

FIRST REGULAR SESSION

# HOUSE BILL NO. 929

91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE HOSMER.

Read 1<sup>st</sup> time March 7, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

0886L.011

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## AN ACT

To repeal sections 650.050 and 650.055, RSMo 2000, relating to DNA evidence, and to enact in lieu thereof three new sections relating to the same subject.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 650.050 and 650.055, RSMo 2000, are repealed and three new sections enacted in lieu thereof, to be known as sections 547.035, 650.050 and 650.055, to read as follows:

- 547.035. 1. A person in the custody of the department of corrections claiming that forensic DNA testing will demonstrate the person's innocence of the crime for which the person is in custody may file a post-conviction motion in the sentencing court seeking such testing. The procedure to be followed for such motions is governed by the rules of civil procedure insofar as applicable.**
- 2. The motion must allege facts under oath demonstrating that:**
- (1) There is evidence upon which DNA testing can be conducted; and**
  - (2) The evidence was secured in relation to the crime; and**
  - (3) The evidence was not previously tested by the movant because:**
    - (a) The technology for the testing was not reasonably available to the movant at the time of the trial;**
    - (b) Neither the movant nor his or her trial counsel was aware of the existence of the evidence at the time of trial; or**
    - (c) The evidence was otherwise unavailable to both the movant and movant's trial counsel at the time of trial; and**

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (4) Identity was an issue in the trial; and

17 (5) The evidence to be tested has been subject to a chain of custody sufficient to  
18 establish that it has not been substituted, tampered with, replaced or altered in any  
19 material aspect; and

20 (6) A reasonable probability exists that the movant would not have been convicted  
21 if exculpatory results had been obtained through the requested DNA testing.

22 3. Movant shall file the motion and two copies thereof with the clerk of the  
23 sentencing court. The clerk shall file the motion in the original criminal case and shall  
24 immediately deliver a copy of the motion to the prosecutor.

25 4. The court shall issue to the prosecutor an order to show cause why the motion  
26 should not be granted unless:

27 (1) It appears from the motion that the movant is not entitled to relief; or

28 (2) The court finds that the files and records of the case conclusively show that the  
29 movant is not entitled to relief.

30 5. Upon the issuance of the order to show cause, the clerk shall notify the court  
31 reporter to prepare and file the transcript of the trial or the movant's guilty plea and  
32 sentencing hearing if the transcript has not been prepared or filed.

33 6. If the court finds that the motion and the files and records of the case  
34 conclusively show that the movant is not entitled to relief, a hearing shall not be held. If  
35 a hearing is ordered, counsel shall be appointed to represent the movant if the movant is  
36 indigent. The hearing shall be on the record. Movant need not be present at the hearing.  
37 The court may order that testimony of the movant shall be received by deposition. The  
38 movant shall have the burden of proving the allegations of the motion by a preponderance  
39 of the evidence.

40 7. The court shall order appropriate testing if the court finds:

41 (1) A reasonable probability exists that the movant would not have been convicted  
42 if exculpatory results had been obtained through the requested DNA testing; and

43 (2) That movant is entitled to relief.

44

45 Such testing shall be conducted by a facility mutually agreed upon by the movant and by  
46 the state and approved by the court. If the parties are unable to agree, the court shall  
47 designate the testing facility. The court shall impose reasonable conditions on the testing  
48 to protect the state's interests in the integrity of the evidence and the testing process.

49 8. The court shall issue findings of fact and conclusions of law whether or not a  
50 hearing is held.

650.050. 1. The Missouri department of public safety shall develop and establish a

2 "DNA Profiling System", referred to in sections 650.050 to 650.057 as the system to support  
3 criminal justice services in the local communities throughout this state in DNA identification.  
4 This establishment shall be accomplished through consultation with the Kansas City, Missouri  
5 regional crime laboratory, Missouri state highway patrol crime laboratory, St. Louis, Missouri  
6 metropolitan crime laboratory, St. Louis county crime laboratory, southeast Missouri regional  
7 crime laboratory, Springfield regional crime laboratory, and the Missouri Southern State College  
8 police academy regional crime lab.

9         2. The DNA profiling system as established in this section shall be compatible with that  
10 used by the Federal Bureau of Investigation to ensure that DNA records are fully exchangeable  
11 between DNA laboratories and that quality assurance standards issued by the director of the  
12 Federal Bureau of Investigations are applied and performed.

13         **3. The DNA profiling system established by this section shall include a separate**  
14 **statistical data base containing DNA profiles of persons whose identity is unknown.**  
15 **Information in this data base may be used for any legitimate law enforcement purpose**  
16 **upon written request of any federal, state, or local law enforcement agency, using the**  
17 **procedure provided by subsection 3 of section 650.055.**

18         **4. The DNA profiling system may charge a reasonable fee to search and provide a**  
19 **comparative analysis of DNA profiles to any law enforcement agency outside of this state.**

650.055. 1. Every individual convicted in a Missouri circuit court, [of a felony, defined  
2 as a violent offense under chapter 565, RSMo, or as a sex offense under] **of murder in the first**  
3 **degree, murder in the second degree, voluntary manslaughter, involuntary manslaughter,**  
4 **assault in the first degree, assault in the second degree, unlawful endangerment of another,**  
5 **assault in the third degree, domestic assault in the first degree, domestic assault in the**  
6 **second degree, domestic assault in the third degree, assault while on school property,**  
7 **assault of a law enforcement officer in the first degree, assault of a law enforcement officer**  
8 **in the second degree, assault of a law enforcement officer in the third degree, tampering**  
9 **with a judicial officer, harassment, aggravated harassment of an employee, elder abuse in**  
10 **the first degree, elder abuse in the second degree, or elder abuse in the third degree, incest,**  
11 **endangering the welfare of a child in the first degree, abuse of a child, use of a child in**  
12 **sexual performance, promoting sexual performance by a child, robbery in the first degree,**  
13 **pharmacy robbery in the first degree, robbery in the second degree, burglary in the first**  
14 **degree, burglary in the second degree, armed criminal action, unlawful use of weapons, or**  
15 **of any sex offense pursuant to chapter 566, RSMo, excluding sections 566.010 and 566.020,**  
16 RSMo, shall have a blood or scientifically accepted biological sample collected for purposes of  
17 DNA profiling analysis:

18         (1) Upon entering the department of correction's reception and diagnostic centers; or

19 (2) Before release from a county jail or detention facility; or

20 (3) If such individual is under the jurisdiction of the department of corrections on or after  
21 August 28, 1996. Such jurisdiction includes persons currently incarcerated, persons on  
22 probation, as defined in section 217.650, RSMo, and on parole, as also defined in section  
23 217.650, RSMo.

24 2. The Missouri state highway patrol and department of corrections shall be responsible  
25 for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to  
26 this section shall be required to provide such sample, without the right of refusal, at a collection  
27 site designated by the Missouri state highway patrol and the department of corrections.  
28 Authorized personnel collecting or assisting in the collection of samples shall not be liable in any  
29 civil or criminal action when the act is performed in a reasonable manner. Such force may be  
30 used as necessary to the effectual carrying out and application of such processes and operations.  
31 The enforcement of these provisions by the authorities in charge of state correctional institutions  
32 and others having custody of those convicted of the felony which shall not be set aside or  
33 reversed, is hereby made mandatory.

34 3. The procedure and rules for the collection, analysis, storage, expungement, use of  
35 DNA database records and privacy concerns shall not conflict with procedures and rules  
36 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA  
37 data bank system. **A written request to analyze and compare DNA samples provided by any  
38 federal, state, or local law enforcement agency with those in the Missouri DNA profiling  
39 system shall be fulfilled if made by any federal, state, or local law enforcement officers in  
40 furtherance of an official investigation of any criminal offense. The name of the requesting  
41 law enforcement official and the law enforcement agency for which the request is made  
42 shall be maintained on file by the DNA profiling system. Any person identified and  
43 charged with an offense as a result of a search of the Missouri DNA profiling system shall,  
44 upon written request, be provided a copy of the relevant written search request made by  
45 law enforcement, if the person submits a DNA sample which matches the requestor's  
46 profile in the Missouri DNA profiling system. Upon showing by the defendant in a  
47 criminal case that access to the Missouri DNA profiling system is material to the  
48 investigation, preparation or presentation of a defense at trial or in a motion for a new  
49 trial, any court having jurisdiction in such case shall direct the Missouri DNA profiling  
50 system to compare a DNA profile which has been generated by the defendant through an  
51 independent test against the profiling system, provided that such DNA has been generated  
52 in accordance with standards for forensic DNA analysis adopted pursuant to sections  
53 650.050 to 650.057.**

54 4. The name of a convicted offender whose profile is contained in the data bases

55 **may be related to any other data bases which are constructed for law enforcement**  
56 **purposes and may be disseminated only for law enforcement purposes except as otherwise**  
57 **provided by this section.** Unauthorized uses or dissemination of individually identifiable DNA  
58 information in a database for purposes other than criminal justice or law enforcement is a class  
59 A misdemeanor.

60       **5. Upon written request of any person whose DNA profile has been included in the**  
61 **Missouri DNA profiling system pursuant to this section and whose relevant felony**  
62 **conviction has been reversed, the system shall expunge the DNA profile of such person**  
63 **from the system, and the Missouri DNA profiling system shall purge all records and**  
64 **identifiable information in the system pertaining to such person and destroy all samples**  
65 **from such person.**

66       **6.** Implementation of section 650.050 and this section shall be subject to future  
67 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of  
68 Investigation's DNA data bank system.