

SECOND REGULAR SESSION

HOUSE BILL NO. 1322

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES LIPKE (Sponsor), JOHNSON (61), BROWN (30), ROORDA, HARRIS (23), PARSON, YOUNG, STORCH, BIVINS AND BAKER (25) (Co-sponsors).

Read 1st time January 10, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3823L.01I

AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof one new section relating to DNA profiling analysis, 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Section A. Section 650.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.055, to read as follows:

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

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

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

(3) When the state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the person is confined or released, the acceptance is conditional

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.

15 on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or
16 pleaded nolo contendere to an offense in any other jurisdiction which would be considered a
17 qualifying offense as defined in this section if committed in this state, or if the person was
18 convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other
19 jurisdiction; or

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

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

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

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

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

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

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

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

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

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

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

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

70 (1) A person whose DNA record or DNA profile has been included in the state DNA
71 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,
72 650.052, and 650.100 may request expungement on the grounds that the conviction has been
73 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that
74 person's DNA record or DNA profile was based has been set aside.

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

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

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

91 9. Notwithstanding the sovereign immunity of the state, an individual who is determined
92 to be "actually innocent" of a crime may be paid restitution in accordance with this subsection.
93 The individual may receive an amount of fifty dollars per day for each day of postconviction
94 incarceration for the crime for which the individual is determined to be actually innocent. The
95 petition for the payment of said restitution shall be filed with the sentencing court within one
96 year of the release from confinement [after August 28, 2003], **or one year after the effective**
97 **date of this section, whichever is later.** For the purposes of this subsection the term "actually
98 innocent" shall mean:

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

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

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

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

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107 An individual who receives restitution pursuant to this subsection shall be prohibited from
108 seeking any civil redress from the state, its departments and agencies, or any employee thereof,
109 or any political subdivision or its employees. This subsection shall not be construed as a waiver
110 of sovereign immunity for any purposes other than the restitution provided for herein. All
111 restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling
112 analysis fund. The department shall determine the aggregate amount of restitution owed during
113 a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining
114 moneys shall be used to pay restitution to those individuals who have received an order awarding
115 restitution under this subsection during the past fiscal year. If insufficient moneys remain in the
116 fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall
117 pay each individual who has received an order awarding restitution a pro rata share of the amount
118 such person is owed. The remaining amounts owed to such individual shall be paid from the
119 fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on
120 June thirtieth, until such time as the restitution to the individual has been paid in full. However,
121 no individual awarded restitution under this subsection shall receive more than thirty-six
122 thousand five hundred dollars during each fiscal year. No interest on unpaid restitution shall be

123 awarded to the individual. If there are no moneys remaining in the DNA profiling analysis fund,
124 then no payments shall be made under this subsection. No individual who has been determined
125 by the court to be actually innocent shall be responsible for the costs of care under section
126 217.831, RSMo.

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

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

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

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