

FIRST REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 152

95TH GENERAL ASSEMBLY

0344L.02P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 650.052 and 650.055, RSMo, and to enact in lieu thereof two new sections relating to the DNA profiling system, with a penalty provision.

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

Section A. Sections 650.052 and 650.055, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 650.052 and 650.055, to read as follows:

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

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

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

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

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

3. The Missouri state highway patrol may promulgate rules and regulations to implement the provisions of sections 650.050 to 650.100 in accordance with Federal Bureau of Investigation recommendations for the form and manner of collection of blood or other scientifically accepted biological samples and other procedures for the operation of sections 650.050 to 650.100. No

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 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 chapter 565 or 566 or 568, RSMo**, or has been determined beyond a reasonable doubt  
6 to be a sexually violent predator pursuant to sections 632.480 to 632.513, RSMo, shall have a  
7 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) Associate circuit judges, circuit judges, judges of the courts of appeals, supreme court  
62 judges, and their employees who need to obtain such records to perform their public duties.

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

68           8. **Within ninety days of warrant refusal, the arresting agency shall notify the**  
69 **Missouri state highway patrol crime laboratory which shall expunge all DNA records taken**  
70 **at the arrest for which the warrant was refused in the database pertaining to the person**  
71 **and destroy the DNA sample of the person, unless the Missouri state highway patrol**  
72 **determines that the person is otherwise obligated to submit a DNA sample.** An individual  
73 may request expungement of his or her DNA sample and DNA profile through the court issuing  
74 the reversal or dismissal. A certified copy of the court order establishing that such conviction  
75 has been reversed or guilty plea or plea of nolo contendere has been set aside shall be sent to the  
76 Missouri state highway patrol crime laboratory. Upon receipt of the court order, the laboratory

77 will determine that the requesting individual has no other qualifying offense as a result of any  
78 separate plea or conviction 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, section 488.5050, RSMo, and sections 650.050,  
81 650.052, and 650.100 may request expungement on the grounds that the conviction has been  
82 reversed, or the guilty plea or plea of nolo contendere on which the authority for including that  
83 person's DNA record or DNA profile was based has been set 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 database pertaining to the person  
88 and destroy the DNA sample of the person, unless the Missouri state highway patrol determines  
89 that the person is otherwise obligated to submit a DNA sample. Within thirty days after the  
90 receipt of the court order, the Missouri state highway patrol shall notify the individual that it has  
91 expunged his or her DNA sample and DNA profile, or the basis for its determination that the  
92 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.

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