

SECOND REGULAR SESSION

# SENATE BILL NO. 729

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIFTON.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4688S.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Section A. Section 650.055, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 650.055, 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  
4 first degree under section 569.160, or burglary in the second degree under section  
5 569.170, or] a felony offense [under chapter 565, 566, 567, 568, or 573]; or  
6 (3) Has been determined to be a sexually violent predator pursuant to  
7 sections 632.480 to 632.513; or  
8 (4) Is an individual required to register as a sexual offender under  
9 sections 589.400 to 589.425; shall have a fingerprint and blood or scientifically  
10 accepted biological sample collected for purposes of DNA profiling analysis.

11 2. Any individual subject to DNA collection and profiling analysis under  
12 this section 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  
15 reception and diagnostic centers; or  
16 (3) Upon entering or before release from a county jail or detention facility,  
17 state correctional facility, or any other detention facility or institution, whether  
18 operated by a private, local, or state agency, or any mental health facility if

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

19 committed as a sexually violent predator pursuant to sections 632.480 to 632.513;  
20 or

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

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

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

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

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

53 5. Unauthorized use or dissemination of individually identifiable DNA  
54 information in a database for purposes other than criminal justice or law

55 enforcement is a class A misdemeanor.

56           6. 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  
58 Bureau of Investigation's DNA databank system.

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

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

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

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

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

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

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

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

90           (1) A person whose DNA record or DNA profile has been included in the

91 state DNA database in accordance with this section and sections 650.050,  
92 650.052, and 650.100 may request expungement on the grounds that the  
93 conviction has been reversed, or the guilty plea on which the authority for  
94 including that person's DNA record or DNA profile was based has been set aside.

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

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

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

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

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

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

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

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

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

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Bill

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