

SECOND REGULAR SESSION

[CORRECTED]

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1322

93RD GENERAL ASSEMBLY

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Reported from the Committee on Crime Prevention and Public Safety March 15, 2006 with recommendation that House Committee Substitute for House Bill No. 1322 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 28, 2006 with recommendation that House Committee Substitute for House Bill No. 1322 Do Pass with no time limit for debate.

Taken up for Perfection April 19, 2006. House Committee Substitute for House Bill No. 1322 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

3823L.02P

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## AN ACT

To repeal sections 488.5050, 650.050, 650.055, 650.056, 650.057, and 650.100, RSMo, and to enact in lieu thereof seven new sections relating to DNA profiling analysis, with penalty provisions and an expiration date.

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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Section A. Sections 488.5050, 650.050, 650.055, 650.056, 650.057, and 650.100, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as section 488.5050, 650.050, 650.055, 650.056, 650.057, 650.058, and 650.100, to read as follows:

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

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

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.

7 cases in which the defendant pleads guilty or nolo contendere to or is convicted of a  
8 misdemeanor.

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

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

18         5. The provisions of subsections 1 and 2 of this section shall expire on August 28, [2006]  
19 **2013.**

650.050. 1. The Missouri department of public safety shall develop and establish a  
2 "DNA Profiling System", referred to in sections 650.050 to 650.100 as the system to assist  
3 federal, state, and local criminal justice and law enforcement agencies in the identification,  
4 investigation, and prosecution of individuals as well as the identification of missing or  
5 unidentified persons.

6         **2.** This DNA profiling system shall consist of qualified Missouri forensic laboratories  
7 approved by the Federal Bureau of Investigation.

8         **3.** The Missouri state highway patrol crime laboratory shall be the administrator of the  
9 state's DNA index system.

10         [2.] **4.** The DNA profiling system as established in this section shall be compatible with  
11 that used by the Federal Bureau of Investigation to ensure that DNA records are fully  
12 exchangeable between DNA laboratories and that quality assurance standards issued by the  
13 director of the Federal Bureau of Investigation are applied and performed.

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

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

8         (2) Upon entering or before release from a county jail or detention facility, state  
9 correctional facility, or any other detention facility or institution, whether operated by private,

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

12 (3) When the state accepts a person from another state under any interstate compact, or  
13 under any other reciprocal agreement with any county, state, or federal agency, or any other  
14 provision of law, whether or not the person is confined or released, the acceptance is conditional  
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. For the purposes of this subsection  
97 the term "actually innocent" shall mean:

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

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

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

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

105

106 An individual who receives restitution pursuant to this subsection shall be prohibited from  
107 seeking any civil redress from the state, its departments and agencies, or any employee thereof,  
108 or any political subdivision or its employees. This subsection shall not be construed as a waiver  
109 of sovereign immunity for any purposes other than the restitution provided for herein. All  
110 restitution paid pursuant to this subsection shall be paid from moneys in the DNA profiling  
111 analysis fund. The department shall determine the aggregate amount of restitution owed during  
112 a fiscal year. If moneys remain in the fund on June thirtieth of each fiscal year, the remaining  
113 moneys shall be used to pay restitution to those individuals who have received an order awarding  
114 restitution under this subsection during the past fiscal year. If insufficient moneys remain in the  
115 fund on June thirtieth of each fiscal year to pay restitution to such persons, the department shall  
116 pay each individual who has received an order awarding restitution a pro rata share of the amount  
117 such person is owed. The remaining amounts owed to such individual shall be paid from the

118 fund on June thirtieth of each subsequent fiscal year, provided moneys remain in the fund on  
119 June thirtieth, until such time as the restitution to the individual has been paid in full. However,  
120 no individual awarded restitution under this subsection shall receive more than thirty-six  
121 thousand five hundred dollars during each fiscal year. No interest on unpaid restitution shall be  
122 awarded to the individual. If there are no moneys remaining in the DNA profiling analysis fund,  
123 then no payments shall be made under this subsection. No individual who has been determined  
124 by the court to be actually innocent shall be responsible for the costs of care under section  
125 217.831, RSMo.

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

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

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

650.056. Any evidence leading to a conviction of a felony described in subsection 1 of  
2 section 650.055 which has been or can be tested for DNA shall be preserved by the [Missouri  
3 state highway patrol] **investigating law enforcement agency**.

650.057. 1. Except as provided in subsection 3 of this section, no local law enforcement  
2 agency may establish or operate a system [before January 15, 1992, and] unless:

3 (1) The equipment of the local system is compatible with that of the state system; and

4 (2) The local system is equipped to receive and answer inquiries from the Missouri DNA  
5 profiling system or FBI databank and transmit data to the Missouri DNA profiling system and  
6 FBI databank; and

7 (3) The procedure and rules for the collection, analysis, storage, expungement and use  
8 of DNA profiling data do not conflict with procedures and rules applicable to the Missouri  
9 system and the FBI DNA databank.

10 2. The Missouri department of public safety shall adopt rules to implement this section.

11 3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local law  
12 enforcement agency from performing DNA profiling analysis in individual cases to assist law  
13 enforcement officials and prosecutors in the preparation and use of DNA evidence for  
14 presentation in court. Implementation of sections 650.050 to 650.057 shall be subject to future  
15 appropriations except for section 650.050.

**650.058. 1. Notwithstanding the sovereign immunity of the state, any individual  
2 who was found guilty of a felony in a Missouri court and was later determined to be  
3 "actually innocent" of such crime solely as a result of DNA profiling analysis may be paid  
4 restitution. The individual may receive an amount of fifty dollars per day for each day of**

5 post-conviction incarceration for the crime for which the individual is determined to be  
6 actually innocent. The petition for the payment of said restitution shall be filed with the  
7 sentencing court. For the purposes of this section, the term "actually innocent" shall  
8 mean:

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

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

12 (3) The individual was not serving any term of a sentence for any other crime  
13 concurrently with the sentence for which he or she is determined to be actually innocent,  
14 unless such individual was serving another concurrent sentence because his or her parole  
15 was revoked by a court or the board of probation and parole in connection with the crime  
16 for which the person has been exonerated; and

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

21

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

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

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

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

43           3. A petition for payment of restitution under this section may only be filed by the  
44 individual determined to be actually innocent or the individual's legal guardian. No claim  
45 or petition for restitution under this section may be filed by the individual's heirs or  
46 assigns. An individual's right to receive restitution under this section is not assignable or  
47 otherwise transferrable. The state's obligation to pay restitution under this section shall  
48 cease upon the individual's death. Any beneficiary designation that purports to bequeath,  
49 assign, or otherwise convey the right to receive such restitution shall be void and  
50 unenforceable.

51           4. An individual who is determined to be "actually innocent" of a crime under this  
52 chapter shall automatically be granted an order of expungement from the court in which  
53 he or she pled guilty or was sentenced to expunge from all official records all recordations  
54 of his or her arrest, plea, trial or conviction. Upon granting of the order of expungement,  
55 the records and files maintained in any administrative or court proceeding in an associate  
56 or circuit division of the court shall be confidential and only available to the parties or by  
57 order of the court for good cause shown. The effect of such order shall be to restore such  
58 person to the status he or she occupied prior to such arrest, plea or conviction and as if  
59 such event had never taken place. No person as to whom such order has been entered shall  
60 be held thereafter under any provision of any law to be guilty of perjury or otherwise  
61 giving a false statement by response to any inquiry made of him or her for any purpose  
62 whatsoever and no such inquiry shall be made for information relating to an expungement  
63 under this section.

          650.100. The following words shall have the following meanings unless a different  
2 meaning clearly appears from the context:

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

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



11           [(2)] (3) "Crime laboratories", those crime laboratories existing on September 28, 1979,  
12 in certain cities in this state and which have at least once prior to September 28, 1979, received  
13 funding through the Missouri council on criminal justice, and such other crime laboratories that  
14 may be created to serve specified regions of the state as determined by the director of the  
15 department of public safety;

16           [(3)] (4) "Department", the Missouri department of public safety;

17           [(4)] (5) "DNA", deoxyribonucleic acid. DNA is located in the cells and provides an  
18 individual's personal genetic blueprint. DNA encodes genetic information that is the basis of  
19 human heredity and forensic identification;

20           [(5)] (6) "DNA profile" refers to the collective results of all DNA identification analyses  
21 on an individual's DNA sample;

22           [(6)] (7) "DNA record", the DNA identification information stored in the state DNA  
23 database or CODIS. The DNA record is the result obtained from the DNA analysis. The DNA  
24 record is comprised of the characteristics of a DNA sample, which are of value in establishing  
25 the identity of individuals, **the DNA profile as well as data required to manage and operate**  
26 **the state's DNA database, to include the specimen identification number;**

27           [(7)] (8) "DNA sample", a biological sample provided by any person with respect to  
28 offenses covered by section 650.055 or submitted to the Missouri state highway patrol crime  
29 laboratory pursuant to sections 650.050 to 650.100 for analysis or storage or both;

30           (9) **"Forensic DNA analysis", the identification and evaluation of biological**  
31 **evidence in criminal matters using DNA technologies;**

32           [(8)] (10) "Local funds", any funds not provided by the federal government.

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