

SECOND REGULAR SESSION

HOUSE BILL NO. 2083

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BLACK.

5366H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 650.055, 650.057, 650.058, and 650.100, RSMo, and to enact in lieu thereof four new sections relating to the collection of DNA, with a penalty provision.

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

Section A. Sections 650.055, 650.057, 650.058, and 650.100, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 650.055, 650.057, 650.058,
3 and 650.100, to read as follows:

650.055. 1. Every individual who:

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

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

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

8 (4) Is an individual required to register as a sexual offender under sections 589.400 to
9 589.425; shall have a fingerprint and blood or scientifically accepted biological sample collected
10 for purposes of DNA profiling analysis.

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

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

14 (2) Upon entering or before release from the department of corrections reception and
15 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.

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

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

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

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

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

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

46 5. Unauthorized use or dissemination of individually identifiable DNA information in
47 a database for purposes other than criminal justice or law enforcement is a class A misdemeanor.

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

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

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

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

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

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

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

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

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

76 (1) A person whose DNA record or DNA profile has been included in the state DNA
77 database in accordance with this section and sections 650.050, 650.052, and 650.100 may request
78 expungement on the grounds that the conviction has been reversed, or the guilty plea on which
79 the authority for including that person's DNA record or DNA profile was based has been set
80 aside.

81 (2) Upon receipt of a written request for expungement, a certified copy of the final court
82 order reversing the conviction or setting aside the plea and any other information necessary to
83 ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall
84 expunge all DNA records and identifiable information in the state DNA database pertaining to
85 the person and destroy the DNA sample of the person, unless the Missouri state highway patrol
86 determines that the person is otherwise obligated to submit a DNA sample. Within thirty days

87 after the receipt of the court order, the Missouri state highway patrol shall notify the individual
88 that it has expunged his or her DNA sample and DNA profile, or the basis for its determination
89 that the person is otherwise obligated to submit a DNA sample.

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

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

97 10. When a DNA sample is taken from an individual pursuant to subdivision (2) of
98 subsection 1 of this section and the prosecutor declines prosecution and notifies the arresting
99 agency of that decision, the arresting agency shall notify the Missouri state highway patrol crime
100 laboratory within ninety days of receiving such notification. Within thirty days of being notified
101 by the arresting agency that the prosecutor has declined prosecution, the Missouri state highway
102 patrol crime laboratory shall determine whether the individual has any other qualifying offenses
103 or arrests that would require a DNA sample to be taken and retained. If the individual has no
104 other qualifying offenses or arrests, the crime laboratory shall expunge all DNA records in the
105 database taken at the arrest for which the prosecution was declined pertaining to the person and
106 destroy the DNA sample of such person.

107 11. When a DNA sample is taken of an arrestee for any offense listed under subsection
108 1 of this section and charges are filed:

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

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

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

116 (4) If the defendant is found not guilty, the court shall notify the state highway patrol
117 crime laboratory of such verdict. If the state highway patrol crime laboratory receives notice
118 under this subsection, such crime laboratory shall determine, within thirty days, whether the
119 individual has any other qualifying offenses or arrests that would require a DNA sample to be
120 taken. If the individual has no other qualifying arrests or offenses, the crime laboratory shall
121 expunge all DNA records in the database pertaining to such person and destroy the person's DNA

122 sample.] **Any DNA sample collected shall be retained in the state DNA database and shall**
123 **not be removed from such database for any reason.**

650.057. 1. Except as provided in subsection 3 of this section, no local law
2 enforcement agency may establish or operate a system unless:

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

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

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

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

13 3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local law
14 enforcement agency from performing DNA profiling analysis in individual cases to assist
15 law enforcement officials and prosecutors in the preparation and use of DNA evidence
16 for presentation in court. Implementation of sections 650.050 to 650.057 shall be subject
17 to future 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
5 of postconviction incarceration for the crime for which the individual is determined to be
6 actually innocent.

7 The petition for the payment of said restitution shall be filed with the sentencing court.
8 For the purposes of this section, the term "actually innocent" shall 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, or testing by the order of any state or
18 federal court, if such person was exonerated on or before August 28, 2004, or testing
19 ordered under section 650.055, if such person was or is exonerated after August 28, 2004,
20 demonstrates a person's innocence of the crime for which the person is in custody. Any
21 individual who receives restitution under this section shall be prohibited from seeking any
22 civil redress from the state, its departments and agencies, or any employee thereof, or any
23 political subdivision or its employees. This section shall not be construed as a waiver of
24 sovereign immunity for any purposes other than the restitution provided for herein. The
25 department of corrections shall determine the aggregate amount of restitution owed
26 during a fiscal year. If insufficient moneys are appropriated each fiscal year to pay
27 restitution to such persons, the department shall pay each individual who has received an
28 order awarding restitution a pro rata share of the amount appropriated. Provided
29 sufficient moneys are appropriated to the department, the amounts owed to such
30 individual shall be paid on June thirtieth of each subsequent fiscal year, until such time
31 as the restitution to the individual has been paid in full. However, no individual awarded
32 restitution under this subsection shall receive more than thirty-six thousand five hundred
33 dollars during each fiscal year. No interest on unpaid restitution shall be awarded to the
34 individual. No individual who has been determined by the court to be actually innocent
35 shall be responsible for the costs of care under section 217.831.

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

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

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

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
47 or 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
54 recordations of his or her arrest, plea, trial or conviction; **however, any DNA sample**
55 **collected shall remain in the state DNA database maintained under this chapter.**
56 Upon granting of the order of expungement, the records and files maintained in any
57 administrative or court proceeding in an associate or circuit division of the court shall be
58 confidential and only available to the parties or by order of the court for good cause
59 shown. The effect of such order shall be to restore such person to the status he or she
60 occupied prior to such arrest, plea or conviction and as if such event had never taken
61 place. No person as to whom such order has been entered shall be held thereafter under
62 any provision of any law to be guilty of perjury or otherwise giving a false statement by
63 reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or
64 expungement in response to any inquiry made of him or her for any purpose whatsoever
65 and no such inquiry shall be made for information relating to an expungement under this
66 section.

650.100. As used in this chapter, the following words shall have the following
2 meanings unless a different meaning clearly appears from the context:

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

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

11 (3) "Crime laboratory", a laboratory operated or supported financially by the state
12 or any unit of city, county, or other local Missouri government that employs at least one
13 scientist who examines physical evidence in criminal matters and provides expert or
14 opinion testimony with respect to such physical evidence in a state court of law;

- 15 (4) "Department", the Missouri department of public safety;
- 16 (5) "DNA", deoxyribonucleic acid. DNA is located in the cells and provides an
17 individual's personal genetic blueprint. DNA encodes genetic information that is the
18 basis of human heredity and forensic identification;
- 19 (6) "DNA profile" [refers to] , the collective results of all DNA identification
20 analyses on an individual's DNA sample;
- 21 (7) "DNA record", the DNA identification information stored in the state DNA
22 database or CODIS. The DNA record is the result obtained from the DNA analysis. The
23 DNA record is comprised of the characteristics of a DNA sample, which are of value in
24 establishing the identity of individuals, the DNA profile as well as data required to
25 manage and operate the state's DNA database, to include the specimen identification
26 number;
- 27 (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
29 crime laboratory pursuant to sections 650.050 to 650.100 for analysis or storage or both;
- 30 (9) ["Expunge", to destroy an individual's DNA sample and remove the DNA
31 record from the state DNA database;
- 32 (10)] "Forensic DNA analysis", the identification and evaluation of biological
33 evidence in criminal matters using DNA technologies;
- 34 [(11)] **(10)** "Local funds", any funds not provided by the federal government.

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