

SECOND REGULAR SESSION

HOUSE BILL NO. 1312

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LIPKE (Sponsor), SMITH (118), MUNZLINGER, SANDER,
SCHAD, MEADOWS, ROORDA, PAGE, STORCH, PARSON, WOOD, YOUNG, BIVINS,
BLACK AND BAKER (25) (Co-sponsors).

Read 1st time January 10, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4300L.01I

AN ACT

To repeal sections 488.5050, 650.050, 650.052, 650.055, 650.056, 650.057, and 650.100, RSMo,
and to enact in lieu thereof seven 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 488.5050, 650.050, 650.052, 650.055, 650.056, 650.057, and
2 650.100, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 488.5050, 650.050, 650.052, 650.055, 650.056, 650.057, and 650.100, to read as
4 follows:

488.5050. 1. In addition to any other surcharges authorized by statute, the clerk of each
2 court of this state shall collect the surcharges provided for in subsection 2 of this section.

3 2. A surcharge of thirty dollars shall be assessed as costs in each circuit court proceeding
4 filed within this state in all criminal cases in which the defendant pleads guilty or nolo
5 contendere to or is convicted of a felony. A surcharge of fifteen dollars shall be assessed as costs
6 in each court proceeding filed within this state in all criminal cases, except for traffic violations
7 cases in which the defendant pleads guilty or nolo contendere to or is convicted of a
8 misdemeanor.

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.

9 3. Notwithstanding any other provisions of law, the moneys collected by clerks of the
10 courts pursuant to the provisions of subsection 1 of this section shall be collected and disbursed
11 in accordance with sections 488.010 to 488.020, and shall be payable to the state treasurer.

12 4. The state treasurer shall deposit such moneys or other gifts, grants, or moneys received
13 on a monthly basis into the "DNA Profiling Analysis Fund", which is hereby created in the state
14 treasury. The fund shall be administered by the department of public safety. The moneys
15 deposited into the DNA profiling analysis fund shall be used only for DNA profiling analysis of
16 convicted offender samples performed to fulfill the purposes of the DNA profiling system
17 pursuant to section 650.052, RSMo.

18 [5. The provisions of subsections 1 and 2 of this section shall expire on August 28,
19 2006.]

 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 650.100 as the system to assist
3 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.

6 2. This DNA profiling system shall consist of qualified Missouri forensic laboratories
7 approved by the Federal Bureau of Investigation.

8 3. The Missouri state highway patrol crime laboratory shall be the administrator of the
9 state's DNA index system.

10 [2.] 4. The DNA profiling system as established in this section shall be compatible with
11 that used by the Federal Bureau of Investigation to ensure that DNA records are fully
12 exchangeable between DNA laboratories and that quality assurance standards issued by the
13 director of the 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; and

10 (4) **Maintain and compare DNA profiles developed from biological samples lawfully**
11 **obtained during a criminal investigation in accordance with the policy and procedures**
12 **established by the Missouri state highway patrol crime laboratory; and**

13 **(5) Assist with criminal investigations conducted by Missouri law enforcement**
14 **agencies by providing investigative leads based on potential familial relationships**
15 **determined by the DNA profiling system in accordance with the policy and procedures**
16 **established by the Missouri state highway patrol crime laboratory.**

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

21 3. The Missouri state highway patrol may promulgate rules and regulations to implement
22 the provisions of sections 650.050 to 650.100 in accordance with Federal Bureau of Investigation
23 recommendations for the form and manner of collection of blood or other scientifically accepted
24 biological samples and other procedures for the operation of sections 650.050 to 650.100. No
25 rule or portion of a rule promulgated pursuant to the authority of this section shall become
26 effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

27 4. The Missouri state highway patrol shall provide the necessary components for **the**
28 collection of the [convicted offender's] biological samples **from individuals as defined in**
29 **section 650.055 for the DNA profiling system.**

30 **5.** For qualified offenders as defined by section 650.055 who are under custody and
31 control of the department of corrections, the DNA sample collection shall be performed by the
32 department of corrections and the division of probation and parole, or their authorized designee
33 or contracted third party.

34 **6.** For qualified offenders as defined by section 650.055 who are under custody and
35 control of a county jail, the DNA sample collections shall be performed by the county jail or its
36 authorized designee or contracted third party.

37 **7.** For qualified offenders as defined by section 650.055 who are under the custody and
38 control of companies contracted by the county or court to perform supervision and/or treatment
39 of the offender, the sheriff's department of the county [assigned to the offender] **of the**
40 **sentencing court** shall perform the DNA sample collection.

41 **8. For individuals as defined by section 650.055 who have been deemed to be a**
42 **sexually violent predator, the Missouri state highway patrol crime laboratory shall**
43 **perform the DNA sample collection.**

44 **9.** The specimens shall thereafter be forwarded to the Missouri state highway patrol
45 crime laboratory.

46 **10.** Any DNA profiling analysis or collection of DNA samples by the state or any county
47 performed pursuant to sections 650.050 to 650.100 shall be subject to appropriations.

48 [5.] 11. The state's participating forensic DNA laboratories shall meet quality assurance
49 standards specified by the Missouri state highway patrol crime laboratory and the Federal Bureau
50 of Investigation to ensure quality DNA identification records submitted to the central repository.

51 [6.] 12. The state's participating forensic DNA laboratories may provide the system [for
52 identification purposes] **as an investigative tool** to criminal justice, law enforcement officials
53 and prosecutors in the preparation and utilization of DNA evidence for presentation in court and
54 provide expert testimony in court on DNA evidentiary issues.

55 [7.] 13. The department of public safety shall have the authority to promulgate rules and
56 regulations to carry out the provisions of sections 650.050 to 650.100. Any rule or portion of
57 a rule, as that term is defined in section 536.010, RSMo, that is created under the authority
58 delegated in this section shall become effective only if it complies with and is subject to all of
59 the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section
60 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
61 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove
62 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
63 and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

64 **14. Database information or evidence of a DNA match shall neither be excluded**
65 **from evidence in the trial of any case, nor shall any identification, detention, arrest, or**
66 **warrant be invalidated, suppressed, excluded or conviction or plea of a person, based in**
67 **whole or in part upon data basing information, or a database match, be reversed or set**
68 **aside if it is determined that an individual's DNA sample was obtained or placed in the**
69 **database in error.**

650.055. 1. Every individual who pleads guilty or nolo contendere to or is convicted **or**
2 **found guilty** in a Missouri circuit court, of a felony or any offense under chapter 566, RSMo,
3 or has been determined beyond a reasonable doubt to be a sexually violent predator pursuant to
4 sections 632.480 to 632.513, RSMo, shall have a blood or scientifically accepted biological
5 sample 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 **or found guilty** of, [pleaded]
16 **pled** guilty to, or [pleaded] **pled** nolo contendere to an offense in any other jurisdiction which
17 would be considered a qualifying offense as defined in this section if committed in this state, or
18 if the person was convicted **or found guilty** of, [pleaded] **pled** guilty to, or [pleaded] **pled** nolo
19 contendere to any equivalent offense in any other 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], **the** department of corrections, **and the**
24 **sheriff's department of the county** shall be responsible for ensuring adherence to the law.

25 3. Any person required to provide a DNA sample pursuant to this section shall be
26 required to provide such sample, without the right of refusal, at a collection site designated by
27 the Missouri state highway patrol [and], the department of corrections, **or the sheriff's**
28 **department of the county**.

29 4. Authorized personnel collecting or assisting in the collection of samples shall not be
30 liable in any civil or criminal action when the act is performed in a reasonable manner. Such
31 force may be used as necessary to the effectual carrying out and application of such processes
32 and operations.

33 5. The enforcement of these provisions by the authorities in charge of state correctional
34 institutions and others having custody, **supervision**, or jurisdiction over those who have been
35 convicted **or found guilty** of, [pleaded] **pled** guilty to, or [pleaded] **pled** nolo contendere to
36 felony offenses **or any offense under chapter 566, RSMo**, which shall not be set aside or
37 reversed is hereby made mandatory.

38 6. The board of probation or parole shall recommend that an individual who refuses to
39 provide a DNA sample have his or her probation or parole revoked.

40 7. In the event that a person's DNA sample is not adequate for any reason, the person
41 shall provide another sample for analysis.

42 8. **Refusal or failure of the individual as defined in this section to provide a DNA**
43 **sample is a class A misdemeanor.**

44 [3.] 9. The procedure and rules for the collection, analysis, storage, expungement, use
45 of DNA database records and privacy concerns shall not conflict with procedures and rules
46 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
47 data bank system.

48 [4.] 10. Unauthorized uses or dissemination of individually identifiable DNA
49 information in a database for purposes other than criminal justice or law enforcement is a class
50 A misdemeanor. **Any tampering or attempt to tamper with any sample collected for the**

51 **DNA profiling system or the collection container without lawful authority is a class A**
52 **misdemeanor.**

53 [5.] **11.** Implementation of sections 650.050 to 650.100 shall be subject to future
54 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
55 Investigation's DNA data bank system.

56 [6.] **12.** All DNA records and biological materials retained in the DNA profiling system
57 are considered closed records pursuant to chapter 610, RSMo. All records containing any
58 information held or maintained by any person or by any agency, department, or political
59 subdivision of the state concerning an individual's DNA profile shall be strictly confidential and
60 shall not be disclosed, except to:

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

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

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

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

69 [7.] **13.** Any person who obtains records pursuant to the provisions of this section shall
70 use such records only for investigative and prosecutorial purposes, including but not limited to
71 use at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes,
72 including identification of human remains. Such records shall be considered strictly confidential
73 and shall only be released as authorized by this section.

74 [8.] **14.** An individual may request expungement of his or her DNA sample and DNA
75 profile through the court issuing the reversal or dismissal. A certified copy of the court order
76 establishing that such conviction has been reversed or guilty plea or plea of nolo contendere has
77 been set aside shall be sent to the Missouri state highway patrol crime laboratory. Upon receipt
78 of the court order, the laboratory will determine that the requesting individual has no other
79 qualifying offense as a result of any separate plea or conviction prior to expungement.

80 (1) A person whose DNA record or DNA profile has been included in the state DNA
81 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,
82 650.052, and 650.100 may request expungement on the grounds that the conviction has been
83 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that
84 person's DNA record or DNA profile was based has been set aside.

85 (2) Upon receipt of a written request for expungement, a certified copy of the final court
86 order reversing the conviction or setting aside the plea and any other information necessary to

ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records and identifiable information in the database pertaining to the person and destroy the DNA sample of the person, unless the Missouri state highway patrol determines that the person is otherwise obligated to submit a DNA sample. Within thirty **business** days after the receipt of the court order, the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA sample and DNA profile, or the basis for its determination that the person is otherwise obligated to submit a DNA sample.

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

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

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

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

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

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

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

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An individual who receives restitution pursuant to this subsection shall be prohibited from seeking any civil redress from the state, its departments and agencies, or any employee thereof, or any political subdivision or its employees. This subsection shall not be construed as a waiver of sovereign immunity for any purposes other than the restitution provided for herein. All restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling analysis fund. The department shall determine the aggregate amount of restitution owed during a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining

moneys shall be used to pay restitution to those individuals who have received an order awarding restitution under this subsection during the past fiscal year. If insufficient moneys remain in the fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall pay each individual who has received an order awarding restitution a pro rata share of the amount such person is owed. The remaining amounts owed to such individual shall be paid from the fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on June thirtieth, until such time as the restitution to the individual has been paid in full. However, no individual awarded restitution under this subsection shall receive more than thirty-six thousand five hundred dollars during each fiscal year. No interest on unpaid restitution shall be awarded to the individual. If there are no moneys remaining in the DNA profiling analysis fund, then no payments shall be made under this subsection. No individual who has been determined by the court to be actually innocent shall be responsible for the costs of care under section 217.831, RSMo.

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

(1) Be liable for any reasonable costs incurred when conducting the DNA test, including but not limited to the cost of the test. Such costs shall be determined by the court and shall be included in the findings of fact and conclusions of law made by the court; and

(2) Be sanctioned under the provisions of section 217.262, RSMo.

650.056. Any evidence leading to a conviction of a felony described in subsection 1 of section 650.055 which has been or can be tested for DNA shall be preserved by the [Missouri state highway patrol] **investigating law enforcement agency**.

650.057. 1. Except as provided in subsection 3 of this section, no local law enforcement agency may establish or operate a system [before January 15, 1992, and] unless:

(1) The equipment of the local system is compatible with that of the state system; and

(2) The local system is equipped to receive and answer inquiries from the Missouri DNA profiling system or FBI databank and transmit data to the Missouri DNA profiling system and FBI databank; and

(3) The procedure and rules for the collection, analysis, storage, expungement and use of DNA profiling data do not conflict with procedures and rules applicable to the Missouri system and the FBI DNA databank.

2. The Missouri department of public safety shall adopt rules to implement this section.

3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local law enforcement agency from performing DNA profiling analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for

14 presentation in court. Implementation of sections 650.050 to 650.057 shall be subject to future
15 appropriations except for section 650.050.

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

4 (1) **"Central repository", is the location where all DNA samples collected from**
5 **individuals defined in section 650.055, will be maintained and analyzed; where all**
6 **authorized DNA profiles uploaded to the state's database will be maintained; and from**
7 **where all authorized DNA profiles will be uploaded to the national DNA database;**

8 (2) "CODIS", the Federal Bureau of Investigation's Combined DNA Index System that
9 allows the storage and exchange of DNA records submitted by federal, state, and local DNA
10 crime laboratories. The term "CODIS" includes the National DNA Index System administered
11 and operated by the Federal Bureau of Investigation;

12 [(2)] (3) "Crime laboratories", those crime laboratories existing on September 28, 1979,
13 in certain cities in this state and which have at least once prior to September 28, 1979, received
14 funding through the Missouri council on criminal justice, and such other crime laboratories that
15 may be created to serve specified regions of the state as determined by the director of the
16 department of public safety;

17 [(3)] (4) "Department", the Missouri department of public safety;

18 [(4)] (5) "DNA", deoxyribonucleic acid. DNA is located in the cells and provides an
19 individual's personal genetic blueprint. DNA encodes genetic information that is the basis of
20 human heredity and forensic identification;

21 [(5)] (6) "DNA profile" refers to the collective results of all DNA identification analyses
22 on an individual's DNA sample;

23 [(6)] (7) "DNA record", the DNA identification information stored in the state DNA
24 database or CODIS. The DNA record is the result obtained from the DNA analysis. The DNA
25 record is comprised of the characteristics of a DNA sample, which are of value in establishing
26 the identity of individuals, **the DNA profile as well as data required to manage and operate**
27 **the state's DNA database, to include the specimen identification number;**

28 [(7)] (8) "DNA sample", a biological sample provided by any person with respect to
29 offenses covered by section 650.055 or submitted to the Missouri state highway patrol crime
30 laboratory pursuant to sections 650.050 to 650.100 for analysis or storage or both;

31 (9) **"Forensic DNA analysis", the identification and evaluation of biological**
32 **evidence in criminal matters using DNA technologies;**

[(8)] (10) "Local funds", any funds not provided by the federal government.

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