

HCS SS SB 1000 -- DNA PROFILING

SPONSOR: Bartle (Mayer)

COMMITTEE ACTION: Voted "do pass" by the Committee on Crime Prevention and Public Safety by a vote of 17 to 0.

This substitute expands the collection and use of DNA evidence in criminal investigations. The substitute:

- (1) Establishes the DNA Database Fund, to be administered by the Department of Public Safety and used for the ongoing operation of the state and local DNA index systems;
- (2) Establishes a \$30 surcharge on all felony cases, a \$15 surcharge on all misdemeanor cases, and a 50-cent surcharge on all traffic cases to be assessed as court costs and deposited into the fund. This funding provision will expire on September 1, 2007;
- (3) Requires a DNA sample to be collected from every person convicted of a felony or any offense in Chapter 566, RSMo, regarding sex crimes. Current law does not require collection for some offenses in Chapter 566 or for nonviolent offenses;
- (4) Allows the state's DNA profiling system to be used to investigate any crime. Current law limits its use to investigating violent or sex-related crimes;
- (5) Clarifies that the Department of Corrections may have DNA samples collected by a contracted third party;
- (6) Requires county jail personnel to collect DNA samples from offenders under the custody of a county jail, subject to appropriations;
- (7) Clarifies that a DNA sample must be collected upon release from any correctional facility or any other detention facility;
- (8) Makes the acceptance of an offender from another state under any interstate compact conditioned upon the collection of a DNA sample when the offender has been convicted of an offense which would require a sample if committed in Missouri;
- (9) Requires the Board of Probation and Parole to revoke any offender's probation or parole upon the refusal to submit a DNA sample;
- (10) Requires an offender to provide another DNA sample if for any reason the offender's DNA sample is not adequate;

(11) Makes all DNA records and biological materials confidential and allows disclosure only to government employees for the performance of their public duties;

(12) Allows an individual whose criminal case was dismissed or conviction reversed to request the court to order his or her DNA record expunged;

(13) Requires the State Highway Patrol's crime lab to expunge all DNA records of an individual upon receipt of a certified copy of the final court order reversing a conviction, as long as the person is not otherwise required to submit a DNA sample;

(14) Allows the patrol to refuse to expunge any physical evidence obtained from a DNA sample if evidence relating to another person would be destroyed;

(15) Prohibits courts from excluding evidence or setting aside any warrant or conviction due to a failure to expunge, or a delay in expunging, DNA records; and

(16) Allows a person who has been incarcerated and then exonerated through the use of DNA evidence to collect restitution from the state for each year the person was incarcerated in an amount equal to the federal poverty guidelines for those years, up to a total of \$60,000. Payments will be made from the DNA Profiling Analysis Fund.

The provisions requiring the collection of DNA samples become effective January 1, 2005.

FISCAL NOTE: No impact on General Revenue Fund in FY 2005, FY 2006, and FY 2007. Estimated Effect on Other State Funds of a cost of Unknown to an income of \$45,640 in FY 2005, a cost of Unknown to an income of \$152,588 in FY 2006, and a cost of Unknown to an income of \$101,442 in FY 2007.

PROPONENTS: Supporters say that DNA evidence allows us to prosecute crimes with a degree of certitude unparalleled in criminal prosecution. The saliva swab test is less invasive than the taking of fingerprints. The use of DNA evidence protects the innocent from unnecessary investigation and prosecution; and it identifies perpetrators of crimes, as long as we have their DNA sample in the system. Very few DNA cases go to trial, because almost all of them plead guilty. Thousands of hours of police investigation are saved every year because of DNA evidence. The states that collect DNA samples from all felons have discovered that the majority of positive identifications from DNA have been from felons whose DNA sample was collected after a property crime or drug offense. The evidence shows that these offenders are

also committing violent crimes. The use of DNA evidence significantly reduces crime because repeat offenders are identified, prosecuted, and incarcerated before they can commit more crimes. The U. S. Justice Department estimates the average rapist commits eight to 12 sexual assaults. When the offender's DNA is on file, he is identified immediately and other assaults can be prevented. With the limited resources currently available, the State Highway Patrol Crime Lab can process only 2,200 samples per year. The bill would require 100,000 samples to be collected and analyzed, so a funding mechanism is required.

Testifying for the bill were Senator Bartle; Office of Jackson County Prosecutor; State Highway Patrol Crime Lab; and Office of Cole County Prosecutor.

OPPONENTS: Those who oppose the bill say that the funding source is inadequate and enacting a law that would charge someone \$30 who has already been convicted would be ex post facto legislation. The bill does not specify mouth swabs as the method of collection, so more invasive methods are possible. Making DNA records confidential would prevent defense attorneys from having access to them while prosecutors are obligated to provide any exculpatory evidence to the defendant. The bill would require all felons, including someone incarcerated for writing bad checks, to submit a DNA sample. These people are not suspects for violent crimes, and their inclusion is unnecessary.

Testifying against the bill was Missouri Association of Criminal Defense Lawyers.

Richard Smreker, Senior Legislative Analyst