

SECOND REGULAR SESSION

SENATE BILL NO. 789

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KRAUS.

Read 1st time February 14, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

5832S.011

AN ACT

To repeal sections 488.5050, 650.055, and 650.100, RSMo, and to enact in lieu thereof three new sections relating to DNA profiling, with a penalty provision.

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

Section A. Sections 488.5050, 650.055, and 650.100, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 488.5050,
3 650.055, and 650.100, to read as follows:

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

4 2. A surcharge of thirty dollars shall be assessed as costs in each circuit
5 court proceeding filed within this state in all criminal cases in which the
6 defendant [pleads guilty or nolo contendere to or is convicted] **is found guilty**
7 of a felony, except when the defendant [pleads guilty or] is found guilty of a class
8 B felony, class A felony, or an unclassified felony, under chapter 195, in which
9 case, the surcharge shall be sixty dollars. A surcharge of fifteen dollars shall be
10 assessed as costs in each court proceeding filed within this state in all **other**
11 criminal cases, except for traffic [violations] **violation** cases in which the
12 defendant [pleads guilty or nolo contendere to or is convicted] **is found guilty**
13 of a misdemeanor.

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

18 4. [If in the immediate previous fiscal year, the state's general revenue

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

19 did not increase by two percent or more, the state treasurer shall deposit such
20 moneys or other gifts, grants, or moneys received on a monthly basis into the
21 state general revenue fund. Otherwise the state treasurer shall deposit such
22 moneys in accordance with the provisions of subsection 5 of this section.

23 5.] The state treasurer shall deposit such moneys or other gifts, grants,
24 or moneys received on a monthly basis into the "DNA Profiling Analysis Fund",
25 which is hereby created in the state treasury. The fund shall be administered by
26 the department of public safety. The moneys deposited into the DNA profiling
27 analysis fund shall be used only [for DNA profiling analysis of convicted offender
28 samples performed] **by the highway patrol crime lab** to fulfill the purposes
29 of the DNA profiling system pursuant to section 650.052. Notwithstanding the
30 provisions of section 33.080 to the contrary, any moneys remaining in the fund
31 at the end of the biennium shall not revert to the credit of the general revenue
32 fund.

33 [6. The provisions of subsections 1 and 2 of this section shall expire on
34 August 28, 2013.]

650.055. 1. Every individual[, in a Missouri circuit court,] who [pleads
2 guilty to or]:

3 (1) Is found guilty of a felony or any offense under chapter 566[.]; or
4 [who]

5 (2) Is seventeen years of age or older and [who is] arrested for burglary
6 in the first degree under section 569.160, or burglary in the second degree under
7 section 569.170, or a felony offense under [chapters] **chapter** 565, 566, 567, 568,
8 or 573[.]; or

9 (3) Has been determined to be a sexually violent predator pursuant to
10 sections 632.480 to 632.513[.]; or

11 (4) Is an individual required to register as a sexual offender under
12 sections 589.400 to 589.425[.];

13 shall have a fingerprint and blood or scientifically accepted biological sample
14 collected for purposes of DNA profiling analysis[.].

15 **2. Any individual subject to DNA collection and profiling analysis**
16 **under this section shall provide a DNA sample:**

17 (1) Upon booking at a county jail or detention facility; or

18 (2) Upon entering or before release from the department of corrections
19 reception and diagnostic centers; or

20 (3) Upon entering or before release from a county jail or detention facility,

21 state correctional facility, or any other detention facility or institution, whether
22 operated by a private, local, or state agency, or any mental health facility if
23 committed as a sexually violent predator pursuant to sections 632.480 to 632.513;
24 or

25 (4) When the state accepts a person from another state under any
26 interstate compact, or under any other reciprocal agreement with any county,
27 state, or federal agency, or any other provision of law, whether or not the person
28 is confined or released, the acceptance is conditional on the person providing a
29 DNA sample if the person was [convicted of, pleaded guilty to, or pleaded nolo
30 contendere to an] **found guilty of a felony** offense [in any other jurisdiction
31 which would be considered a qualifying offense as defined in this section if
32 committed in this state, or if the person was convicted of, pleaded guilty to, or
33 pleaded nolo contendere to any equivalent offense] in any other jurisdiction; or

34 (5) If such individual is under the jurisdiction of the department of
35 corrections. Such jurisdiction includes persons currently incarcerated, persons
36 on probation, as defined in section 217.650, and on parole, as also defined in
37 section 217.650; **or**

38 **(6) At the time of registering as a sex offender under sections**
39 **589.400 to 589.425.**

40 [2.] **3.** The Missouri state highway patrol and department of corrections
41 shall be responsible for ensuring adherence to the law. Any person required to
42 provide a DNA sample pursuant to this section shall be required to provide such
43 sample, without the right of refusal, at a collection site designated by the
44 Missouri state highway patrol and the department of corrections. Authorized
45 personnel collecting or assisting in the collection of samples shall not be liable in
46 any civil or criminal action when the act is performed in a reasonable
47 manner. Such force may be used as necessary to the effectual carrying out and
48 application of such processes and operations. The enforcement of these provisions
49 by the authorities in charge of state correctional institutions and others having
50 custody or jurisdiction over [those who have been arrested for, convicted of,
51 pleaded guilty to, or pleaded nolo contendere to felony offenses] **individuals**
52 **included in subsection 1 of this section** which shall not be set aside or
53 reversed is hereby made mandatory. The board of probation or parole shall
54 recommend that an individual **on probation or parole** who refuses to provide
55 a DNA sample have his or her probation or parole revoked. In the event that a
56 person's DNA sample is not adequate for any reason, the person shall provide

57 another sample for analysis.

58 [3.] 4. The procedure and rules for the collection, analysis, storage,
59 expungement, use of DNA database records and privacy concerns shall not
60 conflict with procedures and rules applicable to the Missouri DNA profiling
61 system and the Federal Bureau of Investigation's DNA databank system.

62 [4.] 5. Unauthorized [uses] **use** or dissemination of individually
63 identifiable DNA information in a database for purposes other than criminal
64 justice or law enforcement is a class A misdemeanor.

65 [5.] 6. Implementation of sections 650.050 to 650.100 shall be subject to
66 future appropriations to keep Missouri's DNA system compatible with the Federal
67 Bureau of Investigation's DNA databank system.

68 [6.] 7. All DNA records and biological materials retained in the DNA
69 profiling system are considered closed records pursuant to chapter 610. All
70 records containing any information held or maintained by any person or by any
71 agency, department, or political subdivision of the state concerning an
72 individual's DNA profile shall be strictly confidential and shall not be disclosed,
73 except to:

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

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

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

82 (4) The individual whose DNA sample has been collected, or his or her
83 attorney; or

84 (5) Associate circuit judges, circuit judges, judges of the courts of appeals,
85 supreme court judges, and their employees who need to obtain such records to
86 perform their public duties.

87 [7.] 8. Any person who obtains records pursuant to the provisions of this
88 section shall use such records only for investigative and prosecutorial purposes,
89 including but not limited to use at any criminal trial, hearing, or proceeding; or
90 for law enforcement identification purposes, including identification of human
91 remains. Such records shall be considered strictly confidential and shall only be
92 released as authorized by this section.

93 [8. Within ninety days of warrant refusal, the arresting agency shall
94 notify the Missouri state highway patrol crime laboratory which shall expunge all
95 DNA records taken at the arrest for which the warrant was refused in the
96 database pertaining to the person and destroy the DNA sample of the person,
97 unless the Missouri state highway patrol determines that the person is otherwise
98 obligated to submit a DNA sample.]

99 9. An individual may request expungement of his or her DNA sample and
100 DNA profile through the court issuing the reversal or dismissal. A certified copy
101 of the court order establishing that such conviction has been reversed or guilty
102 plea [or plea of nolo contendere] has been set aside shall be sent to the Missouri
103 state highway patrol crime laboratory. Upon receipt of the court order, the
104 laboratory will determine that the requesting individual has no other qualifying
105 offense as a result of any separate plea or conviction **and no other qualifying**
106 **arrest** prior to expungement.

107 (1) A person whose DNA record or DNA profile has been included in the
108 state DNA database in accordance with this section[, section 488.5050,] and
109 sections 650.050, 650.052, and 650.100 may request expungement on the grounds
110 that the conviction has been reversed, or the guilty plea [or plea of nolo
111 contendere] on which the authority for including that person's DNA record or
112 DNA profile was based has been set aside.

113 (2) Upon receipt of a written request for expungement, a certified copy of
114 the final court order reversing the conviction or setting aside the plea and any
115 other information necessary to ascertain the validity of the request, the Missouri
116 state highway patrol crime laboratory shall expunge all DNA records and
117 identifiable information in the **state DNA** database pertaining to the person and
118 destroy the DNA sample of the person, unless the Missouri state highway patrol
119 determines that the person is otherwise obligated to submit a DNA
120 sample. Within thirty days after the receipt of the court order, the Missouri state
121 highway patrol shall notify the individual that it has expunged his or her DNA
122 sample and DNA profile, or the basis for its determination that the person is
123 otherwise obligated to submit a DNA sample.

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

127 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match
128 derived from the database shall not be excluded or suppressed from evidence, nor

129 shall any conviction be invalidated or reversed or plea set aside due to the failure
130 to expunge or a delay in expunging DNA records.

131 **[9.] 10. When a DNA sample is taken from an individual pursuant**
132 **to subdivision (2) of subsection 1 of this section and the prosecutor**
133 **declines prosecution and notifies the arresting agency of that decision,**
134 **the arresting agency shall notify the Missouri state highway patrol**
135 **crime laboratory within ninety days of receiving such**
136 **notification. Within ninety days of being notified by the arresting**
137 **agency that the prosecutor has declined prosecution, the Missouri state**
138 **highway patrol crime laboratory shall determine whether the**
139 **individual has any other qualifying offenses or arrests that would**
140 **require a DNA sample to be taken and retained. If the individual has**
141 **no other qualifying offenses or arrests, the crime laboratory shall**
142 **expunge all DNA records in the database taken at the arrest for which**
143 **the prosecution was declined pertaining to the person and destroy the**
144 **DNA sample of such person.**

145 **11. When a DNA sample is taken of an arrestee for any offense listed**
146 **under subsection 1 of this section and charges are filed:**

147 (1) If the charges are later withdrawn, the prosecutor shall notify the
148 state highway patrol crime laboratory that such charges have been withdrawn;

149 (2) If the case is dismissed, the court shall notify the state highway patrol
150 crime laboratory of such dismissal;

151 (3) If the court finds at the preliminary hearing that there is no probable
152 cause that the defendant committed the offense, the court shall notify the state
153 highway patrol crime laboratory of such finding;

154 (4) If the defendant is found not guilty, the court shall notify the state
155 highway patrol crime laboratory of such verdict. If the state highway patrol
156 crime laboratory receives notice under this subsection [that the charges have
157 been withdrawn, the case has been dismissed, there is a finding that the
158 necessary probable cause does not exist, or the defendant is found not guilty],
159 such crime laboratory [shall expunge the DNA sample and DNA profile of the
160 arrestee within thirty days. Prior to such expungement, the state highway patrol
161 crime laboratory] shall determine, **within ninety days**, whether the individual
162 has any other qualifying offenses or arrests that would require a DNA sample to
163 be taken [and retained prior to expungement under this subsection]. **If the**
164 **individual has no other qualifying arrests or offenses, the crime**

165 **laboratory shall expunge all DNA records in the database pertaining to**
166 **such person and destroy the persons's DNA sample.**

650.100. As used in this chapter, the following words shall have the
2 following meanings unless a different meaning clearly appears from the context:

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

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

13 (3) "Crime laboratory", a laboratory operated or supported financially by
14 the state or any unit of city, county, or other local Missouri government that
15 employs at least one scientist, who examines physical evidence in criminal
16 matters and provides expert or opinion testimony with respect to such physical
17 evidence in a state court of law;

18 (4) "Department", the Missouri department of public safety;

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

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

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

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

34 (9) "**Expunge**", to destroy an individual's DNA sample and remove

35 **the DNA record from the state DNA database;**

36 **(10)** "Forensic DNA analysis", the identification and evaluation of
37 biological evidence in criminal matters using DNA technologies;

38 **[(10)] (11)** "Local funds", any funds not provided by the federal
39 government.

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Bill

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