

FIRST REGULAR SESSION

# HOUSE BILL NO. 670

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor), BRINGER, SKAGGS, LeVOTA, PRATT, STORCH, FLOOK, NOLTE, KRAUS, WITTE, PAGE, ZWEIFEL, SALVA, DOUGHERTY, MEADOWS, LOWE (44), VOGT, KRATKY, GRILL, McCLANAHAN, HARRIS (23), GEORGE, COOPER (120), WILDBERGER AND HOLSMAN (Co-sponsors).

Read 1st time January 30, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1821L.011

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### AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof one new section 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Section A. Section 650.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.055, to read as follows: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 is arrested for a felony or any offense under chapter 566, RSMo, every juvenile who is adjudicated to have committed an act that would be a felony if committed by an adult, and every** individual, in a Missouri circuit court, who pleads guilty to or is found guilty 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 any jail or detention facility following an arrest for a felony or any offense under chapter 566, RSMo; or**

(2) **Upon adjudication or before release from the care, custody, and control of the juvenile detention system for any juvenile who is adjudicated to have committed an act that would be a felony if committed by an adult; 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.

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

15           [(2)] (4) Upon entering or before release from a county jail or detention facility, state  
16 correctional facility, or any other detention facility or institution, whether operated by private,  
17 local, or state agency, or any mental health facility if committed as a sexually violent predator  
18 pursuant to sections 632.480 to 632.513, RSMo; or

19           [(3)] (5) When the state accepts a person from another state under any interstate compact,  
20 or under any other reciprocal agreement with any county, state, or federal agency, or any other  
21 provision of law, whether or not the person is confined or released, the acceptance is conditional  
22 on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or  
23 pleaded nolo contendere to an offense in any other jurisdiction which would be considered a  
24 qualifying offense as defined in this section if committed in this state, or if the person was  
25 convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other  
26 jurisdiction; or

27           [(4)] (6) If such individual is under the jurisdiction of the department of corrections.  
28 Such jurisdiction includes persons currently incarcerated, persons on probation, as defined in  
29 section 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

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

44           3. The procedure and rules for the collection, analysis, storage, expungement, use of  
45 DNA database records and privacy concerns shall not conflict with procedures and rules  
46 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA  
47 databank system.

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

50           5. Implementation of sections 650.050 to 650.100 shall be subject to future  
51 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of  
52 Investigation's DNA databank system.

53           6. All DNA records and biological materials retained in the DNA profiling system are  
54 considered closed records pursuant to chapter 610, RSMo. **All biological materials retained**  
55 **in the DNA profiling system which were collected from persons arrested for a felony or any**  
56 **offense under chapter 566, RSMo, shall be automatically destroyed within ninety days after**  
57 **the final disposition of such case if the arrest does not result in a plea of guilty, or a finding**  
58 **of guilt or nolo contendere.** All records containing any information held or maintained by any  
59 person or by any agency, department, or political subdivision of the state concerning an  
60 individual's DNA profile shall be strictly confidential and shall not be disclosed, except to:

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

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

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

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

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

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

80           (1) A person whose DNA record or DNA profile has been included in the state DNA  
81 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,  
82 650.052, and 650.100 may request expungement on the grounds that the conviction has been

83 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that  
84 person's DNA record or DNA profile was based has been set aside.

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

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

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

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