

FIRST REGULAR SESSION

SENATE BILL NO. 21

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR BLAND.

Pre-filed December 1, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0154S,04I

AN ACT

To repeal sections 546.070 and 650.055, RSMo, and to enact in lieu thereof twelve new sections relating to the criminal justice system, with penalty provisions.

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

Section A. Sections 546.070 and 650.055, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 491.053, 546.065, 546.070, 590.700, 590.702, 590.704, 590.706, 590.708, 650.055, 650.111, 650.112, and 650.625, to read as follows:

491.053. 1. Any person that witnessed an incriminating admission by a defendant while incarcerated and who is not a codefendant on the same charge shall require the prosecutor to obtain and disclose to the defendant a sworn statement within fourteen days of this type of witness's disclosure or at least seven days before trial absent a court finding of exigent circumstances. The prosecuting attorney and/or attorney general shall obtain the answers to the following questions in a sworn statement from this type of witness who heard an incriminating admission from the defendant:

(1) "What, if any, consideration have you been promised with regard to charges that were or could be filed against you?";

(2) "What, if any, consideration have you been promised with regard to sentencing on charges pending against you?";

(3) "Other than specific promises, what, if any, hope do you have with regard to future consideration being given to you with regard to charging or sentencing considerations?";

(4) "Prior to your in-custody encounter with the defendant had you been

contacted in any manner by law enforcement about cooperating in an on-going investigation? If so, describe that contact.";

(5) "In what previous criminal cases have you testified?";

(6) "In which, if any, of your previous criminal cases did you receive charging or sentencing consideration for your cooperation?"; and

(7) "Have you received any charging or sentencing consideration for agreeing to testify on behalf of the government in any previous case?".

2. The prosecutor shall register and obtain a registration number for the name of the witness with the office of prosecution services and/or the MULES system that the witness testified for the state regarding any incriminating admission learned of while incarcerated with the defendant and the affidavit the witness executed. This registry shall be available to any prosecuting attorney. The witness history shall be disclosed on any similar instances of testimony by the witness. The notice of registry shall be a closed record with only the notation that it was filed being made on the case docket sheet as an open record.

3. The provisions of this section shall not apply if the witness will testify that they observed the charged criminal act being committed.

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, 2004, significant violation of the protocol contained in sections 590.700 to 590.708, RSMo, shall result in the finder of fact being instructed that

eyewitness evidence may be influenced by a number of factors. The instruction shall be developed by the Missouri supreme court committee on criminal jury instructions and shall consider the clarity and detail of the initial description of the perpetrator and the speed of recognition at the initial nonsuspect witness/subject confrontation are the most reliable indicators of trustworthiness of an identification. 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. No violation of this eyewitness protocol shall be the basis to exclude the testimony but may warrant a jury instruction.

590.700. 1. The director of public safety shall ensure that all P.O.S.T. certified training programs in Missouri have used the United States Department of Transportation Eyewitness Evidence Guidelines for Low End as a training model and adopted the protocol contained in sections 590.700 to 590.708. The director shall also ensure that a continuing education on this protocol will be made available throughout Missouri for in-service law enforcement officers by January 1, 2004.

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 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, 2004.

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 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.

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 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 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' 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;

(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 nonsuspect fillers who generally fit the witness' 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. The following procedures shall be used to conduct a photo or live lineup:

(1) When presenting a sequential photo lineup, the lineup administrator or investigator should:

(a) 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;

(b) 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;

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

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

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

(f) 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";

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

(h) 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;

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

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

(2) When presenting a sequential live lineup, the lineup administrator or investigator should:

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

(b) 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;

(c) Begin with all lineup participants out of view of the witness;

(d) Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup;

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

(f) Ensure that any identification actions are performed by all members of the lineup;

(g) Avoid saying anything to the witness that may influence the witness'

selection;

(h) 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;

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

(j) 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;

(k) 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;

(l) 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 the results obtained from a witness. When conducting an identification procedure, the lineup administrator or investigator should:

(1) Record both identification and non-identification results in writing, including the witness' 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; and

(4) Ensure that the witness does not write on or mark any material that will be used in other identification procedures.

650.055. 1. Every individual convicted in a Missouri circuit court, of a felony, defined as a violent offense under chapter 565, RSMo, or as a sex offense under chapter 566, RSMo, excluding sections 566.010 and 566.020, RSMo, shall have a blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis:

(1) Upon entering the department of correction's reception and diagnostic centers; or

(2) Before release from a county jail or detention facility; or

(3) If such individual is under the jurisdiction of the department of corrections on or after August 28, 1996. Such jurisdiction includes persons currently incarcerated, persons on probation, as defined in section 217.650, RSMo, and on parole, as also defined in section 217.650, RSMo.

2. The Missouri state highway patrol and department of corrections shall be responsible for ensuring adherence to the law. Any person required to provide a DNA sample pursuant to

this section shall be required to provide such sample, without the right of refusal, at a collection site designated by the Missouri state highway patrol and the department of corrections. Authorized personnel collecting or assisting in the collection of samples shall not be liable in any civil or criminal action when the act is performed in a reasonable manner. Such force may be used as necessary to the effectual carrying out and application of such processes and operations. The enforcement of these provisions by the authorities in charge of state correctional institutions and others having custody of those convicted of the felony which shall not be set aside or reversed, is hereby made mandatory.

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

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

5. Implementation of section 650.050 and this section shall be subject to future appropriations to keep Missouri's DNA system compatible with the Federal Bureau of Investigation's DNA data bank system.

6. A defendant convicted of any felony listed in subsection 1 of this section may make a motion before the trial court that entered the judgment of conviction in his or her case for DNA testing on the defendant and on evidence that was secured in relation to the trial which resulted in the conviction. The defendant shall serve notice of the motion upon the prosecuting attorney of the county in which the conviction occurred. The defendant shall present a prima facie case that identity was a contested issue in the defendant's trial. If the defendant establishes a prima facie case, and the trial court determines that the results of the testing have the scientific potential to produce new, noncumulative evidence materially relevant to the defendant's assertion of actual innocence, the trial court shall order the state to compare DNA test results regarding the trial evidence and the defendant.

650.111. 1. The governor shall appoint a seven member "Laboratory Oversight Committee" to provide an independent review of the state crime laboratory operations.

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 member to be selected from the general public. It shall take a majority of the appointed members to conduct business. Meetings shall be conducted in accordance with chapter 610, RSMo.

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 having multiple violations of good scientific procedures to be placed on probation for up to one hundred eighty days. 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 lab report 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 certify whether the testing was performed in accordance with a national or association standard and the standard used in the 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 two-dollar court fee on a felony plea or finding of guilt and a one-dollar court fee for any non-traffic misdemeanor to be allocated to the laboratory oversight committee. Fifty 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. The committee may use any nondedicated funds in the form of grants to buy new equipment and train any Missouri crime lab personnel.

650.112. Every Missouri crime laboratory shall keep the following records for a period of at least five years:

- (1) Documentation of testing methodology;
- (2) Documents relating to quality assurance;
- (3) Internal auditing procedure records;
- (4) Proficiency testing and scores of laboratory technicians;
- (5) Technical reviews of laboratory work product;
- (6) Instrument maintenance and calibration;
- (7) Testing procedure manuals;
- (8) Technician lab notes of laboratory tests conducted;
- (9) Periodic collateral testing of results; and

(10) Written external auditing procedures.

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 both locations and years of experience. The base standard for an entry level rural officer shall be no less than twenty thousand dollars per year. The sheriff or chief law enforcement officer for every department, with more than eight full-time peace officers, shall submit to the director of the department of public safety the pay and years of service for every member of their organization within six months of the start of the 2004 fiscal year. The report shall be posted on the department of public safety's website and disseminated at the director's discretion. This report is only a recommendation and has no binding authority.

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