

FIRST REGULAR SESSION

HOUSE BILL NO. 584

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (Sponsor), BAKER (25), WILDBERGER, ROORDA,
HARRIS (110), YAEGER, MOORE AND McGHEE (Co-sponsors).

Read 1st time January 24, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

0660L.01I

AN ACT

To repeal section 547.035, RSMo, and to enact in lieu thereof two new sections relating to postconviction DNA testing.

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

Section A. Section 547.035, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 490.750 and 547.035, to read as follows:

490.750. 1. Any criminal justice agency having possession or custody of biological evidence from a class A, B, or C felony or any nonclass felony with a possible sentence of at least seven years imprisonment shall retain and preserve that biological evidence for such period of time as any individual convicted of that crime remains incarcerated.

2. As used in this section "biological evidence" means physical evidentiary material originating from the human body from which a nuclear DNA profile or mitochondrial DNA sequence can be obtained or representative or derivative samples of such physical evidentiary material collected by a forensic DNA laboratory.

3. The criminal justice agency in possession or custody of biological evidence may destroy or otherwise dispose of the biological evidence before the expiration of the period of time described in subsection 1 of this section only if:

(1) The agency notifies any person who remains incarcerated in connection with the case and any counsel of record or public defender organization for the judicial district

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

14 **in which the judgment of conviction for such person was entered, of the intention of the**
15 **agency to destroy the evidence;**

16 **(2) No person submits a written objection to the destruction of biological evidence**
17 **to the agency within ninety days of receiving notice under subdivision (1) of subsection 3**
18 **of this section; and**

19 **(3) No other provision of law requires that such biological evidence be preserved.**

547.035. 1. A person **convicted of a class A, B, or C felony or any nonclass felony**
2 **with a possible prison sentence of at least seven years imprisonment** in the custody of the
3 department of corrections claiming that forensic DNA testing will demonstrate the person's
4 innocence of the crime for which the person is in custody may file a postconviction motion in
5 the sentencing court seeking such testing. The procedure to be followed for such motions is
6 governed by the rules of civil procedure insofar as applicable.

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

8 (1) There is evidence upon which DNA testing can be conducted; and

9 (2) The evidence was secured in relation to the crime; and

10 (3) The evidence was not previously tested by the movant because:

11 (a) The technology for the testing was not reasonably available to the movant at the time
12 of the trial;

13 (b) Neither the movant nor his or her trial counsel was aware of the existence of the
14 evidence at the time of trial; or

15 (c) The evidence was otherwise unavailable to both the movant and movant's trial
16 counsel at the time of trial; and

17 (4) Identity was an issue in the trial; and

18 (5) A reasonable probability exists that the movant would not have been convicted if
19 exculpatory results had been obtained through the requested DNA testing.

20 3. Movant shall file the motion and two copies thereof with the clerk of the sentencing
21 court. The clerk shall file the motion in the original criminal case and shall immediately deliver
22 a copy of the motion to the prosecutor.

23 4. The court shall issue to the prosecutor an order to show cause why the motion should
24 not be granted unless:

25 (1) It appears from the motion that the movant is not entitled to relief; or

26 (2) The court finds that the files and records of the case conclusively show that the
27 movant is not entitled to relief.

28 5. Upon the issuance of the order to show cause, the clerk shall notify the court reporter
29 to prepare and file the transcript of the trial or the movant's guilty plea and sentencing hearing
30 if the transcript has not been prepared or filed.

31 6. If the court finds that the motion and the files and records of the case conclusively
32 show that the movant is not entitled to relief, a hearing shall not be held. If a hearing is ordered,
33 counsel shall be appointed to represent the movant if the movant is indigent. The hearing shall
34 be on the record. Movant need not be present at the hearing. The court may order that testimony
35 of the movant shall be received by deposition. The movant shall have the burden of proving the
36 allegations of the motion by a preponderance of the evidence.

37 7. The court shall order appropriate testing if the court finds:

38 (1) A reasonable probability exists that the movant would not have been convicted if
39 exculpatory results had been obtained through the requested DNA testing; and

40 (2) That movant is entitled to relief.

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42 Such testing shall be conducted by a facility mutually agreed upon by the movant and by the state
43 and approved by the court. If the parties are unable to agree, the court shall designate the testing
44 facility. The court shall impose reasonable conditions on the testing to protect the state's
45 interests in the integrity of the evidence and the testing process.

46 **8. If an order was granted prior to August 28, 2007, to a petitioner incarcerated for**
47 **a crime in which the penalty was capital punishment, and such order was not executed**
48 **within six months of the date of the order, failure to execute the order due to the fact that**
49 **the DNA evidence was lost, destroyed, or damaged will result in an automatic stay of**
50 **execution.**

51 **9. The petitioner shall pay the cost of DNA testing ordered under this section,**
52 **unless the results of the DNA testing are favorable to the petitioner, in which case the state**
53 **must pay the costs of the testing.**

54 **10.** The court shall issue findings of fact and conclusions of law whether or not a hearing
55 is held.

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