

FIRST REGULAR SESSION

SENATE BILL NO. 162

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time January 17, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0049S.03I

AN ACT

To repeal sections 547.035, 547.037, 590.700, and 650.056, RSMo, and to enact in lieu thereof nine new sections relating to criminal procedure.

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

Section A. Sections 547.035, 547.037, 590.700, and 650.056, RSMo, are
2 repealed and nine new sections enacted in lieu thereof, to be known as sections
3 491.500, 545.275, 545.365, 547.035, 547.037, 590.700, 650.056, 650.070, and
4 650.075, to read as follows:

**491.500. 1. As used in this section, the following terms shall
2 mean:**

3 **(1) "Administrator", the person conducting the photograph or live
4 lineup;**

5 **(2) "Blind administrator", an administrator who does not know
6 the identity of the suspect;**

7 **(3) "Blinded administrator", an administrator who may know
8 which lineup member is the suspect but does not know which lineup
9 member is being viewed by the eyewitness;**

10 **(4) "Eyewitness", a person who observes another person at or
11 near the scene of an offense;**

12 **(5) "Filler", a person, or photograph of a person, who is not
13 suspected of an offense and is included in an identification procedure;**

14 **(6) "Live lineup", an identification procedure in which a group
15 of persons, including the suspected perpetrator of an offense and other
16 persons not suspected of the offense, is displayed to an eyewitness for
17 the purpose of determining whether the eyewitness identifies the**

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

18 suspect as the perpetrator;

19 (7) "Photo lineup", an identification procedure in which an array
20 of photographs, including a photograph of the suspected perpetrator of
21 an offense and additional photographs of other persons not suspected
22 of the offense, is displayed to an eyewitness for the purpose of
23 determining whether the eyewitness identifies the suspect as the
24 perpetrator;

25 (8) "Showup", an identification procedure in which an eyewitness
26 is presented with a single suspect for the purpose of determining
27 whether the eyewitness identifies such individual as the perpetrator;

28 (9) "Suspect", the person believed by law enforcement to be the
29 possible perpetrator of the crime.

30 2. By January 1, 2014, any law enforcement agency conducting
31 one or more of the identification procedures listed in subsection 1 of
32 this section shall adopt written rules governing the procedures. Each
33 agency shall provide a copy of its written rules to the director of the
34 department of public safety by February 1, 2014. Each agency shall
35 thereafter complete a review of its rules every two years to determine
36 whether new evidence in identification procedures has emerged that
37 would support revising the rules. The agency shall resubmit its rules
38 after completing its biennial review no later than February first of each
39 even-numbered year.

40 3. In developing and revising rules under this section, a law
41 enforcement agency shall adopt practices shown by reliable evidence
42 to enhance the accuracy of identification procedures and minimize
43 mistaken identifications.

44 4. The written rules shall include, but not be limited to, the
45 following:

46 (1) A requirement that only a blind or blinded administrator
47 shall perform a live or photo lineup;

48 (2) A list of instructions that shall be given to the eyewitness to
49 minimize the likelihood of an inaccurate identification. The
50 instructions shall include that the suspect may not be in the lineup,
51 that the administrator does not know if the suspect is in the lineup,
52 that the eyewitness does not need to identify anyone, and that if the
53 eyewitness does make an identification during the procedure, the
54 eyewitness will be required to give a recorded statement regarding his

55 or her confidence level in the identification;

56 (3) A requirement for a minimum of five fillers to appear in each
57 photo or live lineup and a requirement that all fillers generally
58 resemble the suspect, so the suspect does not unduly stand out;

59 (4) A requirement that each individual or photo in a lineup
60 procedure be presented to the witness individually in a sequential
61 order that is previously determined, with no two individuals or photos
62 appearing before the witness at the same time;

63 (5) Prohibitions on reusing fillers in lineups viewed by the same
64 eyewitness and allowing an eyewitness to participate in multiple
65 lineups that include the same suspect;

66 (6) A prohibition on allowing more than one suspect to be
67 present, or have his or her photograph present, at a lineup;

68 (7) A requirement, where practicable, to video or digitally record
69 the entirety of a photo or live lineup procedure. If videotaping or
70 digital video recording is not practicable, a photograph shall be taken
71 of each lineup and a detailed record made as soon as possible and
72 without undue delay that describes, with specificity, how the entire
73 procedure was administered, the appearance of the fillers and the
74 suspect, and that details the identities of everyone present;

75 (8) A requirement that the eyewitness, at the time of the lineup
76 and in the eyewitness's own words, give a video or audio recorded
77 statement to the administrator regarding the eyewitness's confidence
78 level that the person identified is the person who committed the crime;

79 (9) Steps to minimize factors that influence an eyewitness to
80 identify a suspect or overstate his or her confidence level in identifying
81 a suspect, including verbal or nonverbal reactions of the administrator;

82 (10) A prohibition on the administrator providing any feedback
83 about an eyewitness' identification at any time;

84 (11) A list of the circumstances under which a showup is
85 warranted that are limited to circumstances in which the police could
86 not conduct a photo or live lineup because the police lacked probable
87 cause to make an arrest or as a result of other exigent circumstances;
88 and

89 (12) Requirements for showup procedures to ensure that the
90 procedure is not conducted in a location or manner that implicitly
91 conveys to the witness that the suspect is guilty.

92 **5. All written department eyewitness identification rules shall be**
93 **made available to the public upon request.**

94 **6. The requirements of subsection 4 of this section shall not**
95 **prohibit a law enforcement agency from adopting other scientifically**
96 **accepted procedures for conducting identification procedures that the**
97 **scientific community considers more effective.**

98 **7. All of the following shall be available as consequences of**
99 **compliance or noncompliance with the requirements of this section:**

100 **(1) Failure to comply with any of the requirements of this section**
101 **shall be considered by the court in adjudicating motions to suppress**
102 **eyewitness identification pursuant to section 545.275;**

103 **(2) Failure to comply with any of the requirements of this section**
104 **shall be admissible in support of claims of eyewitness misidentification,**
105 **as long as such evidence is otherwise admissible;**

106 **(3) When evidence of compliance or noncompliance with the**
107 **requirements of this section has been presented at trial, the jury shall**
108 **be instructed that it may consider credible evidence of compliance or**
109 **noncompliance to determine the reliability of eyewitness**
110 **identifications.**

545.275. 1. In order to obtain a pretrial hearing on a motion to
2 **suppress evidence obtained during a live or photo lineup or showup**
3 **procedure, the defendant shall produce evidence of suggestiveness**
4 **within the procedure that could lead to a mistaken identification. The**
5 **burden then shifts to the state to prove that the identification is**
6 **reliable.**

7 **2. To evaluate whether there is evidence of suggestiveness in**
8 **order to hold a hearing, the judge shall consider the following:**

9 **(1) Whether the law enforcement agency complied with written**
10 **eyewitness identification procedures adopted pursuant to section**
11 **491.500 and the extent to which such procedures comply with the**
12 **provisions of subsection 4 of section 491.500;**

13 **(2) Whether the eyewitness spoke to anyone besides the law**
14 **enforcement agency about the identification;**

15 **(3) Whether the eyewitness made no choice or chose a different**
16 **suspect or filler during an identification procedure; and**

17 **(4) Any other evidence of suggestiveness.**

18 **3. The court may dismiss the motion at any time it concludes that**

19 the defendant's initial claim of suggestiveness is not supported by the
20 evidence.

21 4. Additional factors the judge shall consider during the
22 suppression hearing include, but shall not be limited to, the following:

- 23 (1) The length of time the witness had to observe the event;
- 24 (2) The distance between the witness and the perpetrator;
- 25 (3) The lighting conditions at the time of the event;
- 26 (4) Whether the witness was under the influence of alcohol or
27 drugs;
- 28 (5) The age of the witness;
- 29 (6) Whether the perpetrator was wearing a disguise;
- 30 (7) Whether the suspect had different facial features at the time
31 of the identification;
- 32 (8) The length of time that elapsed between the crime and the
33 identification;
- 34 (9) Whether the identification was by a witness who is a different
35 race than the suspect;
- 36 (10) The degree of attention the eyewitness paid to the
37 perpetrator during the event; and
- 38 (11) The accuracy of any descriptions of the suspect provided by
39 the eyewitness before the identification procedure occurred.

40 5. The judge shall approve the motion to suppress the
41 identification evidence if he or she finds, from the totality of the
42 circumstances, that a substantial likelihood of irreparable
43 misidentification exists.

44 6. Expert testimony shall be admissible on eyewitness
45 identifications at the hearing on a motion to suppress identification
46 evidence and at the trial.

47 7. If eyewitness identification evidence is admitted at trial, the
48 court shall instruct the jury, in addition to any instructions admissible
49 under subsection 7 of section 491.500, on how to assess the reliability
50 of the identification. The court shall also instruct the jury on any
51 factors that may raise the risk of misidentifications based on the
52 particular facts of the case, including, but not limited to, the factors
53 listed in subsection 4 of this section.

545.365. 1. As used in this section, the following terms shall
2 mean:

3 (1) "Consideration", any agreement that is expressed or implied
4 for a plea bargain, bail consideration, reduction or modification of
5 sentence, or any other leniency, benefit, immunity, financial assistance,
6 reward, or amelioration of current or future conditions of incarceration
7 in return for, or in connection with, the informant's testimony in the
8 criminal proceeding in which the prosecuting or circuit attorney
9 intends to call him or her as a witness;

10 (2) "In-custody informant", a person, other than a co-defendant,
11 percipient witness, accomplice, or co-conspirator whose testimony is
12 based upon statements made by the defendant while both the defendant
13 and the informant were being held within the same correctional
14 institution.

15 2. In any criminal trial or proceeding in which the prosecuting
16 or circuit attorney intends to call an in-custody informant to testify on
17 any matter, the attorney shall disclose to the defense attorney, in
18 addition to any other information required to be disclosed by law, the
19 following:

20 (1) A written statement, signed by the informant, his or her
21 attorney if the informant is represented, and the prosecuting or circuit
22 attorney, setting out any and all consideration promised to, received
23 by, or to be received by the informant from any source;

24 (2) Any video or audio recording of the informant's interview or
25 discussion with law enforcement officers regarding the statement;

26 (3) The complete criminal history of the informant;

27 (4) The names and addresses of any and all persons with
28 information concerning the defendant's alleged statements, including
29 but not limited to: law enforcement and prison officers to whom the
30 informant related the statements, other persons named or included in
31 the statement, and any other persons who witnessed the statement or
32 who can be reasonably expected to have witnessed the statement;

33 (5) Any prior cases in which the informant testified and any
34 consideration promised to, or received by, the informant, provided such
35 information may be obtained by reasonable inquiry;

36 (6) Any and all statements by the informant concerning the
37 offense charged; and

38 (7) Any other information that tends to undermine the
39 informant's credibility.

40 **3. Any materials required to be disclosed under this section are**
41 **admissible to impeach the credibility of the in-custody informant if the**
42 **informant testifies at a court proceeding.**

43 **4. In order for the testimony of an in-custody informant to be**
44 **admissible in a court proceeding, the prosecuting or circuit attorney**
45 **shall file a motion requesting the testimony be admissible. The**
46 **prosecuting or circuit attorney shall bear the burden of proof at the**
47 **hearing. The court may approve the motion if it concludes that, by a**
48 **preponderance of the evidence, the testimony is reliable and**
49 **corroborated by other evidence.**

50 **5. Corroborating evidence shall be credible evidence or**
51 **information available independent of the in-custody informant, which**
52 **significantly supports the informant's testimony. Corroborating**
53 **evidence shall not include the testimony of another in-custody**
54 **informant unless it is established by a preponderance of the evidence**
55 **that the informant has not communicated with another in-custody**
56 **informant about the testimony.**

57 **6. In order to determine whether the evidence is reliable, the**
58 **court shall consider the following:**

59 **(1) Any requests for consideration by the in-custody informant,**
60 **any consideration offered, and whether any offer of consideration was**
61 **in writing and signed by the prosecuting or circuit attorney and the**
62 **informant;**

63 **(2) Whether the informant's interview or discussion with law**
64 **enforcement officers regarding the statement was video or audio**
65 **recorded;**

66 **(3) The complete criminal history of the informant;**

67 **(4) Any statement made by the defendant, including the**
68 **specificity of the statement, whether the statement led to the discovery**
69 **of new evidence or contained details only known by the perpetrator,**
70 **and the extent to which the statement contained details which could**
71 **reasonably be accessed by the informant other than through statements**
72 **by the defendant;**

73 **(5) The time, place, and circumstances of the statement and the**
74 **disclosure of the statement to law enforcement officials, including how**
75 **the statement was recorded by the informant, how law enforcement**
76 **officers learned that the informant had information, and how officers**

77 questioned the informant about the disclosure, investigated the
78 information, and recorded the disclosure;

79 (6) Any relationship between the informant and the defendant;

80 (7) Any inconsistent statement by the informant;

81 (8) The reliability of testimony provided by the informant on
82 previous occasions in which the informant claimed to have been
83 witness to statements made in custody or testified in a court
84 proceeding on behalf of or against another person, or on his or her own
85 behalf;

86 (9) The quality of corroborating evidence; and

87 (10) Any other evidence relating to the credibility of the
88 informant and the reliability of the testimony.

89 7. Whenever an in-custody informant has testified at trial, the
90 court shall instruct the jury to consider the factors listed in subsection
91 6 of this section when evaluating the reliability of the testimony. The
92 jury shall not be instructed that the court has already found the
93 in-custody informant to be reliable.

94 8. The attorney general shall create and maintain a registry of
95 in-custody informants. The registry shall contain the name of any in-
96 custody informant who testifies at any criminal proceeding, and any
97 information regarding the informant or such person's testimony that
98 was presented in court or disclosed to defense attorneys under this
99 section. Information in the registry shall not be a public record under
100 chapter 610 and shall only be available to prosecuting or circuit
101 attorneys, law enforcement officers, and defense attorneys upon
102 request.

547.035. 1. A person in the custody of the department of corrections
2 claiming that forensic DNA testing will demonstrate the person's innocence of the
3 crime for which the person is in custody may file a postconviction motion in the
4 sentencing court seeking such testing. **A person who has been sentenced to**
5 **death may file such a motion if the testing will demonstrate the**
6 **person's innocence as it relates to any aggravating factor of the crime**
7 **that led to the person being sentenced to death even if the person**
8 **cannot claim that he or she is innocent of first degree murder.** The
9 procedure to be followed for such motions is governed by the rules of civil
10 procedure insofar as applicable.

11 2. The motion must allege facts under oath demonstrating that:

- 12 (1) There is evidence upon which DNA testing can be conducted; and
13 (2) [The evidence was secured in relation to the crime; and
14 (3)] **There is a reasonable likelihood that additional testing**
15 **would produce more probative results, or** the evidence was not previously
16 tested by the movant because:
- 17 (a) The technology for the testing was not reasonably available to the
18 movant at the time of the trial;
- 19 (b) Neither the movant nor his or her trial counsel was aware of the
20 existence of the evidence at the time of trial; or
- 21 (c) The evidence was otherwise unavailable to both the movant and
22 movant's trial counsel at the time of trial; and
- 23 [(4)] **(3)** Identity was an issue in the trial; and
24 [(5)] **(4)** A reasonable probability exists that the movant would not have
25 been convicted if exculpatory results had been obtained through the requested
26 DNA testing, **or if the movant has been sentenced to death, that such**
27 **person would not have been sentenced to death.**
- 28 3. Movant shall file the motion and two copies thereof with the clerk of
29 the sentencing court. The clerk shall file the motion in the original criminal case
30 and shall immediately deliver a copy of the motion to the prosecutor.
- 31 4. The court shall issue to the prosecutor an order to show cause why the
32 motion should not be granted unless:
- 33 (1) It appears from the motion that the movant is not entitled to relief; or
34 (2) The court finds that the files and records of the case conclusively show
35 that the movant is not entitled to relief.
- 36 5. Upon the issuance of the order to show cause, the clerk shall notify the
37 court reporter to prepare and file the transcript of the trial or the movant's guilty
38 plea and sentencing hearing if the transcript has not been prepared or filed.
- 39 6. If the court finds that the motion and the files and records of the case
40 conclusively show that the movant is not entitled to relief, a hearing shall not be
41 held. If a hearing is ordered, counsel shall be appointed to represent the movant
42 if the movant is indigent. The hearing shall be on the record. Movant need not
43 be present at the hearing. The court may order that testimony of the movant
44 shall be received by deposition. The movant shall have the burden of proving the
45 allegations of the motion by a preponderance of the evidence.
- 46 7. The court shall order appropriate testing if the court finds:
- 47 (1) A reasonable probability exists that the movant would not have been

48 convicted **or sentenced to death** if exculpatory results had been obtained
49 through the requested DNA testing; and

50 (2) That movant is entitled to relief. Such testing shall be conducted by
51 a facility mutually agreed upon by the movant and by the state and approved by
52 the court. If the parties are unable to agree, the court shall designate the testing
53 facility. The court shall impose reasonable conditions on the testing to protect
54 the state's interests in the integrity of the evidence and the testing process.

55 8. The court shall issue findings of fact and conclusions of law whether or
56 not a hearing is held.

547.037. 1. If testing pursuant to section 547.035 demonstrates
2 a person's innocence of the crime for which the person is in custody **or**
3 **demonstrates a person's innocence regarding the aggravating**
4 **circumstance or circumstances relied on by the trier of fact when**
5 **sentencing the offender to death**, a motion for release **or motion for a new**
6 **sentence** may be filed in the sentencing court.

7 2. The court shall issue to the prosecutor an order to show cause why the
8 motion should not be granted. The prosecutor shall file a response consenting to
9 or opposing the motion.

10 3. If the prosecutor consents to the motion and if the court finds that such
11 testing demonstrates the movant's innocence of the crime for which he or she is
12 in custody, the court shall order the movant's release from the sentence for the
13 crime for which testing occurred. **If the prosecutor consents to the motion**
14 **and the court finds that the testing demonstrates the person's**
15 **innocence as it relates to the aggravating circumstance or**
16 **circumstances relied on by the trier of fact when sentencing the**
17 **offender to death, the court shall order the person to serve a sentence**
18 **of imprisonment for life without eligibility for probation, parole, or**
19 **release except by act of the governor.**

20 4. If the prosecutor files a response opposing the movant's release, the
21 court shall conduct a hearing. If a hearing is ordered, the public defender shall
22 be appointed to represent the movant if the movant is indigent. The hearing
23 shall be on the record. The movant shall have the burden of proving the
24 allegations of the motion by a preponderance of the evidence.

25 5. If the court finds that the testing ordered pursuant to section 547.035
26 demonstrates the movant's innocence of the crime for which he or she is in
27 custody, the court shall order the movant's release from the sentence for the

28 crime for which the testing occurred. **If the court finds that the testing**
29 **demonstrates the person's innocence as it relates to the aggravating**
30 **circumstance or circumstances relied on by the trier of fact when**
31 **sentencing the offender to death, the court shall order the person to**
32 **serve a sentence of imprisonment for life without eligibility for**
33 **probation, parole, or release except by act of the governor.** Otherwise,
34 relief shall be denied the movant.

35 6. The court shall issue findings of fact and conclusions of law whether or
36 not a hearing is held. An appeal may be taken from the court's findings and
37 conclusions as in other civil cases.

590.700. 1. As used in this section, the following terms shall mean:

2 (1) "Custodial interrogation", the questioning of a person under arrest,
3 who is no longer at the scene of the crime, by a member of a law enforcement
4 agency along with the answers and other statements of the person
5 questioned. "Custodial interrogation" shall not include:

6 (a) A situation in which a person voluntarily agrees to meet with a
7 member of a law enforcement agency;

8 (b) A detention by a law enforcement agency that has not risen to the
9 level of an arrest;

10 (c) Questioning that is routinely asked during the processing of the arrest
11 of the suspect;

12 (d) Questioning pursuant to an alcohol influence report;

13 (e) Questioning during the transportation of a suspect;

14 (2) "Recorded" and "recording", any form of audiotape, videotape, motion
15 picture, or digital recording.

16 2. All custodial interrogations of persons suspected of committing or
17 attempting to commit murder in the first degree, murder in the second degree,
18 assault in the first degree, assault of a law enforcement officer in the first degree,
19 domestic assault in the first degree, elder abuse in the first degree, robbery in the
20 first degree, arson in the first degree, forcible rape, forcible sodomy, kidnapping,
21 statutory rape in the first degree, statutory sodomy in the first degree, child
22 abuse, or child kidnapping shall be recorded [when feasible].

23 3. Law enforcement agencies may record an interrogation in any
24 circumstance with or without the knowledge or consent of a suspect, but they
25 shall not be required to record an interrogation under subsection 2 of this section:

26 (1) If the suspect requests that the interrogation not be recorded;

- 27 (2) If the interrogation occurs outside the state of Missouri;
28 (3) If exigent public safety circumstances prevent recording; **or**
29 (4) To the extent the suspect makes spontaneous statements[;].

30 [(5)] 4. If the recording equipment fails[;] or

31 [(6) If] **the recording equipment is not available at the location where the**
32 **interrogation takes place, the law enforcement agency shall demonstrate**
33 **a good faith effort to maintain recording equipment for interrogations**
34 **in order to comply with this section.**

35 [4.] 5. Each law enforcement agency shall adopt a written policy to record
36 custodial interrogations of persons suspected of committing or attempting to
37 commit the felony crimes described in subsection 2 of this section.

38 [5. If a law enforcement agency fails to comply with the provisions of this
39 section, the governor may withhold any state funds appropriated to the
40 noncompliant law enforcement agency if the governor finds that the agency did
41 not act in good faith in attempting to comply with the provisions of this section.

42 6. Nothing in this section shall be construed as a ground to exclude
43 evidence, and a violation of this section shall not have impact other than that
44 provided for in subsection 5 of this section. Compliance or noncompliance with
45 this section shall not be admitted as evidence, argued, referenced, considered or
46 questioned during a criminal trial.]

47 **6. An oral, written, or sign language statement of an accused**
48 **made as a result of a custodial interrogation shall be presumed to be**
49 **inadmissible as evidence in any criminal proceeding brought for any**
50 **of the crimes listed in subsection 2 of this section if the interrogation**
51 **was not recorded as required under this section unless one of the**
52 **exceptions listed in subsection 3 or 4 of this section applies or the**
53 **statement is used for the purposes of impeachment. The state shall**
54 **bear the burden of proving the applicability of an exception.**

55 7. **The presumption of inadmissibility of a statement made by a**
56 **suspect at a custodial interrogation may be overcome by a**
57 **preponderance of the evidence that the statement was voluntarily given**
58 **and is reliable, based on the totality of the circumstances.**

59 8. Nothing contained in this section shall be construed to authorize,
60 create, or imply a private cause of action.

61 9. **Every electronic recording required under this section shall**
62 **be preserved until judgement for any offense relating to the statement**

63 **is final and all direct and habeas corpus appeals are exhausted, or the**
64 **prosecution of such offense is barred by law.**

650.056. 1. Any **biological** evidence [leading to a conviction] **gathered**
2 **during an investigation** of a felony described in subsection 1 of section 650.055
3 [which has been or can be tested for DNA] shall be preserved by the investigating
4 law enforcement agency **until any offender who was convicted of a felony**
5 **and sentenced to a term of imprisonment as a result of such**
6 **investigation has been released from prison.**

7 2. Any **biological** evidence gathered during an investigation of
8 **first degree murder** shall be preserved by the investigating law
9 **enforcement agency until:**

10 (1) Five years after any offender who was convicted of first
11 **degree murder as a result of the investigation has been executed; or**

12 (2) Such person as been released from prison as a result of a
13 **pardon or finding of innocence.**

14 3. The evidence shall be retained in a manner that preserves any
15 **possible DNA evidence for future testing. If retention of a particular**
16 **piece of property containing DNA evidence is impractical, the agency**
17 **shall take reasonable care to retain representative samples of portions**
18 **of the property that contain DNA evidence.**

19 4. If the crime remains unsolved, any **biological** evidence
20 **collected during the investigation shall be properly preserved until the**
21 **prosecuting or circuit attorney provides written authorization to the**
22 **agency to destroy or discard the evidence.**

650.070. 1. Each law enforcement agency that collects **biological**
2 **evidence for use in criminal investigations shall develop written**
3 **guidelines, that are open to public inspection, for the identification,**
4 **collection, and preservation of biological evidence. Such guidelines**
5 **shall include, but not be limited to, the following provisions:**

6 (1) Whenever it is believed that **biological** evidence relevant to
7 **a felony criminal investigation is present at a location, a law**
8 **enforcement officer or other forensic investigator shall be promptly**
9 **dispatched to the location to collect the evidence;**

10 (2) Only law enforcement officers or other forensic investigators
11 **properly trained in the identification, collection, and preservation of**
12 **biological evidence shall identify, collect, and preserve biological**
13 **evidence in felony criminal investigations;**

14 **(3) Law enforcement officers and other forensic investigators**
15 **shall exercise reasonable care to ensure that the collection of biological**
16 **evidence from a crime scene is representative of all relevant evidence**
17 **present;**

18 **(4) Biological evidence shall be collected and preserved in a**
19 **manner designed to document its identity, and to ensure its integrity**
20 **and its availability for testing and retesting;**

21 **(5) The evidence shall be properly handled, packaged, labeled,**
22 **and the following information shall be documented:**

23 **(a) The location where it was collected;**

24 **(b) The person, place, or thing from which the evidence was**
25 **collected;**

26 **(c) The date and time it was collected;**

27 **(d) The person who collected it; and**

28 **(e) The manner in which it was collected and preserved.**

29 **2. Every crime laboratory accredited under section 650.060 shall**
30 **develop written regulations that are open to public inspection. The**
31 **regulations shall include, but not be limited to, the following:**

32 **(1) Procedures for testing and interpreting test results that**
33 **permit deviation only upon the approval of a technical leader or other**
34 **appropriate supervisor and are scientifically validated;**

35 **(2) Quality assurance and quality control procedures, including**
36 **audits, proficiency testing, and corrective action protocols, that are**
37 **consistent with generally accepted practices;**

38 **(3) Procedures designed to minimize bias when interpreting test**
39 **results;**

40 **(4) Requirements for the timely reporting of misconduct or**
41 **serious negligence in the laboratory to its accrediting body; and**

42 **(5) A requirement that each step in the testing of evidence and**
43 **in the interpretation of the test results be recorded contemporaneously**
44 **in case notes that document all information necessary to allow an**
45 **independent expert to evaluate the process used and the conclusions**
46 **reached.**

650.075. 1. When possible, a portion of any piece of biological
2 **evidence tested and any extract from a DNA sample shall be preserved**
3 **for further testing.**

4 **2. If a law enforcement officer is requesting the testing, a crime**

5 laboratory shall not undertake testing that entirely consumes a DNA
6 sample or the extract from it without the prior approval of the
7 prosecutor. Before approving such a test, the prosecutor shall provide
8 the defendant against whom an accusatorial instrument has been filed
9 in relation to the criminal investigation in which the sample is being
10 tested, or the suspect who has requested prior notice, an opportunity
11 to object and move for an appropriate court order.

12 3. If an attorney for the defendant is requesting a test that
13 entirely consumes a DNA sample or the extract from it, the attorney
14 shall provide the prosecutor with an opportunity to object and move for
15 an appropriate court order.

16 4. A court may order an independent evaluation of the
17 consumptive testing or allow an expert representing the moving party
18 to be present, videotape, and photograph the preparation and testing
19 of the evidence.

✓

Bill

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