

# SENATE BILL NO. 851

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BECK.

3309S.01I

ADRIANE D. CROUSE, Secretary

## 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, with existing 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Section A. Section 650.055, RSMo, is repealed and one new  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, or  
6 burglary in the second degree under section 569.170, or] a  
7 felony offense [under chapter 565, 566, 567, 568, or 573]; or

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

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

12 shall have a fingerprint and blood or scientifically  
13 accepted biological sample collected for purposes of DNA  
14 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.**

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

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

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

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

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

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

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

43           3. The Missouri state highway patrol and department of  
44 corrections shall be responsible for ensuring adherence to  
45 the law. Any person required to provide a DNA sample  
46 pursuant to this section shall be required to provide such

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

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

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

74 6. Implementation of sections 650.050 to 650.100 shall  
75 be subject to future appropriations to keep Missouri's DNA  
76 system compatible with the Federal Bureau of Investigation's  
77 DNA databank system.

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

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

88           (2) The attorney general or any assistant attorneys  
89 general acting on his or her behalf, as defined in chapter  
90 27;

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

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

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

100           8. Any person who obtains records pursuant to the  
101 provisions of this section shall use such records only for  
102 investigative and prosecutorial purposes, including but not  
103 limited to use at any criminal trial, hearing, or  
104 proceeding; or for law enforcement identification purposes,  
105 including identification of human remains. Such records  
106 shall be considered strictly confidential and shall only be  
107 released as authorized by this section.

108           9. (1) An individual may request expungement of his  
109 or her DNA sample and DNA profile through the court issuing

110 the reversal or dismissal, or through the court granting an  
111 expungement of all official records under section 568.040.  
112 A certified copy of the court order establishing that such  
113 conviction has been reversed, guilty plea has been set  
114 aside, or expungement has been granted under section 568.040  
115 shall be sent to the Missouri state highway patrol crime  
116 laboratory. Upon receipt of the court order, the laboratory  
117 will determine that the requesting individual has no other  
118 qualifying offense as a result of any separate plea or  
119 conviction and no other qualifying arrest prior to  
120 expungement.

121 (2) A person whose DNA record or DNA profile has been  
122 included in the state DNA database in accordance with this  
123 section and sections 650.050, 650.052, and 650.100 [may  
124 request expungement] **shall be expunged within thirty days** on  
125 **one or more of the following** grounds [that the conviction  
126 has been reversed, the guilty plea on which the authority  
127 for including that person's DNA record or DNA profile was  
128 based has been set aside, or an expungement of all official  
129 records has been granted by the court under section 568.040]:

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

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

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

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

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

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

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

152           (3) Upon receipt of a written request for expungement,  
153 a certified copy of the final court order reversing the  
154 conviction, setting aside the plea, or granting an  
155 expungement of all official records under section 568.040,  
156 and any other information necessary to ascertain the  
157 validity of the request, the Missouri state highway patrol  
158 crime laboratory shall expunge all DNA records and  
159 identifiable information in the state DNA database  
160 pertaining to the person and destroy the DNA sample of the  
161 person, unless the Missouri state highway patrol determines  
162 that the person is otherwise obligated to submit a DNA  
163 sample. Within thirty days after the receipt of the court  
164 order, the Missouri state highway patrol shall notify the  
165 individual that it has expunged his or her DNA sample and  
166 DNA profile, or the basis for its determination that the  
167 person is otherwise obligated to submit a DNA sample.

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

172           (5) Any identification, warrant, arrest, or  
173 evidentiary use of a DNA match derived from the database

174 shall not be excluded or suppressed from evidence, nor shall  
175 any conviction be invalidated or reversed or plea set aside  
176 due to the failure to expunge or a delay in expunging DNA  
177 records.

178 [10. When a DNA sample is taken from an individual  
179 pursuant to subdivision (2) of subsection 1 of this section  
180 and the prosecutor declines prosecution and notifies the  
181 arresting agency of that decision, the arresting agency  
182 shall notify the Missouri state highway patrol crime  
183 laboratory within ninety days of receiving such  
184 notification. Within thirty days of being notified by the  
185 arresting agency that the prosecutor has declined  
186 prosecution, the Missouri state highway patrol crime  
187 laboratory shall determine whether the individual has any  
188 other qualifying offenses or arrests that would require a  
189 DNA sample to be taken and retained. If the individual has  
190 no other qualifying offenses or arrests, the crime  
191 laboratory shall expunge all DNA records in the database  
192 taken at the arrest for which the prosecution was declined  
193 pertaining to the person and destroy the DNA sample of such  
194 person.

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

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

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

203 (3) If the court finds at the preliminary hearing that  
204 there is no probable cause that the defendant committed the

205 offense, the court shall notify the state highway patrol  
206 crime laboratory of such finding;

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

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

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