

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NOS. 754 & 794
94TH GENERAL ASSEMBLY

Reported from the Committee on Crime Prevention and Public Safety April 30, 2008 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 754 & 794 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

D. ADAM CRUMBLISS, Chief Clerk

3690L.06C

AN ACT

To repeal sections 650.055 and 650.056, RSMo, and to enact in lieu thereof two new sections relating to the DNA profiling system, with penalty provisions.

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

Section A. Sections 650.055 and 650.056, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 650.055 and 650.056, to read as follows:

650.055. 1. Every individual[, **who pleads guilty or nolo contendere to or is convicted of or found guilty** in a Missouri circuit court[, who pleads guilty to or is found guilty] of a felony or any offense under chapter 566, RSMo, **or a juvenile who is adjudicated in a Missouri juvenile court of an offense which would constitute a felony under chapter 565, RSMo, or any offense under chapter 566, RSMo, if committed by an adult, or an individual who** 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, **buccal swab**, or **other** 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 before release from the jurisdiction of the juvenile court; 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,

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

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

23 (4) If such individual is under the jurisdiction of the department of corrections. Such
24 jurisdiction includes persons currently incarcerated, persons on probation, as defined in section
25 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

26 2. The Missouri state highway patrol and department of corrections shall be responsible
27 for ensuring adherence to the law.

28 3. Any person required to provide a DNA sample pursuant to this section shall be
29 required to provide such sample, without the right of refusal, at a collection site designated by
30 the Missouri state highway patrol and the department of corrections, **or the law enforcement**
31 **agency of the county or city not within a county in which the conviction, adjudication,**
32 **finding of guilty, plea of guilty, or plea of nolo contendere occurred.**

33 4. Authorized personnel collecting or assisting in the collection of samples shall not be
34 liable in any civil or criminal action when the act is performed in a reasonable manner. Such
35 force may be used as necessary to the effectual carrying out and application of such processes
36 and operations.

37 5. **For individuals included in subsection 1 of this section, the knowing refusal or**
38 **knowing failure to provide a DNA sample is a class A misdemeanor.**

39 6. The enforcement of these provisions by the authorities in charge of state correctional
40 institutions, **juvenile detention facilities**, and others having custody [or] , jurisdiction, **or**
41 **supervision** over those who have been convicted of, **found guilty of**, pleaded guilty to, or
42 pleaded nolo contendere to felony offenses **or offenses under chapter 566, RSMo, or**
43 **authorities having custody, jurisdiction, or supervision over juvenile offenders who are**
44 **adjudicated in a Missouri juvenile court of an offense that would constitute a felony under**
45 **chapter 565, RSMo, or any offense under chapter 566, RSMo, if committed by an adult**
46 which shall not be set aside or reversed is hereby made mandatory. The board of probation or
47 parole shall recommend that an individual who refuses to provide a DNA sample have his or her

48 probation or parole revoked. In the event that a person's DNA sample is not adequate for any
49 reason, the person shall provide another sample for analysis.

50 [3.] 7. The procedure and rules for the collection, analysis, storage, expungement, use
51 of DNA database records and privacy concerns shall not conflict with procedures and rules
52 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA
53 databank system.

54 [4.] 8. **Knowingly** unauthorized [uses or] **use of, knowing attempt to use, knowing**
55 dissemination of **or attempt to disseminate** individually identifiable DNA information in a
56 **DNA** database for purposes other than criminal justice or law enforcement is a class A
57 misdemeanor. **Knowingly unauthorized tampering with, knowing attempt to tamper with,**
58 **or other knowingly unauthorized use of, knowing attempt to use, or knowing dissemination**
59 **of or attempt to disseminate any sample collected for the DNA profiling system is a class**
60 **A misdemeanor.**

61 [5.] 9. 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.] 10. All DNA records and biological materials retained in the DNA profiling system
65 are considered closed records pursuant to chapter 610, RSMo. All records containing any
66 information held or maintained by any person or by any agency, department, or political
67 subdivision of the state concerning an individual's DNA profile shall be strictly confidential and
68 shall not be disclosed, except to:

69 (1) Peace officers, as defined in section 590.010, RSMo, 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, RSMo;

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

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

77 [7.] 11. Any person who obtains records pursuant to the provisions of this section shall
78 use such records only for investigative and prosecutorial purposes, including but not limited to
79 use at any criminal trial, hearing, or proceeding; or for law enforcement identification purposes,
80 including identification of human remains. Such records shall be considered strictly confidential
81 and shall only be released as authorized by this section.

82 [8.] 12. An individual may request expungement of his or her DNA sample and DNA
83 profile through the court issuing the reversal or dismissal. A certified copy of the court order

84 establishing that such conviction has been reversed or guilty plea or plea of nolo contendere has
85 been set aside shall be sent to the Missouri state highway patrol crime laboratory. Upon receipt
86 of the court order, the laboratory will determine that the requesting individual has no other
87 qualifying offense as a result of any separate plea or conviction prior to expungement.

88 (1) A person whose DNA record or DNA profile has been included in the state DNA
89 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,
90 650.052, and 650.100 may request expungement on the grounds that the conviction has been
91 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that
92 person's DNA record or DNA profile was based has been set aside.

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

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

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

650.056. Any evidence leading to a **plea of guilty, plea of nolo contendere, finding of**
2 **guilt or** conviction of [a felony] **an offense or juvenile adjudication** described in subsection
3 1 of section 650.055 which has been or can be tested for DNA shall be preserved by the
4 investigating law enforcement agency.

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