

SECOND REGULAR SESSION

SENATE BILL NO. 768

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRAHAM.

Pre-filed December 19, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

3963S.011

AN ACT

To repeal sections 546.070, 650.056, and 650.057, RSMo, and to enact in lieu thereof sixteen 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Section A. Sections 546.070, 650.056, and 650.057, RSMo, are repealed
2 and sixteen new sections enacted in lieu thereof, to be known as sections
3 488.5022, 491.800, 491.803, 491.806, 491.809, 546.070, 590.700, 590.702, 650.056,
4 650.057, 650.500, 650.505, 650.507, 650.509, 650.510, and 650.515, to read as
5 follows:

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

8 **2. Of the five dollar surcharge collected under subsection 1 of**
9 **this section, four dollars shall be deposited in the Missouri laboratory**
10 **oversight committee revolving fund created in section 650.507, RSMo,**
11 **and one dollar shall be deposited in the justice improvement fund**
12 **created in section 650.509, RSMo.**

491.800. 1. As used in sections 491.800 to 491.815, the following
2 **terms shall mean:**

3 **(1) "Electronic recording", a complete and authentic electronic**

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

4 recording created by motion picture, videotape, audiotape, or digital
5 media;

6 (2) "Police facility", any physical structure, office detention
7 center, or mobile structure under the operational control of law
8 enforcement that has access to electricity necessary to operate
9 recording equipment where investigative interviews may be conducted.

10 2. Prior to any person being charged with violating sections
11 565.020, 565.021, 565.023, or 565.024, RSMo, any interview conducted by
12 a peace officer in a police facility of a person who may have witnessed
13 a violation of these sections shall be electronically recorded.

14 3. Any interview conducted by a peace officer in a police facility
15 with a person who is suspected of committing a violation of section
16 565.020, 565.021, 565.023, or 565.024, RSMo, shall be electronically
17 recorded. Any admission made by a suspect to a peace officer prior to
18 the commencement of electronic recording shall be repeated back to
19 the suspect with the suspect's response electronically recorded.

20 4. An oral, written, or sign language statement of an individual,
21 made under this section and section 491.803, which is obtained at a
22 police facility shall be presumed inadmissible as evidence against a
23 defendant in a criminal proceeding unless:

24 (1) The questioning is electronically recorded in its entirety;

25 (2) Prior to the statement, but during the recording, the accused
26 is given the requisite Miranda warnings and knowingly, intelligently,
27 and voluntarily waives any rights set out in the warning;

28 (3) The recording device is capable of making an accurate
29 recording, the operator is competent at using the equipment, and the
30 recording has not been altered;

31 (4) All voices on the recording that are material to the
32 questioning are identified; and

33 (5) No later than the twentieth day before the date of the
34 proceeding, the attorney representing the defendant is provided with
35 a true, complete, and accurate copy of all recordings related to the
36 charges made under this section.

37 5. When equipment is available, it is preferential that the
38 electronic recording provides live-action video with simultaneous audio
39 recording. The individual being questioned should appear in the video
40 portion with the individual conducting the questioning in such a video.

41 **6. (1) As used in this subsection, good cause means:**

42 **(a) The questioning took place in a location not identified in this**
43 **section and where the requisite equipment is not readily available;**

44 **(b) The accused refused to have his or her interrogation**
45 **electronically recorded; or**

46 **(c) Failure to electronically record an entire questioning was the**
47 **result of equipment failure and obtaining replacement equipment was**
48 **not feasible.**

49 **(2) The state may rebut the presumption of inadmissibility**
50 **through clear and convincing evidence that the statement was both**
51 **voluntary and reliable and law enforcement officers had good cause not**
52 **to tape the entire questioning.**

53 **7. Notwithstanding any other provision of law to the contrary,**
54 **a written, oral, or sign language statement of an individual made under**
55 **this section and section 491.803, which is the result of an interview or**
56 **custodial interrogation, is admissible against the accused in a criminal**
57 **proceeding if:**

58 **(1) The statement was obtained in another state and was**
59 **obtained in compliance with the laws of that state or this state; or**

60 **(2) The statement was obtained by federal law enforcement**
61 **officers in this state or another state and was obtained in compliance**
62 **with the laws of the United States.**

63 **8. Every electronic recording of an individual made under this**
64 **section and section 491.803 must be preserved by the appropriate law**
65 **enforcement officials until such time as the defendant's conviction for**
66 **any offense relating to the questioning is final and all direct and**
67 **habeas corpus appeals are exhausted, or the prosecution is prohibited**
68 **by law.**

491.803. 1. Any interview or questioning relating to a felony
2 **conducted by a peace officer in a police facility with a person whom the**
3 **peace officer reasonably believes by clear and obvious indicators**
4 **apparent to non-medical professionals or after being informed by the**
5 **person being interviewed or by an individual familiar with the person**
6 **being interviewed that such individual is retarded or borderline**
7 **retarded, or a person who is under twelve years of age, shall be**
8 **electronically recorded.**

9 **2. If a peace officer has a reasonable belief that the person**

10 questioned is retarded or borderline retarded or the person is under
11 twelve years of age, interrogation shall be by nonleading questions that
12 do not unduly suggest the answer in the question.

13 3. Any interview or questioning of a person in a police facility
14 that last longer than four hours during any single forty-eight-hour
15 period shall be electronically recorded, beginning at the fifth hour of
16 the interview or questioning, except as provided by section 491.800.

17 4. It is the public policy preference of this state that when
18 possible custodial interviews conducted in a police facility of suspects
19 for a violent felony, including any homicide, rape, robbery, felony
20 assault, or armed criminal action, shall be electronically recorded.

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

7 (1) A listing of the specific consideration offered to the witness
8 by the state for the procurement of his or her testimony against the
9 defendant;

10 (2) Any request by law enforcement about cooperating in an on
11 going investigation prior to the witness in custody encounter with the
12 defendant;

13 (3) A listing of previous criminal cases in which the witness has
14 provided sworn testimony;

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

18 (5) Any media account of the charges pending against the
19 defendant that the witness has read or observed; and

20 (6) Any prosecutor that obtains the above described affidavit
21 shall verify that information with the registry described in subsection
22 2 of this section that the information contained in the affidavit is
23 accurate prior to presenting the affidavit to the defendant.

24 2. For any witness of the state in a capital murder case, the
25 prosecution shall timely disclose its intent to introduce the testimony
26 of an informant. The court shall conduct a hearing to determine

27 whether the testimony of the informant is reliable, unless the defendant
28 waives such a hearing. If the prosecution fails to show by a
29 preponderance of the evidence that the informant's testimony is
30 reliable, the court shall not allow the testimony to be heard at trial. At
31 this hearing, the court shall consider the factors provided by this
32 section as well as any other factors relating to reliability. A hearing
33 required under this section does not apply to statements that are
34 lawfully recorded.

35 3. The department of public safety shall establish a registry
36 within MULES which monitors all persons testifying under this
37 section. The prosecutor shall submit witness information, including a
38 copy of the witness statement, to the department of public safety. The
39 registry shall be an investigative database and shall not be a public
40 record.

41 4. The provisions of this section shall apply to all capital murder
42 prosecutions initiated on or after August 28, 2006.

491.809. The law enforcement officer in charge of the principal
2 investigating agency or his or her designee shall certify to the
3 prosecutor filing felony charges a list of all existing items of evidence,
4 including location, and a list of all witnesses' names, addresses, and
5 phone numbers interviewed in relation to the charge. This certification
6 to the prosecutor shall occur within ten days of presentment to the
7 prosecutor of the police investigation and shall be updated every thirty
8 days until the investigation is closed. The director of the department
9 of public safety shall under this section, and their rulemaking authority
10 develop a standardized form for this certification and publish it on the
11 department web site in a downloadable format.

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

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

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

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

10 (4) In every trial for a criminal offense the court shall instruct the jury

11 in writing upon all questions of law arising in the case which are necessary for
12 their information in giving the verdict, which instructions shall include a
13 definition of the term reasonable doubt;

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

17 **2. After July 1, 2007, significant violation of the eyewitness**
18 **evidence protocol established under sections 590.700 and 590.702,**
19 **RSMo, shall result in the finder of fact being instructed as to the risks**
20 **of mistaken eyewitness identification. However, no violation of the**
21 **eyewitness evidence protocol promulgated under sections 590.700 and**
22 **590.702, RSMo, rules shall provide the basis for the court to grant a**
23 **motion to exclude any eyewitness identification.**

24 **3. The jury shall be instructed as to the reliability of eyewitness**
25 **evidence identifications or the issues relating to cross-racial**
26 **identifications, if used in the trial.**

590.700. The director of the department of public safety shall
2 **provide a standardized eyewitness evidence form for use by law**
3 **enforcement in all cases where an individual was observed but the**
4 **identity is unknown by the witness at the time of the crime and no**
5 **apprehension of the perpetrator occurred at the crime scene. This form**
6 **shall be in compliance with the rules promulgated under this section**
7 **and section 590.702.**

590.702. 1. The director of the department of public safety under
2 **section 590.700 and this section and the director's rulemaking authority**
3 **shall promulgate an eyewitness evidence protocol after consulting the**
4 **United States Department of Justice: Eyewitness Evidence: A Guide**
5 **for Law Enforcement (1999) and then incorporate the following**
6 **recommendations in these specific areas:**

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

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

12 (3) **When possible, the person administrating the line-up or**
13 **photo-spread shall not know the identity of the suspect in the line-up**
14 **or photo-spread;**

15 **(4) A dated and signed written witness statement of confidence**
16 **will be obtained after the witness provides a description of the**
17 **perpetrator or identifies a suspect as the perpetrator of the crime**
18 **which confirms the witness' confidence in correctly identifying the**
19 **perpetrator of the crime;**

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

25 **(6) Only one suspect in any one photo-spread or line-up panel**
26 **with at least four nonsuspect fillers; and**

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

29 **2. Any rule or portion of a rule, as that term is defined in section**
30 **536.010, RSMo, that is created under the authority delegated in this**
31 **section shall become effective only if it complies with and is subject to**
32 **all of the provisions of chapter 536, RSMo, and, if applicable, section**
33 **536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
34 **and if any of the powers vested with the general assembly under**
35 **chapter 536, RSMo, to review, to delay the effective date, or to**
36 **disapprove and annul a rule are subsequently held unconstitutional,**
37 **then the grant of rulemaking authority and any rule proposed or**
38 **adopted after August 28, 2006, shall be invalid and void.**

 650.056. Any evidence leading to a conviction of a felony [described in
2 subsection 1 of section 650.055] which has been or can be tested for DNA shall
3 be preserved by the Missouri state highway patrol **or at the Missouri crime**
4 **lab where the test was conducted or such other central repository**
5 **authorized by the oversight committee for this purpose.**

 650.057. 1. Except as provided in subsection 3 of this section, no local law
2 enforcement agency may establish or operate a system [before January 15, 1992,
3 and] unless:

4 (1) The equipment of the local system is compatible with that of the state
5 system; and

6 (2) The local system is equipped to receive and answer inquiries from the
7 Missouri DNA profiling system or FBI databank and transmit data to the
8 Missouri DNA profiling system and FBI databank; and

9 (3) The procedure and rules for the collection, analysis, storage,
10 expungement and use of DNA profiling data do not conflict with procedures and
11 rules applicable to the Missouri system and the FBI DNA databank; and

12 (4) **The local system is accredited by a nonprofit association of**
13 **persons actively involved in forensic science that is nationally**
14 **recognized within the forensic science community; and**

15 (5) **The local system undergoes external audits, not less than**
16 **once every two years, that demonstrate compliance with crime**
17 **laboratory standards and protocols established by the Director of the**
18 **Federal Bureau of Investigation.**

19 2. The Missouri department of public safety shall adopt rules to
20 implement this section.

21 3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local
22 law enforcement agency from performing DNA profiling analysis in individual
23 cases to assist law enforcement officials and prosecutors in the preparation and
24 use of DNA evidence for presentation in court. Implementation of sections
25 650.050 to 650.057 shall be subject to future appropriations except for section
26 650.050.

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

4 2. As used in this section "Missouri crime lab" means any forensic
5 testing facility used by the state of Missouri, or its subdivisions, to
6 conduct tests of material and then offer an opinion as to the results of
7 those tests in a criminal prosecution.

8 3. This section complies with the requirements of H.R. 5107, "The
9 Justice for All Act of 2004" signed into law by President Bush on
10 October 30, 2004, as independent crime lab oversight.

11 4. The committee shall include one scientist trained in
12 laboratory operations, one health care professional, one law
13 enforcement officer, one defense attorney, one scientist knowledgeable
14 in DNA forensic testing, one scientist knowledgeable in nonDNA
15 forensic testing, and one at-large member. It shall take a majority of
16 the appointed members to conduct business. Meetings shall be
17 conducted in accordance with chapter 610, RSMo.

18 5. Every Missouri crime lab shall be accredited by a reputable
19 and independent scientific organization, and that such accreditation

20 shall be for each type of forensic test that is conducted at that lab
21 which relates to criminal prosecutions.

22 6. The committee shall have the power, whenever substantive
23 allegations of misconduct or incompetence have been made against any
24 Missouri crime lab to:

25 (1) Issue public reprimands to laboratories or to individual
26 personnel that have violated good scientific procedures as adopted by
27 the applicable accrediting organization;

28 (2) Sanction a laboratory having multiple violations of good
29 scientific procedure;

30 (3) Administer oaths, subpoena witnesses, issue subpoenas duces
31 tecum, and require production of documents and records. Subpoenas,
32 including subpoenas duces tecum, shall be served by a person
33 authorized to serve subpoenas of courts of record. In lieu of requiring
34 attendance of a person to produce original documents in response to a
35 subpoena duces tecum, the committee may require sworn copies of such
36 documents to be filed with it or delivered to its designated
37 representative;

38 (4) Submit material covertly to a Missouri crime lab for testing;

39 (5) At every Missouri crime lab a placard shall be displayed
40 providing contact information to the oversight committee, in addition
41 to a summary of the provisions of sections 650.500 to 650.507. The
42 placard shall be prepared and paid for by the oversight committee; and

43 (6) To seek equitable relief in a circuit court, to ensure that
44 every Missouri crime lab in Missouri is in compliance with the federal
45 DNA Identification Act of 1994, 42 U.S.C. 14132(b)(2), and any
46 subsequent crime laboratory standards and protocols established by the
47 Director of the Federal Bureau of Investigation.

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

7 2. It shall be a class B felony for any public employee or lab
8 personnel to knowingly alter, offer, or verify falsified laboratory test
9 results or to alter the material to be submitted for analysis for the

10 purpose of changing the test results or to take material submitted for
11 testing for their personal use.

650.507. 1. There is hereby created in the state treasury the
2 "Missouri Laboratory Oversight Committee Revolving Fund", which
3 shall consist of a portion of the moneys collected under section
4 488.5022, RSMo. Such fund shall be administered by the committee to
5 reimburse local government entities for compliance with sections
6 650.056, 650.057, 650.505, and 650.510 and as the committee may further
7 direct.

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

18 3. Notwithstanding the provisions of section 33.080, RSMo, to the
19 contrary, any moneys remaining in the fund at the end of the biennium
20 shall not revert to the credit of the general revenue fund.

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

650.509. 1. There is hereby created in the state treasury the
2 "Justice Improvement Fund", which shall consist of a portion of the
3 moneys collected under section 488.5022, RSMo. Upon appropriation,
4 money in the fund shall be used solely for the administration of this
5 section.

6 2. Such fund will be administered by the director of the
7 department of public safety to reimburse local law enforcement
8 agencies for necessary expenses accrued to comply with sections
9 491.800, 491.803, 491.806, and 491.809, RSMo, and sections 650.056,
10 650.505, and 650.510, or to provide training scholarships as provided for
11 in subsection 3 of this section. Any rule or portion of a rule, as that
12 term is defined in section 536.010, RSMo, that is created under the

13 authority delegated in this section shall become effective only if it
14 complies with and is subject to all of the provisions of chapter 536,
15 RSMo, and, if applicable, section 536.028, RSMo. This section and
16 chapter 536, RSMo, are nonseverable and if any of the powers vested
17 with the general assembly under chapter 536, RSMo, to review, to delay
18 the effective date, or to disapprove and annul a rule are subsequently
19 held unconstitutional, then the grant of rulemaking authority and any
20 rule proposed or adopted after August 28, 2006, shall be invalid and
21 void.

22 3. If the fund balance exceeds more than thirty thousand dollars,
23 the director may use the money from the fund in excess of thirty
24 thousand dollars to provide scholarships to law enforcement officers
25 and candidates where their law enforcement department requires them
26 to personally incur the cost of law enforcement training. Such training
27 shall include that which is required in accordance with sections 590.100
28 to 590.180, RSMo, or other training approved by the police officer
29 standards and training commission. Each law enforcement officer or
30 candidate who is granted scholarship money from this fund must
31 commit to a minimum of four years of employment in law enforcement
32 upon the completion of the training for which the scholarship was
33 granted. If the individual chooses to leave the law enforcement
34 profession before the end of the requisite four years of employment
35 following the completion of training, he or she must reimburse the fund
36 for the scholarship money awarded on a prorated basis for each month
37 he or she is not employed in law enforcement that is less than the
38 required forty-eight months.

39 4. Notwithstanding the provisions of section 33.080, RSMo, to the
40 contrary, any moneys remaining in the fund at the end of the biennium
41 shall not revert to the credit of the general revenue fund.

42 5. The state treasurer shall invest moneys in the fund in the
43 same manner as other funds are invested. Any interest and moneys
44 earned on such investments shall be credited to the fund.

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

650.515. The director of the department of public safety shall
2 **promulgate a standard salary compensation level for Missouri law**
3 **enforcement officers. The standard shall differentiate by location and**
4 **by years of experience in five-year increments. The recommendation**
5 **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**
7 **informal study to determine what existing salary ranges are throughout**
8 **Missouri. The standard law enforcement salary recommendation shall**
9 **be posted on the department's website by January 1, 2007, and**
10 **otherwise disseminated at the director's discretion. The salary**
11 **standard is only a recommendation to promote improved law**
12 **enforcement compensation and to assist in the recruitment and**
13 **retention of quality individuals in law enforcement and does not**
14 **mandate compliance by city and county government.**

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