

FIRST REGULAR SESSION

HOUSE BILL NO. 791

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MARSHALL (Sponsor), CONWAY (14),
FUHR AND FITZWATER (Co-sponsors).

1902L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 488.5050 and 650.055, RSMo, and to enact in lieu thereof two new sections relating to DNA profiling analysis, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 488.5050 and 650.055, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 488.5050 and 650.055, to read as 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] , **is found guilty** or is convicted of a felony, except when the defendant pleads
6 guilty or is found guilty of a class B felony, class A felony, or an unclassified felony, under
7 chapter 195, in which case, the surcharge shall be sixty dollars. A surcharge of fifteen dollars
8 shall be assessed as costs in each court proceeding filed within this state in all **other** criminal
9 cases, except for traffic violations cases in which the defendant pleads guilty [or nolo contendere
10 to] , **is found guilty** or is convicted of a misdemeanor.

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

14 4. [If in the immediate previous fiscal year, the state's general revenue did not increase
15 by two percent or more, the state treasurer shall deposit such moneys or other gifts, grants, or

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.

16 moneys received on a monthly basis into the state general revenue fund. Otherwise the state
17 treasurer shall deposit such moneys in accordance with the provisions of subsection 5 of this
18 section.

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

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

650.055. 1. Every individual, in a Missouri circuit court, who:

2 (1) Pleads guilty to or is found guilty of a felony or any offense under chapter 566[,] ;
3 or [who]

4 (2) Is seventeen years of age or older and [who is] arrested for **robbery in the first**
5 **degree under section 560.020, robbery in the second degree under section 569.030**, burglary
6 in the first degree under section 569.160, [or] burglary in the second degree under section
7 569.170, or a felony offense under [chapters] **chapter 565, [566,] 567, 568, or 573, or any**
8 **offense under chapter 566; or**

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

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

13

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

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

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

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

21 (3) Upon entering or before release from a county jail or detention facility, state
22 correctional facility, or any other detention facility or institution, whether operated by a private,

23 local, or state agency, or any mental health facility if committed as a sexually violent predator
24 pursuant to sections 632.480 to 632.513; or

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

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

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

37 [2.] **3.** The Missouri state highway patrol and department of corrections shall be
38 responsible for ensuring adherence to the law. Any person required to provide a DNA sample
39 pursuant to this section shall be required to provide such sample, without the right of refusal, at
40 a collection site designated by the Missouri state highway patrol and the department of
41 corrections. Authorized personnel collecting or assisting in the collection of samples shall not
42 be liable in any civil or criminal action when the act is performed in a reasonable manner. Such
43 force may be used as necessary to the effectual carrying out and application of such processes
44 and operations. The enforcement of these provisions by the authorities in charge of state
45 correctional institutions and others having custody or jurisdiction over [those who have been
46 arrested for, convicted of, pleaded guilty to, or pleaded nolo contendere to felony offenses]
47 **individuals included in subsection 1 of this section** which shall not be set aside or reversed is
48 hereby made mandatory. The board of probation or parole shall recommend that an individual
49 **on probation or parole** who refuses to provide a DNA sample have his or her probation or
50 parole revoked. In the event that a person's DNA sample is not adequate for any reason, the
51 person shall provide another sample for analysis.

52 **4. Any person required to submit a DNA sample under this section that knowingly**
53 **refuses or fails to provide such sample commits a class D felony.**

54 [3.] **5.** The procedure and rules for the collection, analysis, storage, expungement, use
55 of DNA database records and privacy concerns shall not conflict with procedures and rules
56 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
57 databank system.

58 [4.] **6.** Unauthorized [uses] **use** or dissemination of individually identifiable DNA
59 information in a database for purposes other than criminal justice or law enforcement is a class
60 A misdemeanor.

61 [5.] **7.** Implementation of sections 650.050 to 650.100 shall be subject to future
62 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
63 Investigation's DNA databank system.

64 [6.] **8.** All DNA records and biological materials retained in the DNA profiling system
65 are considered closed records pursuant to chapter 610. All records containing any information
66 held or maintained by any person or by any agency, department, or political subdivision of the
67 state concerning an individual's DNA profile shall be strictly confidential and shall not be
68 disclosed, except to:

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

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

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

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

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

78 [7.] **9.** Any person who obtains records pursuant to the provisions of this section shall
79 use such records only for investigative and prosecutorial purposes, including but not limited to
80 use at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes,
81 including identification of human remains. Such records shall be considered strictly confidential
82 and shall only be released as authorized by this section.

83 [8. Within ninety days of warrant refusal, the arresting agency shall notify the Missouri
84 state highway patrol crime laboratory which shall expunge all DNA records taken at the arrest
85 for which the warrant was refused in the database pertaining to the person and destroy the DNA
86 sample of the person, unless the Missouri state highway patrol determines that the person is
87 otherwise obligated to submit a DNA sample.] **10.** An individual may request expungement of
88 his or her DNA sample and DNA profile through the court issuing the reversal or dismissal. A
89 certified copy of the court order establishing that such conviction has been reversed or guilty plea
90 [or plea of nolo contendere] has been set aside shall be sent to the Missouri state highway patrol
91 crime laboratory. Upon receipt of the court order, the laboratory will determine that the
92 requesting individual has no other qualifying offense as a result of any separate plea or
93 conviction **and no other qualifying arrest** prior to expungement.

94 (1) A person whose DNA record or DNA profile has been included in the state DNA
95 database in accordance with this section[, section 488.5050,] and sections 650.050, 650.052, and
96 650.100 may request expungement on the grounds that the conviction has been reversed, or the
97 guilty plea [or plea of nolo contendere] on which the authority for including that person's DNA
98 record or DNA profile was based has been set aside.

99 (2) Upon receipt of a written request for expungement, a certified copy of the final court
100 order reversing the conviction or setting aside the plea and any other information necessary to
101 ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall
102 expunge all DNA records and identifiable information in the **state DNA** database pertaining to
103 the person and destroy the DNA sample of the person, unless the Missouri state highway patrol
104 determines that the person is otherwise obligated to submit a DNA sample. Within thirty days
105 after the receipt of the court order, the Missouri state highway patrol shall notify the individual
106 that it has expunged his or her DNA sample and DNA profile, or the basis for its determination
107 that the person is otherwise obligated to submit a DNA sample.

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

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

115 **[9.] 11. When a DNA sample is taken of an arrestee for any offense listed under**
116 **subsection 1 of this section and the warrant is refused, the arresting agency shall notify the**
117 **Missouri state highway patrol crime laboratory within ninety days of warrant refusal and**
118 **the crime laboratory shall expunge all DNA records taken at the arrest for which the**
119 **warrant was refused in the database pertaining to the person and destroy the DNA sample**
120 **of the person, unless the Missouri state highway patrol crime laboratory determines that**
121 **the person is otherwise obligated to submit a DNA sample. Prior to expungement, the state**
122 **highway patrol crime laboratory shall determine whether the individual has any other**
123 **qualifying offenses or arrests that would require a DNA sample to be taken and retained**
124 **prior to expungement under this subsection. The Missouri state highway patrol crime**
125 **laboratory shall have ninety days from the date it receives notice to determine whether the**
126 **DNA sample shall be expunged.**

127 **12. When a DNA sample is taken of an arrestee for any offense listed under subsection**
128 **1 of this section and charges are filed:**

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

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

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

136 (4) If the defendant is found not guilty, the court shall notify the state highway patrol
137 crime laboratory of such verdict. If the state highway patrol crime laboratory receives a notice
138 **of expungement** under this subsection **or subsection 11 of this section** [that the charges have
139 been withdrawn, the case has been dismissed, there is a finding that the necessary probable cause
140 does not exist, or the defendant is found not guilty], such crime laboratory shall expunge the
141 DNA sample and DNA profile of the arrestee within [thirty] **ninety** days. Prior to such
142 expungement, the state highway patrol crime laboratory shall determine whether the individual
143 has any other qualifying offenses or arrests that would require a DNA sample to be taken and
144 retained prior to expungement under this subsection.

Section B. Because immediate action is necessary to ensure the continued operation of
2 the DNA profiling system which dramatically contributes to the safety of citizens of this state
3 and others the repeal and reenactment of section 488.5050 of section A of this act is deemed
4 necessary for the immediate preservation of the public health, welfare, peace, and safety, and is
5 hereby declared to be an emergency act within the meaning of the constitution, and the repeal
6 and reenactment of section 488.5050 of section A of this act shall be in full force and effect upon
7 its passage and approval.