

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 684

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LIPKE.

Read 1st time March 1, 2005 and copies ordered printed.

Read 2nd time March 2, 2005 and referred to the Committee on Crime Prevention and Public Safety March 3, 2005.

Reported from the Committee on Crime Prevention and Public Safety March 9, 2005 with recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 10, 2005 with recommendation that the bill Do Pass by Consent with no time limit for debate.

Perfectured by Consent March 22, 2005.

STEPHEN S. DAVIS, Chief Clerk

1964L.01P

AN ACT

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Section A. Sections 650.050, 650.052, and 650.055, RSMo, are repealed and three new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

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] **650.100** as the system to
3 assist federal, state, and local criminal justice and law enforcement agencies in the identification,
4 investigation, and prosecution of individuals as well as the identification of missing or
5 unidentified persons. This DNA profiling system shall consist of qualified Missouri forensic
6 laboratories approved by the Federal Bureau of Investigation. The Missouri state highway patrol
7 crime laboratory shall be the administrator of the state's DNA index system.

8 2. The DNA profiling system as established in this section shall be compatible with that
9 used by the Federal Bureau of Investigation to ensure that DNA records are fully exchangeable

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

10 between DNA laboratories and that quality assurance standards issued by the director of the
11 Federal Bureau of Investigation 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 identification, detection or exclusion of individuals who are subjects of the investigation or
4 prosecution of criminal offenses in which biological evidence is recovered or obtained; and

5 (2) If personally identifiable information is removed, support development of forensic
6 validation studies, forensic protocols, and the establishment and maintenance of a population
7 statistics database, for federal, state, or local crime laboratories of law enforcement agencies; and

8 (3) Assist in the recovery or identification of human remains from mass disasters, or for
9 other humanitarian purposes, including identification of missing persons.

10 2. The Missouri state highway patrol shall act as the central repository for the DNA
11 profiling system and shall collaborate with the Federal Bureau of Investigation and other criminal
12 justice agencies relating to the state's participation in CODIS and the National DNA Index
13 System or in any DNA database.

14 3. The Missouri state highway patrol may promulgate rules and regulations to implement
15 the provisions of sections 650.050 to 650.100 in accordance with Federal Bureau of Investigation
16 recommendations for the form and manner of collection of blood or other scientifically accepted
17 biological samples and other procedures for the operation of sections 650.050 to [650.057]
18 **650.100.** No rule or portion of a rule promulgated pursuant to the authority of this section shall
19 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
20 RSMo.

21 4. The Missouri state highway patrol shall provide the necessary components for
22 collection of the convicted offender's biological samples. For qualified offenders as defined by
23 section 650.055 who are under custody and control of the department of corrections, the DNA
24 sample collection shall be performed by the department of corrections and the division of
25 probation and parole, or their authorized designee or contracted third party. For qualified
26 offenders as defined by section 650.055 who are under custody and control of a county jail, the
27 DNA sample collections shall be performed by the county jail or its authorized designee or
28 contracted third party. **For qualified offenders as defined by section 650.055 who are under**
29 **the custody and control of companies contracted by the county or court to perform**
30 **supervision and/or treatment of the offender, the sheriff's department of the county**
31 **assigned to the offender shall perform the DNA sample collection.** The specimens shall
32 thereafter be forwarded to the Missouri state highway patrol crime laboratory. Any DNA
33 profiling analysis or collection of DNA samples by the state or any county performed pursuant
34 to sections 650.050 to 650.100 shall be subject to appropriations.

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

42 7. The department of public safety shall have the authority to promulgate rules and
43 regulations to carry out the provisions of sections 650.050 to 650.100. Any rule or portion of
44 a rule, as that term is defined in section 536.010, RSMo, that is created under the authority
45 delegated in this section shall become effective only if it complies with and is subject to all of
46 the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section
47 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
48 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove
49 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
50 and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

 650.055. 1. Every individual who pleads guilty or nolo contendere to or is convicted in
2 a Missouri circuit court, of a felony or any offense under chapter 566, RSMo, or has been
3 determined beyond a reasonable doubt to be a sexually violent predator pursuant to sections
4 632.480 to 632.513, RSMo, shall have a blood or scientifically accepted biological sample
5 collected for purposes of DNA profiling analysis:

6 (1) Upon entering **or before release from** the department of corrections reception and
7 diagnostic centers; or

8 (2) **Upon entering or** before release from a county jail or detention facility, state
9 correctional facility or any other detention facility or institution **whether operated by private,**
10 **local or state agency,** or any mental health facility if committed as a sexually violent predator
11 pursuant to sections 632.480 to 632.513, RSMo; or

12 (3) When the state accepts a person from another state under any interstate compact, or
13 under any other reciprocal agreement with any county, state, or federal agency, or any other
14 provision of law, whether or not the person is confined or released, the acceptance is conditional
15 on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or
16 pleaded nolo contendere to an offense in any other jurisdiction which would be considered a
17 qualifying offense as defined in this section if committed in this state, or if the person was
18 convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other
19 jurisdiction; or

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

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 or jurisdiction over those who have been convicted of, pleaded guilty
32 to, or pleaded nolo contendere to felony offenses which shall not be set aside or reversed is
33 hereby made mandatory. The board of probation or parole shall recommend that an individual
34 who refuses to provide a DNA sample have his or her probation or parole revoked. In the event
35 that a person's DNA sample is not adequate for any reason, the person shall provide another
36 sample for analysis.

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

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

43 5. Implementation of [section] **sections** 650.050 [and this section] **to 650.100** shall be
44 subject to future appropriations to keep Missouri's DNA system compatible with the Federal
45 Bureau of Investigation's DNA data bank system.

46 6. All DNA records and biological materials retained in the DNA profiling system are
47 considered closed records pursuant to chapter 610, RSMo. All records containing any
48 information held or maintained by any person or by any agency, department, or political
49 subdivision of the state concerning an individual's DNA profile shall be strictly confidential and
50 shall not be disclosed, except to:

51 (1) Peace officers, as defined in section 590.010, RSMo, and other employees of law
52 enforcement agencies who need to obtain such records to perform their public duties;

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

55 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56, RSMo, and their
56 employees who need to obtain such records to perform their public duties; or

57 (4) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court
58 judges, and their employees who need to obtain such records to perform their public duties.

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

64 8. An individual may request expungement of his or her DNA sample and DNA profile
65 through the court issuing the reversal or dismissal. A certified copy of the court order
66 establishing that such conviction has been reversed or guilty plea or plea of nolo contendere has
67 been set aside shall be sent to the Missouri state highway patrol crime laboratory. Upon receipt
68 of the court order, the laboratory will determine that the requesting individual has no other
69 qualifying offense as a result of any separate plea or conviction prior to expungement.

70 (1) A person whose DNA record or DNA profile has been included in the state DNA
71 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,
72 650.052, and 650.100 may request expungement on the grounds that the conviction has been
73 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that
74 person's DNA record or DNA profile was based has been set aside.

75 (2) Upon receipt of a written request for expungement, a certified copy of the final court
76 order reversing the conviction or setting aside the plea and any other information necessary to
77 ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall
78 expunge all DNA records and identifiable information in the database pertaining to the person
79 and destroy the DNA sample of the person, unless the Missouri state highway patrol determines
80 that the person is otherwise obligated to submit a DNA sample. Within thirty days after the
81 receipt of the court order, the Missouri state highway patrol shall notify the individual that it has
82 expunged his or her DNA sample and DNA profile, or the basis for its determination that the
83 person is otherwise obligated to submit a DNA sample.

84 (3) The Missouri state highway patrol is not required to destroy any item of physical
85 evidence obtained from a DNA sample if evidence relating to another person would thereby be
86 destroyed.

87 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match derived from
88 the database shall not be excluded or suppressed from evidence, nor shall any conviction be
89 invalidated or reversed or plea set aside due to the failure to expunge or a delay in expunging
90 DNA records.

91 9. Notwithstanding the sovereign immunity of the state, an individual who is determined
92 to be "actually innocent" of a crime may be paid restitution in accordance with this subsection.
93 The individual may receive an amount of fifty dollars per day for each day of postconviction
94 incarceration for the crime for which the individual is determined to be actually innocent. The
95 petition for the payment of said restitution shall be filed with the sentencing court within one
96 year of the release from confinement after August 28, 2003. For the purposes of this subsection
97 the term "actually innocent" shall mean:

98 (1) The individual was convicted of a felony for which a final order of release was
99 entered by the court;

100 (2) All appeals of the order of release have been exhausted;

101 (3) The individual was not serving any term of a sentence for any other crime
102 concurrently with the sentence for which they are determined to be actually innocent; and

103 (4) Testing ordered pursuant to section 547.035, RSMo, demonstrates a person's
104 innocence of the crime for which the person is in custody.

105

106 An individual who receives restitution pursuant to this subsection shall be prohibited from
107 seeking any civil redress from the state, its departments and agencies, or any employee thereof,
108 or any political subdivision or its employees. This subsection shall not be construed as a waiver
109 of sovereign immunity for any purposes other than the restitution provided for herein. All
110 restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling
111 analysis fund. The department shall determine the aggregate amount of restitution owed during
112 a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining
113 moneys shall be used to pay restitution to those individuals who have received an order awarding
114 restitution under this subsection during the past fiscal year. If insufficient moneys remain in the
115 fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall
116 pay each individual who has received an order awarding restitution a pro rata share of the amount
117 such person is owed. The remaining amounts owed to such individual shall be paid from the
118 fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on
119 June thirtieth, until such time as the restitution to the individual has been paid in full. No interest
120 on unpaid restitution shall be awarded to the individual. If there are no moneys remaining in the
121 DNA profiling analysis fund, then no payments shall be made under this subsection. No
122 individual who has been determined by the court to be actually innocent shall be responsible for
123 the costs of care under section 217.831, RSMo.

124 10. If the results of the DNA testing confirm the person's guilt, then the person filing for
125 DNA testing under section 547.035, RSMo, shall:

- 126 (1) Be liable for any reasonable costs incurred when conducting the DNA test, including
127 but not limited to the cost of the test. Such costs shall be determined by the court and shall be
128 included in the findings of fact and conclusions of law made by the court; and
129 (2) Be sanctioned under the provisions of section 217.262, RSMo.