

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 152

95TH GENERAL ASSEMBLY

0344S.05T

2009

AN ACT

To repeal sections 650.050, 650.052, and 650.055, RSMo, and to enact in lieu thereof three new sections relating to the DNA profiling system, with penalty provisions.

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

Section A. Sections 650.050, 650.052, and 650.055, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 650.050, 650.052, and 650.055, to read as follows:

650.050. 1. The Missouri department of public safety shall develop and establish a "DNA Profiling System", referred to in sections 650.050 to 650.100 as the system to assist federal, state, and local criminal justice and law enforcement agencies in the identification, investigation, and prosecution of individuals as well as the identification of missing or unidentified persons.

2. This DNA profiling system shall consist of qualified Missouri forensic laboratories approved by the Federal Bureau of Investigation.

3. The Missouri state highway patrol crime laboratory shall be the administrator of the state's DNA index system.

4. The DNA profiling system as established in this section shall be compatible with that used by the Federal Bureau of Investigation to ensure that DNA records are fully exchangeable between DNA laboratories and that quality assurance standards issued by the director of the Federal Bureau of Investigation are applied and performed.

5. DNA samples obtained under sections 650.050 to 650.100 shall only be analyzed consistent with sections 650.050 to 650.100 and applicable federal laws and regulations.

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.

650.052. 1. The state's DNA profiling system shall:

2 (1) Assist federal, state and local criminal justice and law enforcement agencies in the
3 identification, detection or exclusion of individuals who are subjects of the investigation or
4 prosecution of criminal offenses in which biological evidence is recovered or obtained; and

5 (2) If personally identifiable information is removed, support development of forensic
6 validation studies, forensic protocols, and the establishment and maintenance of a population
7 statistics database for federal, state, or local crime laboratories of law enforcement agencies; and

8 (3) Assist in the recovery or identification of human remains from mass disasters, or for
9 other humanitarian purposes, including identification of missing persons.

10 2. The Missouri state highway patrol shall act as the central repository for the DNA
11 profiling system and shall collaborate with the Federal Bureau of Investigation and other criminal
12 justice agencies relating to the state's participation in CODIS and the National DNA Index
13 System or in any DNA database.

14 3. The Missouri state highway patrol may promulgate rules and regulations to implement
15 the provisions of sections 650.050 to 650.100 in accordance with Federal Bureau of Investigation
16 recommendations for the form and manner of collection of blood or other scientifically accepted
17 biological samples and other procedures for the operation of sections 650.050 to 650.100. No
18 rule or portion of a rule promulgated pursuant to the authority of this section shall become
19 effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

20 4. The Missouri state highway patrol shall provide the necessary components for
21 collection of the [convicted] offender's biological samples. For qualified offenders as defined
22 by section 650.055 who are under custody and control of the department of corrections, the DNA
23 sample collection shall be performed by the department of corrections and the division of
24 probation and parole, or their authorized designee or contracted third party. For qualified
25 offenders as defined by section 650.055 who are under custody and control of a county jail, the
26 DNA sample collections shall be performed by the county jail or its authorized designee or
27 contracted third party. For qualified offenders as defined by section 650.055 who are under the
28 custody and control of companies contracted by the county or court to perform supervision
29 and/or treatment of the offender, the sheriff's department of the county assigned to the offender
30 shall perform the DNA sample collection. The specimens shall thereafter be forwarded to the
31 Missouri state highway patrol crime laboratory. Any DNA profiling analysis or collection of
32 DNA samples by the state or any county performed pursuant to sections 650.050 to 650.100 shall
33 be subject to appropriations.

34 5. The state's participating forensic DNA laboratories shall meet quality assurance
35 standards specified by the Missouri state highway patrol crime laboratory and the Federal Bureau
36 of Investigation to ensure quality DNA identification records submitted to the central repository.

37 6. The state's participating forensic DNA laboratories may provide the system for
38 identification purposes to criminal justice, law enforcement officials and prosecutors in the

39 preparation and utilization of DNA evidence for presentation in court and provide expert
40 testimony in court on DNA evidentiary issues.

41 7. The department of public safety shall have the authority to promulgate rules and
42 regulations to carry out the provisions of sections 650.050 to 650.100. Any rule or portion of
43 a rule, as that term is defined in section 536.010, RSMo, that is created under the authority
44 delegated in this section shall become effective only if it complies with and is subject to all of
45 the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section
46 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general
47 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove
48 and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority
49 and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

650.055. 1. Every individual, in a Missouri circuit court, who pleads guilty to, or is
2 found guilty of a felony or any offense under chapter 566, RSMo, **or who is seventeen years of**
3 **age or older and who is arrested for burglary in the first degree under section 569.160,**
4 **RSMo, or burglary in the second degree under section 569.170, RSMo, or a felony offense**
5 **under chapters 565, 566, 567, 568, or 573, RSMo,** or has been determined beyond a reasonable
6 doubt to be a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo, shall
7 have a blood or scientifically accepted biological sample collected for purposes of DNA profiling
8 analysis:

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

10 (2) Upon entering or before release from the department of corrections reception and
11 diagnostic centers; or

12 [(2)] (3) Upon entering or before release from a county jail or detention facility, state
13 correctional facility, or any other detention facility or institution, whether operated by private,
14 local, or state agency, or any mental health facility if committed as a sexually violent predator
15 pursuant to sections 632.480 to 632.513, RSMo; or

16 [(3)] (4) When the state accepts a person from another state under any interstate compact,
17 or under any other reciprocal agreement with any county, state, or federal agency, or any other
18 provision of law, whether or not the person is confined or released, the acceptance is conditional
19 on the person providing a DNA sample if the person was convicted of, pleaded guilty to, or
20 pleaded nolo contendere to an offense in any other jurisdiction which would be considered a
21 qualifying offense as defined in this section if committed in this state, or if the person was
22 convicted of, pleaded guilty to, or pleaded nolo contendere to any equivalent offense in any other
23 jurisdiction; or

24 [(4)] (5) If such individual is under the jurisdiction of the department of corrections.
25 Such jurisdiction includes persons currently incarcerated, persons on probation, as defined in
26 section 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

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

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

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

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

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

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

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

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

61 (4) **The individual whose DNA sample has been collected, or his or her attorney;**
62 **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 7. 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 8. **Within ninety days of warrant refusal, the arresting agency shall notify the**
71 **Missouri state highway patrol crime laboratory which shall expunge all DNA records taken**
72 **at the arrest for which the warrant was refused in the database pertaining to the person**
73 **and destroy the DNA sample of the person, unless the Missouri state highway patrol**
74 **determines that the person is otherwise obligated to submit a DNA sample.** An individual
75 may request expungement of his or her DNA sample and DNA profile through the court issuing
76 the reversal or dismissal. A certified copy of the court order establishing that such conviction
77 has been reversed or guilty plea or plea of nolo contendere has been set aside shall be sent to the
78 Missouri state highway patrol crime laboratory. Upon receipt of the court order, the laboratory
79 will determine that the requesting individual has no other qualifying offense as a result of any
80 separate plea or conviction prior to expungement.

81 (1) A person whose DNA record or DNA profile has been included in the state DNA
82 database in accordance with this section, section 488.5050, RSMo, and sections 650.050,
83 650.052, and 650.100 may request expungement on the grounds that the conviction has been
84 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that
85 person's DNA record or DNA profile was based has been set aside.

86 (2) Upon receipt of a written request for expungement, a certified copy of the final court
87 order reversing the conviction or setting aside the plea and any other information necessary to
88 ascertain the validity of the request, the Missouri state highway patrol crime laboratory shall
89 expunge all DNA records and identifiable information in the database pertaining to the person
90 and destroy the DNA sample of the person, unless the Missouri state highway patrol determines
91 that the person is otherwise obligated to submit a DNA sample. Within thirty days after the
92 receipt of the court order, the Missouri state highway patrol shall notify the individual that it has
93 expunged his or her DNA sample and DNA profile, or the basis for its determination that the
94 person is otherwise obligated to submit a DNA sample.

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

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

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

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

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

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

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

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114 **If the state highway patrol crime laboratory receives notice under this subsection that the**
115 **charges have been withdrawn, the case has been dismissed, there is a finding that the**
116 **necessary probable cause does not exist, or the defendant is found not guilty, such crime**
117 **laboratory shall expunge the DNA sample and DNA profile of the arrestee within thirty**
118 **days. Prior to such expungement, the state highway patrol crime laboratory shall**
119 **determine whether the individual has any other qualifying offenses or arrests that would**
120 **require a DNA sample to be taken and retained prior to expungement under this**
121 **subsection.**

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