

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 361**  
**AND**  
**HOUSE BILL NO. 684**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 12, 2005, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

1072S.02C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 488.5050, 650.050, 650.052, and 650.055, RSMo, and to enact in lieu thereof four new sections relating to DNA profiling, with penalty provisions.

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

Section A. Sections 488.5050, 650.050, 650.052, and 650.055, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 488.5050, 650.050,  
3 650.052, and 650.055, to read as follows:

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

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

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

14 4. The state treasurer shall deposit such moneys or other gifts, grants, or moneys

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

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

20 5. The provisions of subsections 1 and 2 of this section shall expire on August 28,  
21 2006.

650.050. 1. The Missouri department of public safety shall develop and establish  
2 a "DNA Profiling System", referred to in sections 650.050 to [650.057] **650.100** as the  
3 system to assist federal, state, and local criminal justice and law enforcement agencies  
4 in the identification, investigation, and prosecution of individuals as well as the  
5 identification of missing or unidentified persons. This DNA profiling system shall  
6 consist of qualified Missouri forensic laboratories approved by the Federal Bureau of  
7 Investigation. The Missouri state highway patrol crime laboratory shall be the  
8 administrator of the state's DNA index system.

9 2. The DNA profiling system as established in this section shall be compatible  
10 with that used by the Federal Bureau of Investigation to ensure that DNA records are  
11 fully exchangeable between DNA laboratories and that quality assurance standards  
12 issued by the 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  
3 in the identification, detection or exclusion of individuals who are subjects of the  
4 investigation or prosecution of criminal offenses in which biological evidence is recovered  
5 or obtained; and

6 (2) If personally identifiable information is removed, support development of  
7 forensic validation studies, forensic protocols, and the establishment and maintenance  
8 of a population statistics database, for federal, state, or local crime laboratories of law  
9 enforcement agencies; and

10 (3) Assist in the recovery or identification of human remains from mass disasters,  
11 or for other humanitarian purposes, including identification of missing persons.

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

16 3. The Missouri state highway patrol may promulgate rules and regulations to  
17 implement the provisions of sections 650.050 to 650.100 in accordance with Federal

18 Bureau of Investigation recommendations for the form and manner of collection of blood  
19 or other scientifically accepted biological samples and other procedures for the operation  
20 of sections 650.050 to [650.057] **650.100**. No rule or portion of a rule promulgated  
21 pursuant to the authority of this section shall become effective unless it has been  
22 promulgated pursuant to the provisions of section 536.024, RSMo.

23         4. The Missouri state highway patrol shall provide the necessary components for  
24 collection of the convicted offender's biological samples. For qualified offenders as  
25 defined by section 650.055 who are under custody and control of the department of  
26 corrections, the DNA sample collection shall be performed by the department of  
27 corrections and the division of probation and parole, or their authorized designee or  
28 contracted third party. For qualified offenders as defined by section 650.055 who are  
29 under custody and control of a county jail, the DNA sample collections shall be  
30 performed by the county jail or its authorized designee or contracted third party. **For**  
31 **qualified offenders as defined by section 650.055 who are under the custody**  
32 **and control of companies contracted by the county or court to perform**  
33 **supervision and/or treatment of the offender, the sheriff's department of the**  
34 **county assigned to the offender shall perform the DNA sample collection.** The  
35 specimens shall thereafter be forwarded to the Missouri state highway patrol crime  
36 laboratory. Any DNA profiling analysis or collection of DNA samples by the state or any  
37 county performed pursuant to sections 650.050 to 650.100 shall be subject to  
38 appropriations.

39         5. The state's participating forensic DNA laboratories shall meet quality  
40 assurance standards specified by the Missouri state highway patrol crime laboratory and  
41 the Federal Bureau of Investigation to ensure quality DNA identification records  
42 submitted to the central repository.

43         6. The state's participating forensic DNA laboratories may provide the system  
44 for identification purposes to criminal justice, law enforcement officials and prosecutors  
45 in the preparation and utilization of DNA evidence for presentation in court and provide  
46 expert testimony in court on DNA evidentiary issues.

47         7. The department of public safety shall have the authority to promulgate rules  
48 and regulations to carry out the provisions of sections 650.050 to 650.100. Any rule or  
49 portion of a rule, as that term is defined in section 536.010, RSMo, that is created under  
50 the authority delegated in this section shall become effective only if it complies with and  
51 is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section  
52 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the  
53 powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to

54 delay the effective date, or to disapprove and annul a rule are subsequently held  
55 unconstitutional, then the grant of rulemaking authority and any rule proposed or  
56 adopted after August 28, 2004, shall be invalid and void.

650.055. 1. Every individual who pleads guilty or nolo contendere to or is  
2 convicted 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  
4 pursuant to sections 632.480 to 632.513, RSMo, shall have a blood or scientifically  
5 accepted biological sample collected for purposes of DNA profiling analysis:

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

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

13 (3) When the state accepts a person from another state under any interstate  
14 compact, or under any other reciprocal agreement with any county, state, or federal  
15 agency, or any other provision of law, whether or not the person is confined or released,  
16 the acceptance is conditional on the person providing a DNA sample if the person was  
17 convicted of, pleaded guilty to, or pleaded nolo contendere to an offense in any other  
18 jurisdiction which would be considered a qualifying offense as defined in this section if  
19 committed in this state, or if the person was convicted of, pleaded guilty to, or pleaded  
20 nolo contendere to any equivalent offense in any other jurisdiction; or

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

25 2. The Missouri state highway patrol and department of corrections shall be  
26 responsible for ensuring adherence to the law. Any person required to provide a DNA  
27 sample pursuant to this section shall be required to provide such sample, without the  
28 right of refusal, at a collection site designated by the Missouri state highway patrol and  
29 the department of corrections. Authorized personnel collecting or assisting in the  
30 collection of samples shall not be liable in any civil or criminal action when the act is  
31 performed in a reasonable manner. Such force may be used as necessary to the effectual  
32 carrying out and application of such processes and operations. The enforcement of these  
33 provisions by the authorities in charge of state correctional institutions and others

34 having custody or jurisdiction over those who have been convicted of, pleaded guilty to,  
35 or pleaded nolo contendere to felony offenses which shall not be set aside or reversed is  
36 hereby made mandatory. The board of probation or parole shall recommend that an  
37 individual who refuses to provide a DNA sample have his or her probation or parole  
38 revoked. In the event that a person's DNA sample is not adequate for any reason, the  
39 person shall provide another sample for analysis.

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

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

47           5. Implementation of [section] sections 650.050 [and this section] **to 650.100**  
48 shall be subject to future appropriations to keep Missouri's DNA system compatible with  
49 the Federal Bureau of Investigation's DNA data bank system.

50           6. All DNA records and biological materials retained in the DNA profiling system  
51 are considered closed records pursuant to chapter 610, RSMo. All records containing any  
52 information held or maintained by any person or by any agency, department, or political  
53 subdivision of the state concerning an individual's DNA profile shall be strictly  
54 confidential and shall not be disclosed, except to:

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

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

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

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

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

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

77           (1) A person whose DNA record or DNA profile has been included in the state  
78 DNA database in accordance with this section, section 488.5050, RSMo, and sections  
79 650.050, 650.052, and 650.100 may request expungement on the grounds that the  
80 conviction has been reversed, or the guilty plea or plea of nolo contendere on which the  
81 authority for including that person's DNA record or DNA profile was based has been set  
82 aside.

83           (2) Upon receipt of a written request for expungement, a certified copy of the  
84 final court order reversing the conviction or setting aside the plea and any other  
85 information necessary to ascertain the validity of the request, the Missouri state  
86 highway patrol crime laboratory shall expunge all DNA records and identifiable  
87 information in the database pertaining to the person and destroy the DNA sample of the  
88 person, unless the Missouri state highway patrol determines that the person is otherwise  
89 obligated to submit a DNA sample. Within thirty days after the receipt of the court  
90 order, the Missouri state highway patrol shall notify the individual that it has expunged  
91 his or her DNA sample and DNA profile, or the basis for its determination that the  
92 person is otherwise obligated to submit a DNA sample.

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

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

100           9. Notwithstanding the sovereign immunity of the state, an individual who is  
101 determined to be "actually innocent" of a crime may be paid restitution in accordance  
102 with this subsection. The individual may receive an amount of fifty dollars per day for  
103 each day of postconviction incarceration for the crime for which the individual is  
104 determined to be actually innocent. The petition for the payment of said restitution  
105 shall be filed with the sentencing court within one year of the release from confinement

106 after August 28, 2003. For the purposes of this subsection the term "actually innocent"  
107 shall mean:

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

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

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

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

116 An individual who receives restitution pursuant to this subsection shall be prohibited  
117 from seeking any civil redress from the state, its departments and agencies, or any  
118 employee thereof, or any political subdivision or its employees. This subsection shall not  
119 be construed as a waiver of sovereign immunity for any purposes other than the  
120 restitution provided for herein. All restitution paid pursuant to this subsection shall be  
121 paid from moneys in the DNA profiling analysis fund. The department shall determine  
122 the aggregate amount of restitution owed during a fiscal year. If moneys remain in the  
123 fund on June thirtieth of each fiscal year, the remaining moneys shall be used to pay  
124 restitution to those individuals who have received an order awarding restitution under  
125 this subsection during the past fiscal year. If insufficient moneys remain in the fund on  
126 June thirtieth of each fiscal year to pay restitution to such persons, the department shall  
127 pay each individual who has received an order awarding restitution a pro rata share of  
128 the amount such person is owed. The remaining amounts owed to such individual shall  
129 be paid from the fund on June thirtieth of each subsequent fiscal year, provided moneys  
130 remain in the fund on June thirtieth, until such time as the restitution to the individual  
131 has been paid in full. No interest on unpaid restitution shall be awarded to the  
132 individual. If there are no moneys remaining in the DNA profiling analysis fund, then  
133 no payments shall be made under this subsection. No individual who has been  
134 determined by the court to be actually innocent shall be responsible for the costs of care  
135 under section 217.831, RSMo.

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

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

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

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