

SECOND REGULAR SESSION

SENATE BILL NO. 1252

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLAND.

Read 1st time February 28, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4928S.011

AN ACT

To repeal sections 546.070 and 610.105, RSMo, relating to the criminal justice system, and to enact in lieu thereof twelve new sections relating to the same subject.

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

Section A. Section 546.070 and 610.105, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 491.053, 546.065, 546.070, 590.700, 590.702, 590.704, 590.706, 590.708, 610.105, 650.051, 650.625 and 650.630, to read as follows:

491.053. 1. Any state witness that witnessed an incriminating admission by a defendant while also incarcerated and is not a co-defendant on the same charge shall be presumed unreliable and not permitted to testify unless such witness shall pass a two-step review before the testimony is submitted to a judge or jury:

(1) The first review to determine the reliability of such a witness' testimony shall be a three prosecutor panel to determine if the testimony of the state's incarcerated testimonial witness is sufficiently corroborated to indicate that it is trustworthy. After reviewing all relevant information, the three-prosecutor panel shall vote to determine whether there are sufficient indicia of reliability to submit this testimony to a finder of fact for their consideration. A majority of the prosecutors in a recorded vote must vote in favor of the reliability of this testimony before it may be considered by a judge to determine if this testimony should be admitted. The panel shall consist of three prosecutors, none of whom may be subordinate to any prosecutor involved as trial counsel in the case in question. One of the prosecutors may be an attorney with the office of the Missouri attorney general. The prosecutors will consider at a minimum the following factors:

(a) Has the state's witness been a testimonial witness or jail house snitch on any prior cases;

(b) What are the current charges under consideration against this witness and what consideration has been offered this witness for their testimony;

(c) The witness's prior criminal record;

(d) Was polygraph of this witness conducted about the testimony they will offer in the case and what were the results;

(e) Were any of the details provided by the witness not reported in the media;

(f) Were there any law enforcement contacts about this case with this witness prior to their placement in proximity to the defendant.

(2) The court in a pre-trial proceeding or out of the presence of the jury shall review all admissible information seeking indicia of reliability of this type of testimonial evidence which would allow it to overcome the presumption of unreliability. The court may consider the vote of the prosecutorial review committee and any other finding made by that committee and shall admit this type of evidence if it presents sufficient indicia of reliability.

2. The prosecutor shall register the name of this type of state's witness with the office of prosecution services and/or the MULES system once this type of witness was disclosed to opposing counsel to this witness testified for the state with regard to the learned of incriminating admission while incarcerated with the defendant. This registry shall be available to any prosecuting attorney and a witness history shall be disclosed on any similar instances of testimony by the state's witness.

546.065. It shall be admissible as evidence whether tests were conducted which could include or exclude the defendant as the perpetrator of the crime. These tests include finger printing, DNA, bodily fluid, or other established forensic tests. The rule on negative inferences as it pertains to criminal charges is hereby abolished.

546.070. 1. The jury being impaneled and sworn, the trial may proceed in the following order:

(1) The prosecuting attorney must state the case and offer the evidence in support of the prosecution;

(2) The defendant or his counsel may then state his defense and offer evidence in support thereof;

(3) The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original case;

(4) In every trial for a criminal offense the court shall instruct the jury in writing upon all questions of law arising in the case which are necessary for their information in giving the verdict, which instructions shall include a definition of the term reasonable doubt;

(5) Unless the case be submitted without argument, the counsel for the prosecution shall make the opening argument, the counsel for the defendant shall follow, and the counsel for the prosecution shall conclude the argument.

2. After July 1, 2003, violation of the protocol contained in sections 590.700 through 590.708, RSMo, shall result in the finder of fact being provided with an instruction that eyewitness evidence may be influenced by a number of factors and that the clarity and detail of the initial description of the perpetrator is the most reliable indicator of identification's trustworthiness. That subsequent improperly supervised exposure to an individual with similar characteristics to the perpetrator has resulted in the adoption by a witness of that individual as the suspect and it is for the finder of fact to determine the reliability of the identification with the knowledge that the witness's good-faith belief may or may not be based in fact.

590.700. 1. The director of public safety shall ensure that all P.O.S.T. certified training academies in Missouri have adopted the protocol contained in sections 590.700 through 590.708 into their training requirements. The director shall also ensure that a continuing education P.O.S.T. certification class on this protocol will be made available throughout Missouri for in-service law enforcement officers by January 1, 2003.

2. The director of public safety shall provide a standardized eyewitness evidence protocol form for use by law enforcement in all cases where an individual was observed but the identity of the perpetrator is unknown at the time of the incident. This form shall be in compliance with the Department of Justice Eyewitness Evidence Guide and this protocol will be available to law enforcement no later than January 1, 2003.

590.702. The following protocol shall be exercised by an officer during initial contact with a witness when the identity of the suspect is unknown:

(1) The officer shall separate the witnesses and not permit them to discuss with each other what they have just witnessed;

(2) The officer will obtain the names, addresses, and phone numbers of all witnesses present at the scene;

(3) The officer will ask the witness to write, if able, or will record the witness's identification of the suspect in as much detail as the witness can provide before asking any follow-up identification questions. The interview will occur at the scene or within six hours of leaving the scene;

(4) The officer will ask any appropriate height, weight, body build, distinguishing marks, or unusual characteristics questions to provide a more complete picture of the suspect;

(5) The officer will ask the witness if they could identify the suspect if they were to see them again and how certain they would be of being able to correctly identify the suspect;

(6) The officer will also determine if the witness talked with any other witness about the suspect and if any of the details provided by the witness were in conflict or were changed to be in harmony with another witness's description and record any response; and

(7) The officer will encourage the witness to contact law enforcement if any additional information is recalled and instruct the witness not to discuss the details of the incident with any other potential witness or the media and thank the witness for their cooperation.

590.704. The following procedures shall be used to compose a photo or live lineup:

(1) In order to assure that inadvertent verbal cues or body language do not impact on the witness, whenever practical, the person conducting the lineup should not know the identity of the suspect in the lineup. The investigating officer will prepare the lineup. In those cases where no other law enforcement officer or other cooperating citizen is reasonably available, the investigating officer may conduct the lineup identification procedure. He or she should be careful to avoid inadvertent signaling to the witness of the "correct" response;

(2) The witness should be instructed prior to the photo or live lineup identification procedure that the perpetrator may not be among those in the photo array or live lineup and, therefore, they should not feel compelled to make an identification;

(3) Photo or live lineup identification procedures shall be conducted sequentially by showing one photo or person at a time to a witness, rather than simultaneously;

(4) In composing a photo or live lineup, the person administering the identification procedure should ensure that the lineup is comprised in such a manner that the suspect does not unduly stand out. However, complete uniformity of features is not required;

(5) In composing a photo lineup, the lineup administrator or investigator should:

(a) Include only one suspect in each identification procedure;

(b) Select non-suspect fillers who generally fit the witness's description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs

significantly from the appearance of the suspect, fillers should resemble the suspect in significant features;

(c) Select a photo that resembles the suspect's description or appearance at the time of the incident if multiple photos of the suspect are reasonably available to the investigator;

(d) Include a minimum of five non-suspect fillers per identification procedure;

(e) Place the suspect in different positions in each lineup when conducting more than one lineup for a case due to multiple witnesses;

(f) Avoid reusing fillers in lineups shown to the same witness when showing a new suspect;

(g) Ensure that no writing or information concerning previous arrest will be visible to the witness;

(h) View the array, once completed, to ensure that the suspect does not unduly stand out;

(i) Preserve the presentation order of the photo lineup, in addition, the photos themselves should be preserved in their original condition;

(6) In composing a live lineup, the lineup administrator or investigator should:

(a) Include only one suspect in each identification procedure;

(b) Select non-suspect fillers who generally fit the witness's description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features;

(c) Place the suspect in different positions in each lineup when conducting more than one lineup for a case due to multiple witnesses;

(d) Include a minimum of four fillers per identification procedure;

(e) Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.

590.706. 1. The following procedures shall be used to conduct a photo or live lineup:

2. When presenting a sequential photo lineup, the lineup administrator or investigator should:

(1) Provide viewing instructions that the perpetrator may not be among those in the photo array and, therefore, they should not feel compelled to make an identification;

(2) Provide the following additional viewing instructions to the witness:

(a) Individual photographs will be viewed one at a time;

(b) The photos are taken in random order;

(c) Take as much time as needed in making a decision about each photo before moving to the next one;

(d) All photos will be shown, even if an identification is made prior to viewing all photos;

(3) Confirm that the witness understands the nature of the sequential procedure;

(4) Present each photo to the witness separately, in a previously determined order, removing those previously shown;

(5) Avoid saying anything to the witness that may influence the witness selection;

(6) If an identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' "Statement of Certainty";

(7) Record any identification results and witness statement of certainty as outlined in section 590.708;

(8) Document in writing the lineup procedure, including:

(a) Identification information and sources of all photos used;

(b) Names of all persons present at the photo lineup;

(c) Date and time of the identification procedure;

(9) Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly;

(10) Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

3. Sequential live lineup: When presenting a sequential live lineup, the lineup administrator or investigator should:

(1) Provide viewing instructions that the perpetrator may not be among those in the photo array and, therefore, they should not feel compelled to make an identification;

(2) Provide the following additional viewing instructions to the witness:

(a) Individuals will be viewed one at a time;

(b) The individuals are in random order;

(c) Take as much time as needed in making a decision about each individual before moving to the next one;

(d) If the person who committed the crime is present, identify him or her;

(e) All individuals will be presented, even if an identification is made prior to viewing all individuals;

- (3) Begin with all lineup participants out of view of the witness;**
- (4) Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup;**
- (5) Present each individual to the witness separately, in a previously determined order, removing those previously shown;**
- (6) Ensure that any identification actions are performed by all members of the lineup;**
- (7) Avoid saying anything to the witness that may influence the witness' selection;**
- (8) If an identification is made, avoid reporting to the witness any information regarding the individual he or she has selected prior to obtaining the witness' statement of certainty;**
- (9) Record any identification results and witness' statement of certainty as outlined in section 590.708;**
- (10) Document in writing the lineup procedure, including:**
 - (a) Identification information of lineup participants;**
 - (b) Names of all person present at the lineup;**
 - (c) Date and time the identification procedure was conducted;**
- (11) Document the lineup by photo or video. This documentation should be of a quality that represents the lineup clearly and fairly. Photo documentation can either depict the group or each individual;**
- (12) Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.**

590.708. When conducting an identification procedure, the lineup administrator or investigator shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from a witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings. When conducting an identification procedure, the lineup administrator or investigator should:

- (1) Record both identification and non-identification results in writing, including the witness's own words regarding how sure he or she is;**
- (2) Ensure that the results are signed and dated by the witness;**
- (3) Ensure that no materials indicating previous identification results are visible to the witness;**
- (4) Ensure that the witness does not write on or mark any material that will**

be used in other identification procedures.

610.105. **1.** If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated except as provided in section 610.120 and except that the court's judgment or order or the final action taken by the prosecutor in such matters may be accessed. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

2. In any case where the prosecuting attorney dismisses or nolle prosses the charge and the prosecuting attorney believes that the individual charged is either actually innocent or legally innocent they shall declare so in writing, upon request of the defendant. In any dismissal or nolle prosequi that the defendant requests a finding the prosecuting attorney shall issue one of the following findings:

- (1) No finding;**
- (2) Actually innocent; or**
- (3) Legally innocent.**

The defendant on a "no finding" by the prosecuting attorney may request a hearing before the judge assigned to the case before it was disposed of and if the defendant presents clear and convincing evidence to the court then the court may amend the finding accordingly. The defendant's request for a hearing shall be made within twenty days of receiving notice of the dismissal or nolle prosequi and a hearing shall be held within forty-five days of the request being filed with the court. The prosecuting attorney shall submit the findings pursuant to this subsection to the office of prosecution services on an annual basis and in the prosecuting attorney's annual report. Actually innocent shall be defined as: "where the defendant did not act and was not in any legal way involved with the act or acts of the charged offense". Legally innocent shall be defined as: "the defendant acted, but either the act has a valid legal justification, such as self-defense, or the act was not prohibited by law".

650.051. 1. The governor shall appoint a seven member "Laboratory Oversight Committee" to provide an independent review of laboratory operations and analysis.

2. The committee shall include: one scientist trained in laboratory operations; one health care professional; one law enforcement officer; one defense attorney; one

individual recommended by the speaker of the house of representatives; one individual recommended by the president pro tem of the senate; one lay member. It shall take a majority of the appointed members to conduct business.

3. The committee shall have the power to appoint an ombudsman at each crime laboratory facility in Missouri to assist laboratory personnel in resolving any internal conflict over procedures. The committee shall have the power to issue reprimands to laboratories and individual personnel which shall be a public record. The committee shall have the authority to require laboratories that have multiple violations of good scientific procedures to be placed on probation for up to one hundred eighty days and that information will be displayed on any lab report test conducted during that probationary period. The committee shall have the authority to establish rules by which lab personnel may be reprimanded, suspended and/or terminated for misconduct.

4. Every laboratory report of crime related evidence shall be signed by the technician that conducted the test or tests. Every report shall also contain a listing of any outside agencies which have currently accredited the lab, or if none, the report shall so indicate. Every report shall also contain whether the testing was performed in accordance with a national or association standard and which standard was used for testing.

5. It shall be a class B felony for any public employee or lab personnel to knowingly alter, offer or verify falsified laboratory test results and/or to alter the material to be submitted for analysis for the purpose of changing the test result.

6. There shall be assessed a one-dollar court fee on a felony plea or finding of guilt to be allocated to the laboratory oversight committee. Seventy-five cents out of every dollar shall be directed to conducting DNA testing of currently incarcerated individuals and to improve the DNA database. Twenty-five cents out of every dollar shall be assigned to the committee for accreditation testing and auditing of crime laboratory facilities in Missouri and for such other expenditures as the committee may authorize.

650.625. The director of the department of public safety shall promulgate a standard compensation level for Missouri law enforcement. This standard shall differentiate between rural and urban pay standards and officers entering the profession and those who have served five, ten or fifteen years service. The base standard for an entry level rural officer shall be established at no less than twenty thousand dollars per year. The sheriff or chief law enforcement officer for every department, with more than four peace officers, shall submit to the director of the department of public safety the pay and time in law enforcement for every member of their organization within six months of starting their fiscal year and when the budget

process begins for the next fiscal year. The director shall provide the sheriff or chief law enforcement officer of every department, with more than four peace officers, and their budgetary authority with a report on whether they are in compliance with the minimum recommended compensation level for law enforcement at least thirty days prior to the start of their budgetary process for the next fiscal year. This report is only a recommendation and has no binding authority.

650.630. The sheriff or chief law enforcement officer of every police agency in Missouri shall maintain a monthly report of individuals arrested by their agency. The report shall include the type of charge the individual was arrested on, length of incarceration, the name, age, gender, and race, name of arresting officer and whether the charge was found to be substantiated and submitted to the prosecuting attorney and charges were filed. The monthly reports shall be totaled and submitted to the director of the department of public safety as an annual report with the individuals' names not part of the annual report. The names and other personally identifiable information of those individuals on the monthly report shall not be a public record unless they otherwise qualify as a public record.

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