

SECOND REGULAR SESSION

HOUSE BILL NO. 1094

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MAYER (Sponsor), JOLLY, PORTWOOD, LIPKE,
DUSENBERG, YATES, PRATT, GOODMAN, KINGERY, LeVOTA, DOUGHERTY, ROARK, MYERS,
CROWELL, BURNETT, JETTON, BLACK, BIVINS, ICET, BEAN,
BRINGER AND BEHNEN (Co-sponsors).

Read 1st time January 14, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3835L.011

AN ACT

To repeal sections 650.050, 650.052, 650.055, and 650.100, RSMo, and to enact in lieu thereof four new sections relating to the DNA profiling system, with penalty provisions.

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

Section A. Sections 650.050, 650.052, 650.055, and 650.100, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 650.050, 650.052, 650.055,
3 and 650.100, to read as follows:

650.050. 1. **In any criminal trial or proceeding, the results of forensic DNA analysis**
2 **shall be admissible in evidence to prove or disprove any relevant fact.** The Missouri
3 department of public safety shall develop and establish a "DNA Profiling System", referred to
4 in sections 650.050 to 650.057 as the system to [support criminal justice services in the local
5 communities throughout this state in DNA identification] **assist federal, state, and local**
6 **criminal justice and law enforcement agencies in the identification, investigation, and**
7 **prosecution of individuals as well as the identification of missing and unidentified persons.**
8 [This establishment] **The DNA profiling system** shall be accomplished through consultation
9 with the Kansas City, Missouri regional **police** crime laboratory, Missouri state highway patrol
10 crime laboratory, St. Louis, Missouri metropolitan crime laboratory, St. Louis county crime
11 laboratory, southeast Missouri regional crime laboratory, Springfield regional crime laboratory,
12 and the Missouri Southern State College police academy regional crime lab.

13 2. The DNA profiling system as established in this section shall be compatible with that

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

14 used by the Federal Bureau of Investigation to ensure that DNA records are fully exchangeable
15 between DNA laboratories and that quality assurance standards issued by the director of the
16 Federal Bureau of Investigations are applied and performed.

650.052. 1. The state's DNA profiling system shall:

2 (1) Assist federal, state and local criminal justice and law enforcement agencies in the
3 [putative] identification, detection or exclusion of individuals who are subjects of the
4 investigation or prosecution of [violent or sex-related crime] **criminal offenses** in which
5 biological evidence is recovered [from the crime scene]; and

6 (2) [Support] **If personally identifiable information is removed, support development**
7 **of forensic validation studies, forensic protocols, and the establishment and maintenance**
8 **of a population statistics database, [when personal identifying information is removed] or**
9 **support development of forensic validation studies, forensic protocols or the establishment**
10 **and maintenance of a population statistics database, for federal, state, or local crime**
11 **laboratories or law enforcement agencies; and**

12 (3) [Support identification research and protocol development of forensic DNA analysis
13 methods; and

14 (4) For quality control purposes; or

15 (5) Assist in the recovery or identification of human remains from mass disasters, or for
16 other humanitarian purposes, including identification of living missing persons.

17 2. The Missouri state highway patrol shall act as the central repository for the DNA
18 profiling system and shall [coordinate with the Federal Bureau of Investigation on the national
19 database program] **collaborate with the Federal Bureau of Investigation and other criminal**
20 **justice agencies relating to the state's participation in CODIS and the national DNA**
21 **identification index or in any DNA database.**

22 3. The Missouri state highway patrol **crime laboratory** may promulgate rules **and**
23 **regulations to implement the provisions of sections 650.050 to 650.057** in accordance with
24 Federal Bureau of Investigation recommendations for the form and manner of collection of blood
25 or other scientifically accepted biological samples and other procedures for the operation of
26 sections 650.050 to 650.057. No rule or portion of a rule promulgated pursuant to the authority
27 of this section shall become effective unless it has been promulgated pursuant to the provisions
28 of section 536.024, RSMo.

29 4. The Missouri state highway patrol shall provide the necessary components for
30 collection of the convicted offender's biological samples. **The DNA sample collection shall be**
31 **performed by the Missouri department of corrections and Missouri department of**
32 **probation and parole or their authorized designee, or contracted third party.** The
33 specimens shall thereafter be forwarded to the Missouri state highway patrol crime laboratory.

34 5. The state's **participating** forensic DNA laboratories shall meet quality assurance
35 standards specified by the Missouri state highway patrol **crime laboratory** and the Federal
36 Bureau of Investigation to ensure quality DNA identification records submitted to the central
37 repository.

38 6. The state's **participating** forensic DNA laboratories may provide the system for
39 identification purposes to criminal justice, law enforcement officials and prosecutors in the
40 preparation and utilization of DNA evidence for presentation in court and provide expert
41 testimony in court on DNA evidentiary issues.

 650.055. 1. Every individual **who pleads guilty or nolo contendere to or is convicted**
2 in a Missouri circuit court, of a felony[, defined as a violent offense under chapter 565, RSMo,]
3 or [as a sex] **any** offense under chapter 566, RSMo, [excluding sections 566.010 and 566.020,
4 RSMo,] shall have a blood or scientifically accepted biological sample collected for purposes
5 of DNA profiling analysis:

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

7 (2) Before release from a county jail or detention facility, **state correctional facility,**
8 **mental health facility, or any other detention facility or institution;** or

9 (3) **When the state accepts a person from another state under any interstate**
10 **compact, or under any other reciprocal agreement with any county, state, or federal**
11 **agency, or any other provision of law, whether the person is confined or released, the**
12 **acceptance is conditional on the person providing a DNA sample if the person was**
13 **convicted of, pleaded guilty to, or pleaded nolo contendere to an offense in any other**
14 **jurisdiction which would be considered a qualifying offense as defined in this section if**
15 **committed in this state, or if the person was convicted of, pleaded guilty to, or pleaded nolo**
16 **contendere to any equivalent offense in any other jurisdiction;**

17 (4) If such individual is under the jurisdiction of the department of corrections [on or
18 after August 28, 1996]. Such jurisdiction includes persons currently incarcerated, persons on
19 probation, as defined in section 217.650, RSMo, and on parole, as also defined in section
20 217.650, RSMo. **Such individual shall not be released in any manner prior to the**
21 **expiration of the person's maximum term of incarceration or supervised release unless and**
22 **until that person has provided a DNA sample.**

23 2. The Missouri state highway patrol and department of corrections shall be responsible
24 for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to
25 this section shall be required to provide such sample, without the right of refusal, at a collection
26 site designated by the Missouri state highway patrol and the department of corrections.
27 Authorized personnel collecting or assisting in the collection of samples shall not be liable in any
28 civil or criminal action when the act is performed in a reasonable manner. Such force may be

29 used as necessary to the effectual carrying out and application of such processes and operations.
30 The enforcement of these provisions by the authorities in charge of state correctional institutions
31 and others having custody [of] **or jurisdiction over those who have been convicted of [the],**
32 **pleaded guilty to, or pleaded nolo contendere to felony offenses** which shall not be set aside
33 or reversed, is hereby made mandatory. **In the event that a person's DNA sample is not**
34 **adequate for any reason, the person shall provide another sample for analysis.**

35 3. The procedure and rules for the collection, analysis, storage, expungement, use of
36 DNA database records and privacy concerns shall not conflict with procedures and rules
37 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
38 data bank system.

39 4. **Database information or evidence of a DNA match shall neither be excluded**
40 **from evidence in the trial of any case, nor shall any identification, detention, arrest, or**
41 **warrant be invalidated, suppressed, excluded, or conviction or plea of a person, based in**
42 **whole or in part upon databasing information, or a database match, be reversed or set**
43 **aside if it is determined that an offender's DNA sample was obtained or placed in the**
44 **database by mistake.**

45 5. Unauthorized uses or dissemination of individually identifiable DNA information in
46 a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

47 6. **A mandatory fee of one hundred sixty dollars, which shall be in addition to any**
48 **other cost imposed pursuant to statutory authority, shall be automatically assessed on any**
49 **person who pleads guilty to, pleads nolo contendere to, or is convicted of a qualifying**
50 **offense under this section. All fees authorized pursuant to this section shall be collected**
51 **by the Missouri department of probation and parole and the Missouri department of**
52 **corrections. All such fees collected pursuant to this section shall be transmitted to the**
53 **Missouri department of public safety, which shall establish and administer a DNA**
54 **database fund. The DNA database fund shall be used to provide for the ongoing operation**
55 **and support of Missouri's state and local CODIS systems.**

56 7. **If an inmate under the jurisdiction of the department of corrections has not paid**
57 **the fee required pursuant to this section, the department shall assess and collect the**
58 **amount owed from that inmate's wages or prison account.**

59 [5.] 8. Implementation of section 650.050 and this section shall be subject to future
60 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
61 Investigation's DNA data bank system.

62 9. **All DNA records and biological materials retained in the DNA profiling system**
63 **are considered closed records pursuant to chapter 610, RSMo. All records containing any**
64 **information held or maintained by any person or by any agency, department, or political**

65 subdivision of the state concerning an individual's DNA profile shall be strictly confidential
66 and shall not be disclosed, except to:

67 (1) Peace officers, as defined in section 590.010, RSMo;

68 (2) The attorney general or any assistant attorneys general acting on his or her
69 behalf, as defined in chapter 27, RSMo;

70 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo; or

71 (4) Public employees of any agency, department, or political subdivision who need
72 to obtain such records to perform their public duties.

73 10. Any person who obtains records pursuant to the provisions of this section shall
74 use such records only for investigative and prosecutorial purposes, including but not
75 limited to, use at any criminal trial, hearing, or proceeding; or for law enforcement
76 identification purposes, including identification of human remains. Such records shall be
77 considered strictly confidential and shall only be released as authorized by this section.

78 11. An individual may request expungement of his or her DNA sample and DNA
79 profile through the court issuing the reversal or dismissal. A certified copy of the court
80 order establishing that such conviction has been reversed or the guilty plea, or plea of nolo
81 contendere has been set aside shall be sent to the Missouri state highway patrol crime
82 laboratory. Upon receipt of the court order, the laboratory shall determine that the
83 requesting individual has no other qualifying offense as a result of any separate plea or
84 conviction prior to expungement.

85 12. A person whose DNA record or DNA profile has been included in the state DNA
86 database in accordance with the provisions of sections 650.050 to 650.057 may request
87 expungement on the grounds that the conviction has been reversed, or the guilty plea or
88 plea of nolo contendere on which the authority for including that person's DNA record or
89 DNA profile was based has been set aside.

90 13. Upon receipt of a written request for expungement, a certified copy of the final
91 court order reversing the conviction or setting aside the plea, and any other information
92 necessary to ascertain the validity of the request, the Missouri state highway patrol crime
93 laboratory shall expunge all DNA records and identifiable information in the database
94 pertaining to the person and destroy the DNA sample of the person, unless the Missouri
95 state highway patrol determines that the person is otherwise obligated to submit a DNA
96 sample.

97 14. The Missouri state highway patrol is not required to destroy any item of
98 physical evidence obtained from a DNA sample if evidence relating to another person
99 would thereby be destroyed.

100 15. Any identification, warrant, arrest, or evidentiary use of a DNA match derived

101 **from the database shall not be excluded or suppressed from evidence, nor shall any**
102 **conviction be invalidated or reversed or plea set aside due to the failure to expunge or a**
103 **delay in expunging DNA records.**

650.100. The following words shall have the following meanings unless a different
2 meaning clearly appears from the context:

3 (1) **"CODIS", is derived from the Federal Bureau of Investigation's combined DNA**
4 **index system that allows the storage and exchange of DNA records submitted by federal,**
5 **state, and local DNA crime laboratories. The term CODIS includes the national DNA**
6 **identification index administered and operated by the Federal Bureau of Investigation;**

7 (2) **"Crime laboratories"** means those crime laboratories existing on September 28, 1979,
8 in certain cities in this state and which have at least once prior to September 28, 1979, received
9 funding through the Missouri council on criminal justice, and such other crime laboratories that
10 may be created to serve specified regions of the state as determined by the director of the
11 department of public safety;

12 [(2)] (3) **"Department"** means the Missouri department of public safety;

13 (4) **"DNA", means deoxyribonucleic acid. DNA is located in the cells and provides**
14 **an individual's personal genetic blueprint. DNA encodes genetic information that is the**
15 **basis of human heredity and forensic identification;**

16 (5) **"DNA record", means the DNA identification information stored in the state**
17 **DNA database or CODIS. The DNA record is the result obtained from the DNA analysis.**
18 **The DNA record is comprised of the characteristics of a DNA sample, which are of value**
19 **in establishing the identity of individuals;**

20 (6) **"DNA profile", refers to the collective results of all DNA identification analyses**
21 **on an individual's DNA sample;**

22 (7) **"DNA sample", is a biological sample provided by any person with respect to**
23 **offenses covered by section 650.055 or submitted to the Missouri state highway patrol**
24 **crime laboratory pursuant to the provisions of sections 650.050 to 650.057 for analysis or**
25 **storage or both;**

26 [(3)] (8) **"Local funds"** means any funds not provided by the federal government.