

SENATE BILL NO. 1458

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

6299S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof one new section relating to collection of biological samples, 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Section A. Section 650.055, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 650.055,
3 to read as follows:

650.055. 1. Every individual who:

2 (1) Is found guilty of a [felony or any] offense under
3 chapter 566; or

4 (2) Is seventeen years of age or older and arrested
5 for [burglary in the first degree under section 569.160,] a
6 **felony offense** or burglary in the second degree under
7 section 569.170[, or a felony offense under chapter 565,
8 566, 567, 568, or 573]; or

9 (3) Has been determined to be a sexually violent
10 predator pursuant to sections 632.480 to 632.513; or

11 (4) Is an individual required to register as a sexual
12 offender under sections 589.400 to 589.425;

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

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

19 (1) Upon booking at a county jail or detention
20 facility; or

21 (2) Upon entering or before release from the
22 department of corrections reception and diagnostic centers;
23 or

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

30 (4) When the state accepts a person from another state
31 under any interstate compact, or under any other reciprocal
32 agreement with any county, state, or federal agency, or any
33 other provision of law, whether or not the person is
34 confined or released, the acceptance is conditional on the
35 person providing a DNA sample if the person was found guilty
36 of a felony offense in any other jurisdiction; or

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

42 (6) At the time of registering as a sex offender under
43 sections 589.400 to 589.425; **or**

44 **(7) Notwithstanding the provisions of this subsection**
45 **to the contrary, if it is determined that the person's DNA**
46 **sample has been included in the DNA database, and has not**

47 **been subject to a court order expunging the record from the**
48 **DNA database, no additional sample is required.**

49 3. The Missouri state highway patrol and department of
50 corrections shall be responsible for ensuring adherence to
51 the law. Any person required to provide a DNA sample
52 pursuant to this section shall be required to provide such
53 sample, without the right of refusal, at a collection site
54 designated by the Missouri state highway patrol and the
55 department of corrections. Authorized personnel collecting
56 or assisting in the collection of samples shall not be
57 liable in any civil or criminal action when the act is
58 performed in a reasonable manner. Such force may be used as
59 necessary to the effectual carrying out and application of
60 such processes and operations. The enforcement of these
61 provisions by the authorities in charge of state
62 correctional institutions and others having custody or
63 jurisdiction over individuals included in subsection 1 of
64 this section which shall not be set aside or reversed is
65 hereby made mandatory. The division of probation and parole
66 shall recommend that an individual on probation or parole
67 who refuses to provide a DNA sample have his or her
68 probation or parole revoked. In the event that a person's
69 DNA sample is not adequate for any reason, the person shall
70 provide another sample for analysis.

71 4. The procedure and rules for the collection,
72 analysis, storage, expungement, use of DNA database records
73 and privacy concerns shall not conflict with procedures and
74 rules applicable to the Missouri DNA profiling system and
75 the Federal Bureau of Investigation's DNA databank system.

76 5. Unauthorized use or dissemination of individually
77 identifiable DNA information in a database for purposes

78 other than criminal justice or law enforcement is a class A
79 misdemeanor.

80 6. Implementation of sections 650.050 to 650.100 shall
81 be subject to future appropriations to keep Missouri's DNA
82 system compatible with the Federal Bureau of Investigation's
83 DNA databank system.

84 7. All DNA records and biological materials retained
85 in the DNA profiling system are considered closed records
86 pursuant to chapter 610. All records containing any
87 information held or maintained by any person or by any
88 agency, department, or political subdivision of the state
89 concerning an individual's DNA profile shall be strictly
90 confidential and shall not be disclosed, except to:

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

94 (2) The attorney general or any assistant attorneys
95 general acting on his or her behalf, as defined in chapter
96 27;

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

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

102 (5) Associate circuit judges, circuit judges, judges
103 of the courts of appeals, supreme court judges, and their
104 employees who need to obtain such records to perform their
105 public duties.

106 8. Any person who obtains records pursuant to the
107 provisions of this section shall use such records only for
108 investigative and prosecutorial purposes, including but not
109 limited to use at any criminal trial, hearing, or

proceeding; or for law enforcement identification purposes, including identification of human remains. Such records shall be considered strictly confidential and shall only be released as authorized by this section.

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

(2) A person whose DNA record or DNA profile has been included in the state DNA database in accordance with this section and sections 650.050, 650.052, and 650.100 may request expungement on the grounds that the conviction has been reversed, the guilty plea on which the authority for including that person's DNA record or DNA profile was based has been set aside, or an expungement of all official records has been granted by the court under section 568.040.

(3) Upon receipt of a written request for expungement, a certified copy of the final court order reversing the conviction, setting aside the plea, or granting an expungement of all official records under section 568.040, and any other information necessary to ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall expunge all DNA records and

identifiable information in the state DNA database pertaining to the person and destroy the DNA sample of the person, unless the Missouri state highway patrol determines that the person is otherwise obligated to submit a DNA sample. Within thirty days after the receipt of the court order, the Missouri state highway patrol shall notify the individual that it has expunged his or her DNA sample and DNA profile, or the basis for its determination that the person is otherwise obligated to submit a DNA sample.

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

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

10. When a DNA sample is taken from an individual pursuant to subdivision (2) of subsection 1 of this section and the prosecutor declines prosecution and notifies the arresting agency of that decision, the arresting agency shall notify the Missouri state highway patrol crime laboratory within ninety days of receiving such notification. Within thirty days of being notified by the arresting agency that the prosecutor has declined prosecution, the Missouri state highway patrol crime laboratory shall determine whether the individual has any other qualifying offenses or arrests that would require a DNA sample to be taken and retained. If the individual has no other qualifying offenses or arrests, the crime

laboratory shall expunge all DNA records in the database taken at the arrest for which the prosecution was declined pertaining to the person and destroy the DNA sample of such person.

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

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

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

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

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

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

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