ANY PERSON IS INCARCERATED IN CONNECTION WITH  
26 THAT CASE.

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1 Enacting section 1. This amendatory act takes effect  
2 January 1, 2001.