

FIRST REGULAR SESSION

SENATE BILL NO. 136

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIFTON.

Pre-filed December 1, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0410S.01I

AN ACT

To repeal section 650.055, RSMo, and to enact in lieu thereof one new section relating to the collection of biological samples from individuals arrested for felony offenses.

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Section A. Section 650.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.055, to read as follows: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, 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
- (3) Upon entering or before release from a county jail or detention facility, state correctional facility, or any other detention facility or institution, whether

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

19 operated by a private, local, or state agency, or any mental health facility if
20 committed as a sexually violent predator pursuant to sections 632.480 to 632.513;
21 or

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

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

32 (6) At the time of registering as a sex offender under sections 589.400 to
33 589.425.

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

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

54 5. Unauthorized use or dissemination of individually identifiable DNA

55 information in a database for purposes other than criminal justice or law
56 enforcement is a class A misdemeanor.

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

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

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

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

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

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

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

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

84 9. (1) An individual may request expungement of his or her DNA sample
85 and DNA profile through the court issuing the reversal or dismissal, or through
86 the court granting an expungement of all official records under section 568.040.
87 A certified copy of the court order establishing that such conviction has been
88 reversed, guilty plea has been set aside, or expungement has been granted under
89 section 568.040 shall be sent to the Missouri state highway patrol crime
90 laboratory. Upon receipt of the court order, the laboratory will determine that

91 the requesting individual has no other qualifying offense as a result of any
92 separate plea or conviction and no other qualifying arrest prior to expungement.

93 (2) A person whose DNA record or DNA profile has been included in the
94 state DNA database in accordance with this section and sections 650.050,
95 650.052, and 650.100 may request expungement on **one or more of** the
96 **following** grounds [that the conviction has been reversed, the guilty plea on
97 which the authority for including that person's DNA record or DNA profile was
98 based has been set aside, or an expungement of all official records has been
99 granted by the court under section 568.040]:

100 (a) **The conviction on which the authority for including that**
101 **person's DNA record or DNA profile was based on has been reversed;**

102 (b) **The guilty plea on which the authority for including that**
103 **person's DNA record or DNA profile was based on has been set aside;**

104 (c) **The prosecutor has declined prosecution on all alleged**
105 **offenses which, upon conviction, would authorize the inclusion of that**
106 **person's DNA record or DNA profile;**

107 (d) **The prosecutor has withdrawn all qualifying charges which,**
108 **upon conviction, would authorize the inclusion of that person's DNA**
109 **record or DNA profile;**

110 (e) **The case or cases containing all charges which, upon**
111 **conviction, would authorize the inclusion of that person's DNA record**
112 **or DNA profile, are dismissed;**

113 (f) **The court finds at a preliminary hearing that there is no**
114 **probable cause to try that person for any charge which, upon**
115 **conviction, would authorize the inclusion of that person's DNA record**
116 **or DNA profile;**

117 (g) **That person is found not guilty of all charges which, upon**
118 **conviction, would authorize the inclusion of that person's DNA record**
119 **or DNA profile.**

120 (3) Upon receipt of a written request for expungement, a certified copy of
121 the final court order reversing the conviction, setting aside the plea, or granting
122 an expungement of all official records under section 568.040, and any other
123 information necessary to ascertain the validity of the request, the Missouri state
124 highway patrol crime laboratory shall expunge all DNA records and identifiable
125 information in the state DNA database pertaining to the person and destroy the
126 DNA sample of the person, unless the Missouri state highway patrol determines

127 that the person is otherwise obligated to submit a DNA sample. Within thirty
128 days after the receipt of the court order, the Missouri state highway patrol shall
129 notify the individual that it has expunged his or her DNA sample and DNA
130 profile, or the basis for its determination that the person is otherwise obligated
131 to submit a DNA sample.

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

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

139 [10. When a DNA sample is taken from an individual pursuant to
140 subdivision (2) of subsection 1 of this section and the prosecutor declines
141 prosecution and notifies the arresting agency of that decision, the arresting
142 agency shall notify the Missouri state highway patrol crime laboratory within
143 ninety days of receiving such notification. Within thirty days of being notified by
144 the arresting agency that the prosecutor has declined prosecution, the Missouri
145 state highway patrol crime laboratory shall determine whether the individual has
146 any other qualifying offenses or arrests that would require a DNA sample to be
147 taken and retained. If the individual has no other qualifying offenses or arrests,
148 the crime laboratory shall expunge all DNA records in the database taken at the
149 arrest for which the prosecution was declined pertaining to the person and
150 destroy the DNA sample of such person.

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

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

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

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

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

162 If the state highway patrol crime laboratory receives notice under this subsection,

163 such crime laboratory shall determine, within thirty days, whether the individual
164 has any other qualifying offenses or arrests that would require a DNA sample to
165 be taken. If the individual has no other qualifying arrests or offenses, the crime
166 laboratory shall expunge all DNA records in the database pertaining to such
167 person and destroy the person's DNA sample.]

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