

FIRST REGULAR SESSION

# SENATE BILL NO. 382

98TH GENERAL ASSEMBLY

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INTRODUCED BY SENATOR DIXON.

Read 1st time February 2, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

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## AN ACT

To repeal sections 542.296, 544.250, 545.400, and 545.490, RSMo, and to enact in lieu thereof four new sections relating to criminal procedure.

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

Section A. Sections 542.296, 544.250, 545.400, and 545.490, RSMo, are  
2 repealed and four new sections enacted in lieu thereof, to be known as sections  
3 542.296, 544.250, 545.400, and 545.490, to read as follows:

542.296. 1. A person aggrieved by an unlawful seizure made by an officer  
2 and against whom there is a pending criminal proceeding growing out of the  
3 subject matter of the seizure may file a motion to suppress the use in evidence of  
4 the property or matter seized. For the purposes of this section, a pending  
5 criminal proceeding shall mean [any criminal investigation being conducted with  
6 the intention of using the seized subject matter in seeking an indictment or  
7 information or] when an information has been issued or an indictment returned.

8 2. The motion to suppress shall be in writing. It shall be filed with the  
9 court in which there is pending against the moving party a criminal proceeding  
10 growing out of the subject matter of the seizure.

11 3. The motion shall be made before the commencement of the trial of the  
12 moving party on the charge arising out of the seizure unless he was unaware of  
13 the grounds or had no opportunity to do so before the trial. In that event the  
14 motion may be made during the trial. However, the trial judge may in his  
15 discretion entertain a motion any time during trial.

16 4. Notice shall be given to the prosecuting attorney of the date, time, place  
17 and nature of the hearing.

18 5. The motion to suppress may be based upon any one or more of the  
19 following grounds:

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

20 (1) That the search and seizure were made without warrant and without  
21 lawful authority;

22 (2) That the warrant was improper upon its face or was illegally issued,  
23 including the issuance of a warrant without proper showing of probable cause;

24 (3) That the property seized was not that described in the warrant and  
25 that the officer was not otherwise lawfully privileged to seize the same;

26 (4) That the warrant was illegally executed by the officer;

27 (5) That in any other manner the search and seizure violated the rights  
28 of the movant under section 15 of article I of the Constitution of Missouri, or the  
29 fourth and fourteenth amendments of the Constitution of the United States.

30 6. The judge shall receive evidence on any issue of fact necessary to the  
31 decision of the motion. The burden of going forward with the evidence and the  
32 risk of nonpersuasion shall be upon the state to show by a preponderance of the  
33 evidence that the motion to suppress should be overruled.

34 7. If the motion is sustained, the judge shall order the property or matter  
35 delivered to the moving party, unless its retention is authorized or required by  
36 section 542.301, or by any other law of this state.

544.250. 1. No prosecuting or circuit attorney in this state shall file any  
2 information charging any person or persons with any felony, until such person or  
3 persons shall first have been accorded the right of a preliminary examination  
4 before some associate circuit judge in the county where the offense is alleged to  
5 have been committed in accordance with this chapter. And if upon such hearing  
6 the associate circuit judge shall determine that the alleged offense is one on  
7 which the accused may be released, the associate circuit judge may release him  
8 as provided in section 544.455 conditioned for his appearance at a time certain  
9 before a circuit judge, or associate circuit judge who is specially assigned, and  
10 thereafter as directed by the court to answer such charges as may be preferred  
11 against him, abide sentence and judgment therein, and not to depart the court  
12 without leave; provided, a preliminary examination shall in no case be required  
13 where same is waived by the person charged with the crime, or in any case where  
14 an information has been substituted for an indictment as authorized by section  
15 545.300.

16 **2. The findings of the court shall be based on evidence, in whole**  
17 **or in part, in the following forms:**

18 **(1) Testimony of witnesses;**

19 **(2) Written reports of expert witnesses;**

20 **(3) Documentary evidence without a proper predicate; provided,**

21 **there is a substantial basis for believing such predicate will be**  
22 **available at trial and that the document is otherwise competent; or**

23 **(4) Testimony of a witness concerning the declarations of**  
24 **another where such evidence is cumulative, or there is a substantial**  
25 **basis for believing that the source of the hearsay is credible and that**  
26 **a factual basis for the information furnished exists and there is no**  
27 **reason for believing the declarant will not be personally available for**  
28 **trial.**

545.400. 1. [The defendant] **A party** in any [criminal] **felony** cause may  
2 also have witnesses examined on his **or her** behalf, conditionally, upon a  
3 commission issued by the clerk of the court in which the cause is pending, in the  
4 same cases and upon the like notice to the [prosecuting attorney] **opposing**  
5 **party**, with the like effect and in all respects as is provided by law in civil suits;  
6 provided, that the notice in such case to the [prosecuting attorney] **opposing**  
7 **party** shall state the name or names of the witness or witnesses whose  
8 depositions are desired or will be taken. **Depositions in misdemeanor causes**  
9 **may only be taken upon a motion granted by the court for good cause**  
10 **shown.**

11 **2. The party who takes a deposition shall provide to the other**  
12 **party one copy of the transcript and any video or audio recording from**  
13 **the deposition. Any costs associated with providing such copies to the**  
14 **other party shall be paid by the party who takes the deposition.**

545.490. [The petition of the applicant for a change of venue shall set  
2 forth the facts or grounds upon which such change is sought, and such petition  
3 shall be supported by the affidavit of petitioner and the affidavit of at least two  
4 credible disinterested citizens of the county where said cause is pending and the  
5 truth of the allegations thereof shall be proved, to the satisfaction of the court,  
6 by legal and competent evidence, and the prosecuting attorney may in such case  
7 offer evidence in rebuttal of that submitted in support of such application; the  
8 court, or judge in vacation, shall fix the number of witnesses for which the state  
9 or county may be liable; provided, in all cases in counties in this state which now  
10 have or may hereafter have a population of less than seventy-five thousand  
11 inhabitants if such petition for change of venue is supported by the affidavits of  
12 five or more credible disinterested citizens residing in different neighborhoods of  
13 the county where said cause is pending, then the court or judge in vacation, shall  
14 grant such change of venue, as of course, without additional proof; provided  
15 further, that reasonable previous notice of such application shall in all cases be

16 given to the prosecuting attorney; and provided further, that if the facts alleged  
17 as the ground of the application be within the knowledge of the court or judge, he  
18 may order such removal of the cause without any formal proof or the filing of  
19 affidavit; and provided further, that if the application shall allege prejudice of the  
20 inhabitants of more than one county in the circuit in which the case is pending,  
21 the court may, upon proof of the allegations as herein provided for, order the case  
22 sent to some county in the same or some other circuit where such causes do not  
23 exist.]

**1. Upon written application of the defendant, a change of venue may be ordered in any felony proceeding for the following reasons:**

**(1) The inhabitants of the county are prejudiced against the defendant; or**

**(2) The state has an undue influence over the inhabitants of the county.**

**2. The application shall be filed not later than thirty days after arraignment.**

**3. A copy of the application and a notice of the time when it will be presented to the court shall be served on all parties.**

**4. The application shall set forth the reason or reasons for change of venue. It need not be verified and shall be signed by the defendant or his or her attorney.**

**5. The state may, within five days after the filing of the application for a change of venue, file a denial of the existence of the reason or reasons alleged in the application. Such denial need not be verified. If a denial is filed, the court shall hear evidence and determine the issues. If the issues are determined in favor of the defendant, or if the truth of the grounds alleged is within the knowledge of the court, or if no denial is filed, a change of venue shall be ordered to some other county convenient to the parties and where the reason or reasons for the change of venue do not exist.**

**6. All proceedings, except the trial by jury, shall occur in the originating county, except as may be agreed upon by the parties and the court.**

**7. In lieu of transferring the case to another county, the court may secure a jury from another county as provided by law.**