

SECOND REGULAR SESSION

HOUSE BILL NO. 2868

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKER.

6519H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof one new section relating to the collection of biological samples.

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Section A. Section 650.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.055, to read as follows: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:

- (1) Is found guilty of ~~[a felony or]~~ any offense under chapter 566; or
- (2) Is seventeen years of age or older and arrested for ~~[burglary in the first degree under section 569.160,]~~ **a felony offense** or burglary in the second degree under section 569.170~~], or a felony offense under chapter 565, 566, 567, 568, or 573];~~ or
- (3) Has been determined to be a sexually violent predator pursuant to sections 632.480 to 632.513; or
- (4) Is an individual required to register as a sexual offender under sections 589.400 to 589.425;

shall have a fingerprint and blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis.

2. Any individual subject to DNA collection and profiling analysis under this section shall provide a DNA sample:

- (1) Upon booking at a county jail or detention facility; or
- (2) Upon entering or before release from the department of corrections reception and diagnostic centers; 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.

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

22 (4) When the state accepts a person from another state under any interstate compact,
23 or under any other reciprocal agreement with any county, state, or federal agency, or any other
24 provision of law, whether or not the person is confined or released, the acceptance is
25 conditional on the person providing a DNA sample if the person was found guilty of a felony
26 offense in any other jurisdiction; or

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

30 (6) At the time of registering as a sex offender under sections 589.400 to 589.425.

31 **3. Notwithstanding the provisions of subsection 2 of this section, if it is**
32 **determined that the person's DNA sample has been included in the DNA database and**
33 **has not been subject to a court order expunging the record from the DNA database, no**
34 **additional sample is required.**

35 **4.** The Missouri state highway patrol and department of corrections shall be
36 responsible for ensuring adherence to the law. Any person required to provide a DNA sample
37 pursuant to this section shall be required to provide such sample, without the right of refusal,
38 at a collection site designated by the Missouri state highway patrol and the department of
39 corrections. Authorized personnel collecting or assisting in the collection of samples shall not
40 be liable in any civil or criminal action when the act is performed in a reasonable manner.
41 Such force may be used as necessary to the effectual carrying out and application of such
42 processes and operations. The enforcement of these provisions by the authorities in charge of
43 state correctional institutions and others having custody or jurisdiction over individuals
44 included in subsection 1 of this section which shall not be set aside or reversed is hereby
45 made mandatory. The division of probation and parole shall recommend that an individual on
46 probation or parole who refuses to provide a DNA sample have his or her probation or parole
47 revoked. In the event that a person's DNA sample is not adequate for any reason, the person
48 shall provide another sample for analysis.

49 **[4:] 5.** The procedure and rules for the collection, analysis, storage, expungement, use
50 of DNA database records and privacy concerns shall not conflict with procedures and rules
51 applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's
52 DNA databank system.

53 ~~[5-]~~ 6. Unauthorized use or dissemination of individually identifiable DNA
54 information in a database for purposes other than criminal justice or law enforcement is a
55 class A misdemeanor.

56 ~~[6-]~~ 7. Implementation of sections 650.050 to 650.100 shall be subject to future
57 appropriations to keep Missouri's DNA system compatible with the Federal Bureau of
58 Investigation's DNA databank system.

59 ~~[7-]~~ 8. All DNA records and biological materials retained in the DNA profiling
60 system are considered closed records pursuant to chapter 610. All records containing any
61 information held or maintained by any person or by any agency, department, or political
62 subdivision of the state concerning an individual's DNA profile shall be strictly confidential
63 and shall not be disclosed, except to:

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

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

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

70 (4) The individual whose DNA sample has been collected, or his or her attorney; or

71 (5) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme
72 court judges, and their employees who need to obtain such records to perform their public
73 duties.

74 ~~[8-]~~ 9. Any person who obtains records pursuant to the provisions of this section shall
75 use such records only for investigative and prosecutorial purposes, including but not limited
76 to use at any criminal trial, hearing, or proceeding; or for law enforcement identification
77 purposes, including identification of human remains. Such records shall be considered
78 strictly confidential and shall only be released as authorized by this section.

79 ~~[9-]~~ 10. (1) An individual may request expungement of his or her DNA sample and
80 DNA profile through the court issuing the reversal or dismissal, or through the court granting
81 an expungement of all official records under section 568.040. A certified copy of the court
82 order establishing that such conviction has been reversed, guilty plea has been set aside, or
83 expungement has been granted under section 568.040 shall be sent to the Missouri state
84 highway patrol crime laboratory. Upon receipt of the court order, the laboratory will
85 determine that the requesting individual has no other qualifying offense as a result of any
86 separate plea or conviction and no other qualifying arrest prior to expungement.

87 (2) A person whose DNA record or DNA profile has been included in the state DNA
88 database in accordance with this section and sections 650.050, 650.052, and 650.100 may
89 request expungement on the grounds that the conviction has been reversed, the guilty plea on

90 which the authority for including that person's DNA record or DNA profile was based has
91 been set aside, or an expungement of all official records has been granted by the court under
92 section 568.040.

93 (3) Upon receipt of a written request for expungement, a certified copy of the final
94 court order reversing the conviction, setting aside the plea, or granting an expungement of all
95 official records under section 568.040, and any other information necessary to ascertain the
96 validity of the request, the Missouri state highway patrol crime laboratory shall expunge all
97 DNA records and identifiable information in the state DNA database pertaining to the person
98 and destroy the DNA sample of the person, unless the Missouri state highway patrol
99 determines that the person is otherwise obligated to submit a DNA sample. Within thirty days
100 after the receipt of the court order, the Missouri state highway patrol shall notify the
101 individual that it has expunged his or her DNA sample and DNA profile, or the basis for its
102 determination that the person is otherwise obligated to submit a DNA sample.

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

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

110 ~~[10.]~~ 11. When a DNA sample is taken from an individual pursuant to subdivision (2)
111 of subsection 1 of this section and the prosecutor declines prosecution and notifies the
112 arresting agency of that decision, the arresting agency shall notify the Missouri state highway
113 patrol crime laboratory within ninety days of receiving such notification. Within thirty days
114 of being notified by the arresting agency that the prosecutor has declined prosecution, the
115 Missouri state highway patrol crime laboratory shall determine whether the individual has
116 any other qualifying offenses or arrests that would require a DNA sample to be taken and
117 retained. If the individual has no other qualifying offenses or arrests, the crime laboratory
118 shall expunge all DNA records in the database taken at the arrest for which the prosecution
119 was declined pertaining to the person and destroy the DNA sample of such person.

120 ~~[11.]~~ 12. When a DNA sample is taken of an arrestee for any offense listed under
121 subsection 1 of this section and charges are filed:

122 (1) If the charges are later withdrawn, the prosecutor shall notify the state highway
123 patrol crime laboratory that such charges have been withdrawn;

124 (2) If the case is dismissed, the court shall notify the state highway patrol crime
125 laboratory of such dismissal;

126 (3) If the court finds at the preliminary hearing that there is no probable cause that the
127 defendant committed the offense, the court shall notify the state highway patrol crime
128 laboratory of such finding;

129 (4) If the defendant is found not guilty, the court shall notify the state highway patrol
130 crime laboratory of such verdict.

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132 If the state highway patrol crime laboratory receives notice under this subsection, such crime
133 laboratory shall determine, within thirty days, whether the individual has any other qualifying
134 offenses or arrests that would require a DNA sample to be taken. If the individual has no
135 other qualifying arrests or offenses, the crime laboratory shall expunge all DNA records in the
136 database pertaining to such person and destroy the person's DNA sample.

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