

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 694**  
**100TH GENERAL ASSEMBLY**

1433S.04T

2019

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**AN ACT**

To repeal sections 43.540 and 488.5050, RSMo, and to enact in lieu thereof four new sections relating to records maintained by the Missouri highway patrol, with penalty provisions and an emergency clause for certain sections.

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

Section A. Sections 43.540 and 488.5050, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 43.539, 43.540, 43.548, and 488.5050, to read as follows:

**43.539. 1. As used in this section, the following terms mean:**

**(1) "Applicant", a person who:**

**(a) Is actively employed by or seeks employment with a qualified entity;**

**(b) Is actively licensed or seeks licensure with a qualified entity;**

**(c) Actively volunteers or seeks to volunteer with a qualified entity;**

**(d) Is actively contracted with or seeks to contract with a qualified entity; or**

**(e) Owns or operates a qualified entity;**

**(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or disabled persons;**

**(3) "Missouri criminal record review", a review of criminal history records and sex offender registration records under sections 589.400 to 589.425 maintained by the Missouri state highway patrol in the Missouri criminal records repository;**

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.

(4) "Missouri Rap Back program", any type of automatic notification made by the Missouri state highway patrol to a qualified entity indicating that an applicant who is employed, licensed, or otherwise under the purview of that entity has been arrested for a reported criminal offense in Missouri as required under section 43.506;

(5) "National criminal record review", a review of the criminal history records maintained by the Federal Bureau of Investigation;

(6) "National Rap Back program", any type of automatic notification made by the Federal Bureau of Investigation through the Missouri state highway patrol to a qualified entity indicating that an applicant who is employed, licensed, or otherwise under the purview of that entity has been arrested for a reported criminal offense outside the state of Missouri and the fingerprints for that arrest were forwarded to the Federal Bureau of Investigation by the arresting agency;

(7) "Patient or resident", a person who by reason of age, illness, disease, or physical or mental infirmity receives or requires care or services furnished by an applicant, as defined in this section, or who resides or boards in, or is otherwise kept, cared for, treated, or accommodated in a facility as defined in section 198.006, for a period exceeding twenty-four consecutive hours;

(8) "Qualified entity", a person, business, or organization that provides care, care placement, or educational services for children, the elderly, or persons with disabilities as patients or residents, including a business or organization that licenses or certifies others to provide care or care placement services;

(9) "Youth services agency", any agency, school, or association that provides programs, care, or treatment for or exercises supervision over minors.

2. The central repository shall have the authority to submit applicant fingerprints to the National Rap Back program to be retained for the purpose of being searched against future submissions to the National Rap Back program, including latent fingerprint searches. Qualified entities may conduct Missouri and national criminal record reviews on applicants and participate in Missouri and National Rap Back programs for the purpose of determining suitability or fitness for a permit, license, or employment, and shall abide by the following requirements:

(1) The qualified entity shall register with the Missouri state highway patrol prior to submitting a request for screening under this section. As part of the registration, the qualified entity shall indicate if it chooses to enroll applicants in the Missouri and National Rap Back programs;

(2) Qualified entities shall notify applicants subject to a criminal record review under this section that the applicant's fingerprints shall be retained by the state central

49 repository and the Federal Bureau of Investigation and shall be searched against other  
50 fingerprints on file, including latent fingerprints;

51 (3) Qualified entities shall notify applicants subject to enrollment in the National  
52 Rap Back program that the applicant's fingerprints, while retained, may continue to be  
53 compared against other fingerprints submitted or retained by the Federal Bureau of  
54 Investigation, including latent fingerprints;

55 (4) The criminal record review and Rap Back process described in this section shall  
56 be voluntary and conform to the requirements established in the National Child Protection  
57 Act of 1993, as amended, and other applicable state or federal law. As a part of the  
58 registration, the qualified entity shall agree to comply with state and federal law and shall  
59 indicate so by signing an agreement approved by the Missouri state highway patrol. The  
60 Missouri state highway patrol may periodically audit qualified entities to ensure  
61 compliance with federal law and this section;

62 (5) A qualified entity shall submit to the Missouri state highway patrol a request  
63 for screening on applicants covered under this section using a completed fingerprint card;

64 (6) Each request shall be accompanied by a reasonable fee, as provided in section  
65 43.530, plus the amount required, if any, by the Federal Bureau of Investigation for the  
66 national criminal record review and enrollment in the National Rap Back program in  
67 compliance with the National Child Protection Act of 1993, as amended, and other  
68 applicable state or federal laws;

69 (7) The Missouri state highway patrol shall provide, directly to the qualified entity,  
70 the applicant's state criminal history records that are not exempt from disclosure under  
71 chapter 610 or otherwise confidential under law;

72 (8) The national criminal history data shall be available to qualified entities to use  
73 only for the purpose of screening applicants as described under this section. The Missouri  
74 state highway patrol shall provide the applicant's national criminal history record  
75 information directly to the qualified entity;

76 (9) The determination whether the criminal history record shows that the applicant  
77 has been convicted of or has a pending charge for any crime that bears upon the fitness of  
78 the applicant to have responsibility for the safety and well-being of children, the elderly,  
79 or disabled persons shall be made solely by the qualified entity. This section shall not  
80 require the Missouri state highway patrol to make such a determination on behalf of any  
81 qualified entity;

82 (10) The qualified entity shall notify the applicant, in writing, of his or her right to  
83 obtain a copy of any criminal record review, including the criminal history records, if any,  
84 contained in the report and of the applicant's right to challenge the accuracy and

85 completeness of any information contained in any such report and obtain a determination  
86 as to the validity of such challenge before a final determination regarding the applicant is  
87 made by the qualified entity reviewing the criminal history information. A qualified entity  
88 that is required by law to apply screening criteria, including any right to contest or request  
89 an exemption from disqualification, shall apply such screening criteria to the state and  
90 national criminal history record information received from the Missouri state highway  
91 patrol for those applicants subject to the required screening; and

92 (11) Failure to obtain the information authorized under this section, with respect  
93 to an applicant, shall not be used as evidence in any negligence action against a qualified  
94 entity. The state, any political subdivision of the state, or any agency, officer, or employee  
95 of the state or a political subdivision shall not be liable for damages for providing the  
96 information requested under this section.

97 3. The criminal record review shall include the submission of fingerprints to the  
98 Missouri state highway patrol, who shall conduct a Missouri criminal record review,  
99 including closed record information under section 610.120. The Missouri state highway  
100 patrol shall also forward a copy of the applicant's fingerprints to the Federal Bureau of  
101 Investigation for a national criminal record review.

102 4. The applicant subject to a criminal record review shall provide the following  
103 information to the qualified entity:

104 (1) Consent to obtain the applicant's fingerprints, conduct the criminal record  
105 review, and participate in the Missouri and National Rap Back programs;

106 (2) Consent to obtain the identifying information required to conduct the criminal  
107 record review, which may include, but not be limited to:

108 (a) Name;

109 (b) Date of birth;

110 (c) Height;

111 (d) Weight;

112 (e) Eye color;

113 (f) Hair color;

114 (g) Gender;

115 (h) Race;

116 (i) Place of birth;

117 (j) Social Security number; and

118 (k) The applicant's photo.

119 5. Any information received by an authorized state agency or a qualified entity  
120 under the provisions of this section shall be used solely for internal purposes in

determining the suitability of an applicant. The dissemination of criminal history information from the Federal Bureau of Investigation beyond the authorized state agency or related governmental entity is prohibited. All criminal record check information shall be confidential, and any person who discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

6. A qualified entity enrolled in either the Missouri or National Rap Back program shall be notified by the Missouri state highway patrol that a new arrest has been reported on an applicant who is employed, licensed, or otherwise under the purview of the qualified entity. Upon receiving the Rap Back notification, if the qualified entity deems that the applicant is still serving in an active capacity, the entity may request and receive the individual's updated criminal history record. This process shall only occur if:

(1) The entity has abided by all procedures and rules promulgated by the Missouri state highway patrol and Federal Bureau of Investigation regarding the Missouri and National Rap Back programs;

(2) The individual upon whom the Rap Back notification is being made has previously had a Missouri and national criminal record review completed for the qualified entity under this section within the previous six years; and

(3) The individual upon whom the Rap Back notification is being made is a current employee, licensee, or otherwise still actively under the purview of the qualified entity.

7. The Missouri state highway patrol shall make available or approve the necessary forms, procedures, and agreements necessary to implement the provisions of this section.

43.540. 1. As used in this section, the following terms mean:

(1) "Applicant", a person who:

(a) Is actively employed by or seeks employment with a qualified entity;

(b) Is actively licensed or seeks licensure with a qualified entity;

(c) Actively volunteers or seeks to volunteer with a qualified entity; **or**

(d) Is actively contracted with or seeks to contract with a qualified entity; ~~or~~

~~(e) Owns or operates a qualified entity;~~

~~(2) "Care", the provision of care, treatment, education, training, instruction, supervision, or recreation;~~

~~(3) "Missouri criminal record review", a review of criminal history records and sex offender registration records pursuant to sections 589.400 to 589.425 maintained by the Missouri state highway patrol in the Missouri criminal records repository;~~

~~(4) "Missouri Rap Back program", shall include any type of automatic notification made by the Missouri state highway patrol to a qualified entity indicating that an applicant who~~

15 is employed, licensed, or otherwise under the purview of that entity has been arrested for a  
16 reported criminal offense in Missouri as required under section 43.506;

17 ~~[(5)]~~ (4) "National criminal record review", a review of the criminal history records  
18 maintained by the Federal Bureau of Investigation;

19 ~~[(6)]~~ (5) "National Rap Back program", shall include any type of automatic notification  
20 made by the Federal Bureau of Investigation through the Missouri state highway patrol to a  
21 qualified entity indicating that an applicant who is employed, licensed, or otherwise under the  
22 purview of that entity has been arrested for a reported criminal offense outside the state of  
23 Missouri and the fingerprints for that arrest were forwarded to the Federal Bureau of  
24 Investigation by the arresting agency;

25 ~~[(7)]~~ "Patient or resident", a person who by reason of age, illness, disease or physical or  
26 mental infirmity receives or requires care or services furnished by an applicant, as defined in this  
27 section, or who resides or boards in, or is otherwise kept, cared for, treated or accommodated in  
28 a facility as defined in section 198.006, for a period exceeding twenty-four consecutive hours;

29 ~~———~~ (8) (6) "Qualified entity", an entity that is:

30 (a) ~~[A person, business, or organization, whether public or private, for profit, not for~~  
31 ~~profit, or voluntary, that provides care, care placement, or educational services for children, the~~  
32 ~~elderly, or persons with disabilities as patients or residents, including a business or organization~~  
33 ~~that licenses or certifies others to provide care or care placement services;~~

34 ~~———~~ (b) An office or division of state, county, or municipal government, including a political  
35 subdivision or a board or commission designated by statute or approved local ordinance, to issue  
36 or renew a license, permit, certification, or registration of authority;

37 ~~[(e)]~~ (b) An office or division of state, county, or municipal government, including a  
38 political subdivision or a board or commission designated by statute or approved local ordinance,  
39 to make fitness determinations on applications for state, county, or municipal government  
40 employment; or

41 ~~[(d)]~~ A criminal justice agency, including law enforcement agencies that screen persons  
42 seeking issuance or renewal of a license, permit, certificate, or registration to purchase or possess  
43 a firearm; or

44 ~~[(e)]~~ (c) Any entity that is authorized to obtain criminal history record information under  
45 28 CFR 20.33[;]

46 ~~———~~ (9) "Youth services agency", any public or private agency, school, or association which  
47 provides programs, care or treatment for or which exercises supervision over minors].

48 2. The central repository shall have the authority to submit applicant fingerprints to the  
49 National Rap Back program to be retained for the purpose of being searched against future  
50 submissions to the National Rap Back program, including latent fingerprint searches. Qualified

51 entities may conduct Missouri and national criminal record reviews on applicants and participate  
52 in Missouri and National Rap Back programs for the purpose of determining suitability or fitness  
53 for a permit, license, or employment, and shall abide by the following requirements:

54 (1) The qualified entity shall register with the Missouri state highway patrol prior to  
55 submitting a request for screening under this section. As part of such registration, the qualified  
56 entity shall indicate if it chooses to enroll their applicants in the Missouri and National Rap Back  
57 programs;

58 (2) Qualified entities shall notify applicants subject to a criminal record review under  
59 this section that the applicant's fingerprints shall be retained by the state central repository and  
60 the Federal Bureau of Investigation and shall be searched against other fingerprints on file,  
61 including latent fingerprints;

62 (3) Qualified entities shall notify applicants subject to enrollment in the National Rap  
63 Back program that the applicant's fingerprints, while retained, may continue to be compared  
64 against other fingerprints submitted or retained by the Federal Bureau of Investigation, including  
65 latent fingerprints;

66 (4) The criminal record review and Rap Back process described in this section shall be  
67 voluntary and conform to the requirements established in ~~[the National Child Protection Act of~~  
68 ~~1993, as amended,]~~ **Pub. L. 92-544** and other applicable state or federal law. As a part of the  
69 registration, the qualified entity shall agree to comply with state and federal law and shall  
70 indicate so by signing an agreement approved by the Missouri state highway patrol. The  
71 Missouri state highway patrol may periodically audit qualified entities to ensure compliance with  
72 federal law and this section;

73 (5) A qualified entity shall submit to the Missouri state highway patrol a request for  
74 screening on applicants covered under this section using a completed fingerprint card;

75 (6) Each request shall be accompanied by a reasonable fee, as provided in section  
76 43.530, plus the amount required, if any, by the Federal Bureau of Investigation for the national  
77 criminal record review and enrollment in the National Rap Back program in compliance with  
78 ~~[the National Child Protection Act of 1993, as amended, and other applicable]~~ **applicable** state  
79 or federal laws;

80 (7) The Missouri state highway patrol shall provide, directly to the qualified entity, the  
81 applicant's state criminal history records that are not exempt from disclosure under chapter 610  
82 or are otherwise confidential under law;

83 (8) The national criminal history data shall be available to qualified entities to use only  
84 for the purpose of screening applicants as described under this section. The Missouri state  
85 highway patrol shall provide the applicant's national criminal history record information directly  
86 to the qualified entity;

87           (9) ~~[The determination whether the criminal history record shows that the applicant has~~  
88 ~~been convicted of, or has a pending charge, for any crime that bears upon the fitness of the~~  
89 ~~applicant to have responsibility for the safety and well-being of children, the elderly, or disabled~~  
90 ~~persons shall be made solely by the qualified entity.]~~ This section shall not require the Missouri  
91 state highway patrol to make ~~[such a]~~ **an eligibility** determination on behalf of any qualified  
92 entity;

93           (10) The qualified entity shall notify the applicant, in writing, of his or her right to obtain  
94 a copy of any criminal record review, including the criminal history records, if any, contained  
95 in the report, and of the applicant's right to challenge the accuracy and completeness of any  
96 information contained in any such report and to obtain a determination as to the validity of such  
97 challenge before a final determination regarding the applicant is made by the qualified entity  
98 reviewing the criminal history information. A qualified entity that is required by law to apply  
99 screening criteria, including any right to contest or request an exemption from disqualification,  
100 shall apply such screening criteria to the state and national criminal history record information  
101 received from the Missouri state highway patrol for those applicants subject to the required  
102 screening; and

103           (11) Failure to obtain the information authorized under this section with respect to an  
104 applicant shall not be used as evidence in any negligence action against a qualified entity. The  
105 state, any political subdivision of the state, or any agency, officer, or employee of the state or a  
106 political subdivision shall not be liable for damages for providing the information requested  
107 under this section.

108           3. The criminal record review shall include the submission of fingerprints to[:  
109 ~~——(1)]~~ the Missouri state highway patrol, who shall conduct a Missouri criminal record  
110 review, including closed record information under section 610.120~~], and~~  
111 ~~——(2)]~~ . The Missouri state highway patrol shall also forward a copy of the applicant's  
112 fingerprints to the Federal Bureau of Investigation for a national criminal record review.

113           4. The applicant subject to a criminal record review shall provide the following  
114 information to the qualified entity:

115           (1) Consent to obtain the applicant's fingerprints, conduct the criminal record review,  
116 and participate in the Missouri and National Rap Back programs;

117           (2) Consent to obtain the identifying information required to conduct the criminal record  
118 review, which may include, but not be limited to:

119           (a) Name;

120           (b) Date of birth;

121           (c) Height;

122           (d) Weight;



- 123 (e) Eye color;
- 124 (f) Hair color;
- 125 (g) Gender;
- 126 (h) Race;
- 127 (i) Place of birth;
- 128 (j) Social Security number; and
- 129 (k) The applicant's photo.

130 5. Any information received by an authorized state agency or a qualified entity pursuant  
131 to the provisions of this section shall be used solely for internal purposes in determining the  
132 suitability of an applicant. The dissemination of criminal history information from the Federal  
133 Bureau of Investigation beyond the authorized state agency or related governmental entity is  
134 prohibited. All criminal record check information shall be confidential and any person who  
135 discloses the information beyond the scope allowed is guilty of a class A misdemeanor.

136 6. A qualified entity enrolled in either the Missouri or National Rap Back programs shall  
137 be notified by the Missouri state highway patrol that a new arrest has been reported on an  
138 applicant who is employed, licensed, or otherwise under the purview of the qualified entity.  
139 Upon receiving the Rap Back notification, if the qualified entity deems that the applicant is still  
140 serving in an active capacity, the entity may request and receive the individual's updated criminal  
141 history record. This process shall only occur if:

142 (1) The agency has abided by all procedures and rules promulgated by the Missouri state  
143 highway patrol and Federal Bureau of Investigation regarding the Missouri and National Rap  
144 Back programs;

145 (2) The individual upon whom the Rap Back notification is being made has previously  
146 had a Missouri and national criminal record review completed for the qualified entity under this  
147 section within the previous six years; and

148 (3) The individual upon whom the Rap Back notification is being made is a current  
149 employee, licensee, or otherwise still actively under the purview of the qualified entity.

150 7. The highway patrol shall make available or approve the necessary forms, procedures,  
151 and agreements necessary to implement the provisions of this section.

**43.548. 1. Missouri circuit courts and the department of social services may require  
2 the fingerprinting of applicants for adoptions or guardians, conservators, advocates, or  
3 personal representatives over minors or incapacitated, elderly, or disabled persons,  
4 including supervision and care over minors or elderly persons or persons with disabilities,  
5 for the purpose of positive identification and receiving criminal history information when  
6 determining an applicant's ability or fitness to serve in such capacity.**

7           **2. Fingerprint-based criminal history record checks submitted under subsection**  
8 **1 of this section shall be forwarded to the Missouri state highway patrol to be used to**  
9 **search the state's criminal history repository, and the fingerprints shall be forwarded to**  
10 **the Federal Bureau of Investigation for a national criminal background check under**  
11 **section 43.540. All applicable fees shall be paid under section 43.530. Notwithstanding the**  
12 **provisions of section 610.120, all records related to any criminal history information shall**  
13 **be accessible and available to the circuit court or state agency making the request.**

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 is found guilty of a felony,  
5 except when the defendant is found guilty of a class B felony, class A felony, or an unclassified  
6 felony, under chapter [495] **579**, in which case, the surcharge shall be sixty dollars. A surcharge  
7 of fifteen dollars shall be assessed as costs in each court proceeding filed within this state in all  
8 other criminal cases, except for traffic violation cases in which the defendant is found guilty of  
9 a misdemeanor.

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

13           4. The state treasurer shall deposit such moneys or other gifts, grants, or moneys received  
14 on a monthly basis into the "DNA Profiling Analysis Fund", which is hereby created in the state  
15 treasury. The fund shall be administered by the department of public safety. The moneys  
16 deposited into the DNA profiling analysis fund shall be used only by the highway patrol crime  
17 lab to fulfill the purposes of the DNA profiling system pursuant to section 650.052.  
18 Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the  
19 fund at the end of the biennium shall not revert to the credit of the general revenue fund.

20           5. The provisions of subsections 1 and 2 of this section shall expire on August 28, [2019]  
21 **2029.**

Section B. Because of the urgent need to protect the safety of the citizens of this state,  
2 the repeal and reenactment of section 43.540 and the enactment of sections 43.539 and 43.548  
3 of this act is deemed necessary for the immediate preservation of the public health, welfare,  
4 peace, and safety, and is hereby declared to be an emergency act within the meaning of the  
5 constitution, and the repeal and reenactment of section 43.540 and the enactment of sections  
6 43.539 and 43.548 of this act shall be in full force and effect upon its passage and approval.

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