

FIRST REGULAR SESSION

# HOUSE BILL NO. 1115

99TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE ANDERS.

1101H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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*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Section A. Section 650.055, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 650.055, to read as follows: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;

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11 shall have a fingerprint and blood or scientifically accepted biological sample collected for  
12 purposes of DNA profiling analysis.

13 2. Any individual subject to DNA collection and profiling analysis under this section  
14 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  
17 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 that it has expunged his or her DNA sample and DNA profile, or the basis for its determination  
92 that the person is otherwise obligated to submit a DNA sample.

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

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

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

110 11. When a DNA sample is taken of an arrestee for any offense listed under subsection  
111 1 of this section and charges are filed:

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

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

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

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

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