

SECOND REGULAR SESSION

SENATE BILL NO. 1023

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GIBBONS, CROWELL, KOSTER, BARTLE AND BRAY.

Read 1st time February 7, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3073S.05I

AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof two new sections relating to exoneration using DNA testing, with penalty provisions.

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

Section A. Section 650.055, RSMo, is repealed and two new sections
2 enacted in lieu thereof, to be known as sections 650.055 and 650.058, to read as
3 follows:

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

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

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

14 (3) When the state accepts a person from another state under any
15 interstate compact, or under any other reciprocal agreement with any county,
16 state, or federal agency, or any other provision of law, whether or not the person
17 is confined or released, the acceptance is conditional on the person providing a
18 DNA sample if the person was convicted of, pleaded guilty to, or pleaded nolo

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

19 contendere to an offense in any other jurisdiction which would be considered a
20 qualifying offense as defined in this section if committed in this state, or if the
21 person was convicted of, pleaded guilty to, or pleaded nolo contendere to any
22 equivalent offense in any other jurisdiction; or

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

27 2. The Missouri state highway patrol and department of corrections shall
28 be responsible for ensuring adherence to the law. Any person required to provide
29 a DNA sample pursuant to this section shall be required to provide such sample,
30 without the right of refusal, at a collection site designated by the Missouri state
31 highway patrol and the department of corrections. Authorized personnel
32 collecting or assisting in the collection of samples shall not be liable in any civil
33 or criminal action when the act is performed in a reasonable manner. Such force
34 may be used as necessary to the effectual carrying out and application of such
35 processes and operations. The enforcement of these provisions by the authorities
36 in charge of state correctional institutions and others having custody or
37 jurisdiction over those who have been convicted of, pleaded guilty to, or pleaded
38 nolo contendere to felony offenses which shall not be set aside or reversed is
39 hereby made mandatory. The board of probation or parole shall recommend that
40 an individual who refuses to provide a DNA sample have his or her probation or
41 parole revoked. In the event that a person's DNA sample is not adequate for any
42 reason, the person shall provide another sample for analysis.

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

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

50 5. Implementation of sections 650.050 to 650.100 shall be subject to future
51 appropriations to keep Missouri's DNA system compatible with the Federal
52 Bureau of Investigation's DNA data bank system.

53 6. All DNA records and biological materials retained in the DNA profiling
54 system are considered closed records pursuant to chapter 610, RSMo. All records
55 containing any information held or maintained by any person or by any agency,

56 department, or political subdivision of the state concerning an individual's DNA
57 profile shall be strictly confidential and shall not be disclosed, except to:

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

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

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

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

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

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

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

88 (2) Upon receipt of a written request for expungement, a certified copy of
89 the final court order reversing the conviction or setting aside the plea and any
90 other information necessary to ascertain the validity of the request, the Missouri
91 state highway patrol crime laboratory shall expunge all DNA records and
92 identifiable information in the database pertaining to the person and destroy the

93 DNA sample of the person, unless the Missouri state highway patrol determines
94 that the person is otherwise obligated to submit a DNA sample. Within thirty
95 days after the receipt of the court order, the Missouri state highway patrol shall
96 notify the individual that it has expunged his or her DNA sample and DNA
97 profile, or the basis for its determination that the person is otherwise obligated
98 to submit a DNA sample.

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

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

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

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

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

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

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

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

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

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

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

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

**650.058. 1. Notwithstanding the sovereign immunity of the state,
2 any individual who was found guilty of a felony in a Missouri court and
3 was later determined to be "actually innocent" of such crime solely as a
4 result of DNA profiling analysis may be paid restitution. The individual
5 may receive an amount of fifty dollars per day for each day of post-
6 conviction incarceration for the crime for which the individual is
7 determined to be actually innocent. The petition for the payment of said
8 restitution shall be filed with the sentencing court. For the purposes of
9 this section, the term "actually innocent" shall mean:**

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

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

13 (3) **The individual was not serving any term of a sentence for any
14 other crime concurrently with the sentence for which he or she is**

15 determined to be actually innocent, unless such individual was serving
16 another concurrent sentence because his or her parole was revoked by
17 a court or the board of probation and parole in connection with the
18 crime for which the person has been exonerated; and

19 (4) Testing ordered under section 547.035, RSMo, or testing by the
20 order of any state or federal court, if such person was exonerated on or
21 before August 28, 2004, or testing ordered under section 650.055, if such
22 person was or is exonerated after August 28, 2004, demonstrates a
23 person's innocence of the crime for which the person is in custody.

24 Any individual who receives restitution under this section shall be
25 prohibited from seeking any civil redress from the state, its departments
26 and agencies, or any employee thereof, or any political subdivision or its
27 employees. This section shall not be construed as a waiver of sovereign
28 immunity for any purposes other than the restitution provided for
29 herein. The department of corrections shall determine the aggregate
30 amount of restitution owed during a fiscal year. If insufficient moneys
31 are appropriated each fiscal year to pay restitution to such persons, the
32 department shall pay each individual who has received an order
33 awarding restitution a pro rata share of the amount
34 appropriated. Provided sufficient moneys are appropriated to the
35 department, the amounts owed to such individual shall be paid on June
36 thirtieth of each subsequent fiscal year, until such time as the
37 restitution to the individual has been paid in full. However, no
38 individual awarded restitution under this subsection shall receive more
39 than thirty-six thousand five hundred dollars during each fiscal year. No
40 interest on unpaid restitution shall be awarded to the individual. No
41 individual who has been determined by the court to be actually innocent
42 shall be responsible for the costs of care under section 217.831, RSMo.

43 2. If the results of the DNA testing confirm the person's guilt, then
44 the person filing for DNA testing under section 547.035, RSMo, shall:

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

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

50 3. A petition for payment of restitution under this section may
51 only be filed by the individual determined to be actually innocent or the

52 individual's legal guardian. No claim or petition for restitution under
53 this section may be filed by the individual's heirs or assigns. An
54 individual's right to receive restitution under this section is not
55 assignable or otherwise transferrable. The state's obligation to pay
56 restitution under this section shall cease upon the individual's
57 death. Any beneficiary designation that purports to bequeath, assign,
58 or otherwise convey the right to receive such restitution shall be void
59 and unenforceable.

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Bill

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