

SECOND REGULAR SESSION

HOUSE BILL NO. 1700

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RIBACK WILSON (25) (Sponsor), BLAND, WILSON (42),
SANDERS BROOKS AND JOHNSON (61) (Co-sponsors).

Read 1st time March 30, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4975L.011

AN ACT

To repeal sections 546.070 and 650.056, RSMo, and to enact in lieu thereof fifteen 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Section A. Sections 546.070 and 650.056, RSMo, are repealed and fifteen new sections
2 enacted in lieu thereof, to be known as sections 488.5022, 491.800, 491.803, 491.806, 491.809,
3 546.068, 546.070, 590.720, 590.722, 650.056, 650.500, 650.505, 650.507, 650.510, and 650.515,
4 to read as follows:

**488.5022. 1. A surcharge of five dollars shall be assessed as costs in each court
2 proceeding filed in any court in the state in all criminal cases, including violations of any
3 county ordinance or any violation of a criminal or traffic law of the state, including an
4 infraction; except that no such surcharge shall be collected in any proceeding in any court
5 when the proceeding or the defendant has been dismissed by the court or when costs are
6 to be paid by the state, county, or municipality.**

**2. The surcharge collected shall be deposited in the Missouri laboratory oversight
8 committee revolving fund and expended pursuant to section 650.507, RSMo.**

**491.800. 1. Any interview conducted by a peace officer in a police facility of a
2 person who may have witnessed a violation of section 565.020, 565.021, 565.023, or 565.024,
3 RSMo, shall be electronically recorded. As used in sections 491.800 to 491.815, the term
4 "electronically recorded" shall mean a complete and authentic electronic recording created
5 by motion picture, videotape, audiotape, or digital media.**

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

6 **2. Any interview conducted by a peace officer in a police facility with a person who**
7 **is suspected of committing a violation of section 565.020, 565.021, 565.023, or 565.024,**
8 **RSMo, shall be electronically recorded. Any admission made by a suspect to a peace**
9 **officer prior to the commencement of electronic recording shall be repeated back to the**
10 **suspect with the suspect's response electronically recorded.**

491.803. 1. Any interview or questioning conducted by a peace officer in a police
2 **facility with a person whom the peace officer reasonably believes has significant learning**
3 **disabilities, so that he or she would be diagnosed as having either mental retardation or**
4 **borderline mental retardation shall be electronically recorded.**

5 **2. If a peace officer has a reasonable belief that the person questioned has**
6 **significant learning disabilities, interrogation shall be by nonleading questions that do not**
7 **unduly suggest the answer in the question.**

491.806. 1. Any prosecutor obtaining the testimony of a witness that learned of an
2 **incriminating admission by a defendant while incarcerated and who is not a codefendant**
3 **on charges arising out of the same act or acts shall obtain a sworn affidavit at least seven**
4 **days before the witness would testify at trial. The affidavit shall contain the following:**

5 **(1) A listing of the specific consideration offered to the witness by the state for the**
6 **procurement of his or her testimony against the defendant;**

7 **(2) Any request by law enforcement about cooperating in an on-going investigation**
8 **prior to the witness in-custody encounter with the defendant;**

9 **(3) A listing of previous criminal cases in which the witness has provided sworn**
10 **testimony;**

11 **(4) A listing of previous criminal cases in which the witness has testified as a state's**
12 **witness, and the consideration received for such testimony; and**

13 **(5) Any media account of the charges pending against the defendant that the**
14 **witness has read or observed.**

15 **2. The department of public safety shall establish a registry within MULES which**
16 **monitors all persons testifying pursuant to this section. The prosecutor shall submit**
17 **witness information, including a copy of the witness statement, to the department of public**
18 **safety. The registry shall be an investigative database and shall not be a public record.**

491.809. The law enforcement officer in charge of the principal investigating
2 **agency, or his or her designee, shall certify to the prosecutor filing felony charges a list of**
3 **all existing items of evidence, including location, and a list of all witnesses' names,**
4 **addresses, and phone numbers interviewed in relation to the charge. This certification to**
5 **the prosecutor shall occur within ten days of presentment to the prosecutor of the police**
6 **investigation and shall be updated every thirty days until the investigation is closed.**

546.068. Tests conducted which could include or exclude the defendant as the perpetrator of the crime shall be admissible as evidence. These tests include fingerprinting, DNA, bodily fluid, or other established forensic tests. The rule on negative or adverse 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 eyewitness evidence protocol established pursuant to sections 590.700 and 590.702, RSMo, shall result in the finder of fact being instructed as to the risks of mistaken eyewitness identification. However, no violation of the eyewitness evidence protocol rules promulgated pursuant to sections 590.700 and 590.702, RSMo, rules shall provide the basis for the court to grant a motion to exclude any eyewitness identification.

3. The jury shall be instructed as to the reliability of eyewitness evidence, if used in the trial.

590.720. The director of the department of public safety shall provide a standardized eyewitness evidence form for use by law enforcement in all cases where an individual was observed but the identity is unknown by the witness at the time of the crime and no apprehension of the perpetrator occurred at the crime scene. This form shall be in compliance with the rules promulgated pursuant to this section and 590.702. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to chapter 536, RSMo.

590.722. 1. The director of the department of public safety pursuant to section 590.700 and this section and the director's rulemaking authority shall promulgate an eyewitness evidence protocol that applies the general recommendations in the following

4 areas:

5 (1) The witness shall be told prior to any line-up that the perpetrator of the crime
6 might not be in the line-up or photo-spread;

7 (2) The witness shall be told that he or she shall not assume the person
8 administrating the line-up or photo-spread knows which person is the perpetrator;

9 (3) When possible, the person administrating the line-up or photo-spread shall not
10 know the identity of the suspect in the line-up;

11 (4) A dated written witness statement of certainty shall be obtained after the
12 witness provides a description of the perpetrator and the witness' confidence in correctly
13 identifying the perpetrator of the crime;

14 (5) Suspect confrontations, either by photo-spread or live line-up, shall be
15 conducted in sequential order with the witness viewing only one suspect at a time and
16 requested to make a decision on whether the person viewed is or is not the perpetrator
17 before viewing any additional members of the photo-spread or line-up;

18 (6) There shall be only one suspect in any one photo-spread or line-up panel with
19 at least four nonsuspect fillers; and

20 (7) Photographic or electronic documentation of the entire photo-spread or line-up
21 procedure including panels used.

22 2. The director of the department of public safety shall promulgate rules pursuant
23 to section 590.700 and this section. No rule or portion of a rule promulgated pursuant to
24 the authority of this section shall become effective unless it has been promulgated pursuant
25 to chapter 536, RSMo.

650.056. Any evidence leading to a conviction of a felony [described in subsection 1 of
2 section 650.055] which has been or can be tested for DNA shall be preserved by the Missouri
3 state highway patrol.

650.500. 1. The governor shall appoint a seven-member "Laboratory Oversight
2 Committee" to provide independent review of state crime laboratory operations.

3 2. The committee shall include one scientist trained in laboratory operations, one
4 health care professional, one law enforcement officer, one defense attorney, one individual
5 recommended by the speaker of the house of representatives, one individual recommended
6 by the president pro tem of the senate, and one at-large member. It shall take a majority
7 of the appointed members to conduct business. Meetings shall be conducted in accordance
8 with chapter 610, RSMo.

9 3. The committee shall have the power to:

10 (1) Appoint an ombudsman to each crime laboratory facility in Missouri to assist
11 laboratory personnel in resolving any internal conflict over operations;

12 **(2) Issue public reprimands to laboratories and to individual personnel; and**

13 **(3) Sanction a laboratory having multiple violations of good scientific procedure.**

650.505. 1. Every lab report shall be signed by the individual that conducted the
2 **test or tests described therein. Every report shall also contain a listing of any outside**
3 **agencies which have currently accredited the lab, or if none, the report shall so indicate.**
4 **Every report shall also certify if the testing was performed in accordance with the national**
5 **or association standards.**

6 **2. Any public employee or lab personnel who knowingly alters, offers, or verifies**
7 **falsified laboratory test results or alters the material to be submitted for analysis for the**
8 **purpose of changing the test results is guilty of a class B felony.**

650.507. 1. There is hereby created in the state treasury the "Missouri Laboratory
2 **Oversight Committee Revolving Fund", which shall consist of money collected pursuant**
3 **to section 488.5022, RSMo.**

4 **2. One-half of all moneys in the Missouri laboratory oversight committee revolving**
5 **fund shall be directed to conduct the DNA testing of currently incarcerated individuals and**
6 **to improve the DNA database as the committee may direct. One-quarter of moneys**
7 **collected under this fund shall be used for accreditation testing and auditing of crime**
8 **laboratory facilities in Missouri and for such other related expenditures as the committee**
9 **may authorize. The remaining one-quarter of moneys collected under this fund shall be**
10 **used by the laboratory oversight committee to obtain new equipment and to provide**
11 **training for Missouri crime laboratory personnel.**

12 **3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any**
13 **moneys remaining in the fund at the end of the biennium shall not revert to the credit of**
14 **the general revenue fund.**

15 **4. The state treasurer shall invest moneys in the fund in the same manner as other**
16 **funds are invested. Any interest and moneys earned on such investments shall be credited**
17 **to the fund.**

650.510. Every Missouri crime laboratory shall keep the following records for a
2 **period of at least seven years:**

3 **(1) Documentation of testing methodology;**

4 **(2) Documents relating to quality assurance;**

5 **(3) Internal auditing procedure records;**

6 **(4) Proficiency testing and scores of laboratory technicians;**

7 **(5) Technical reviews of laboratory work product;**

8 **(6) Instrument maintenance and calibration records;**

9 **(7) Testing procedure protocols;**

- 10 **(8) Technician lab notes sorted by report;**
11 **(9) Periodic collateral testing of results; and**
12 **(10) Written external auditing procedures.**

2 **650.515. The director of the department of public safety shall promulgate a**
3 **standard salary compensation level for Missouri law enforcement officers. The standard**
4 **shall differentiate by location and by years of experience in five-year increments. The**
5 **recommendation for the base standard salary of an entry level officer shall be at least**
6 **twenty-thousand dollars per year. The director shall conduct an informal study to**
7 **determine what existing salary ranges are throughout Missouri. The standard law**
8 **enforcement salary recommendation shall be posted on the department's web site by**
9 **January 1, 2005, and otherwise disseminated at the director's discretion. The salary**
10 **standard is only a recommendation to promote improved law enforcement compensation**
11 **and to assist in the recruitment and retention of quality individuals in law enforcement and**
 does not mandate compliance by city and county government.