

HB 575 -- Criminal Procedure

Sponsor: Higdon

This bill changes the laws regarding criminal procedure.

EYEWITNESS IDENTIFICATION PROCEDURES (Sections 491.500 & 545.275)

By January 1, 2014, each law enforcement agency that uses eyewitness identification procedures must adopt written rules governing the procedures. The agency must submit the rules to the Department of Public Safety and biannually review the rules. A list of practices that must be included within the rules is specified in the bill.

The court must consider the failure to comply with the requirements for eyewitness identifications during any hearing on a motion to suppress identification evidence and when hearing claims of eyewitness misidentification. When evidence of compliance or noncompliance with the rules is presented at trial, the court must instruct the jury that it may consider the compliance, or lack thereof, when judging the reliability of an identification.

The bill allows a defendant to obtain a pretrial hearing on a motion to suppress eyewitness identification evidence upon demonstrating the existence of certain evidence that could lead to a mistaken identification. The burden then shifts to the state to prove the identification is reliable. A list of factors the court must consider when determining whether to hold a hearing or approve the motion is specified in the bill. The judge must approve the motion to suppress if he or she finds that a substantial likelihood of irreparable misidentification exists.

The bill allows expert testimony on eyewitness identifications to be admissible at the hearing on a motion to suppress and at trial. In addition, if eyewitness identification evidence is admitted at trial, the court must instruct the jury on how to assess the reliability of the identification and on any factors in the particular case that might raise the risk of a misidentification.

JAILHOUSE INFORMANT TESTIMONY (Section 545.365)

The bill requires prosecuting and circuit attorneys to follow certain procedures regarding testimony from jailhouse informants. If the prosecuting attorney intends to call an informant to testify on any matter, he or she must disclose certain information regarding the informant to the defense attorney. This information includes a written statement, signed by the informant, his or her counsel, and the prosecuting attorney, detailing any promises made

to the informant; a video or audio recording of any discussion or interview of the informant by law enforcement officers; the complete criminal history of the informant; the names and addresses of any person with information concerning the defendant's alleged statement; any prior cases in which the informant testified and any consideration promised to or received by the informant; all statements by the informant concerning the offenses charged; and any other information that tends to undermine the informant's credibility. Any materials required to be disclosed under this act are admissible to impeach the credibility of the informant.

In order for the testimony of an in-custody informant to be admissible at trial, the prosecuting or circuit attorney must file a motion and prove at a hearing that the testimony is reliable and corroborated by other evidence. The bill specifies the factors for the court to consider when ruling on the motion.

When an in-custody informant has testified at trial, the court must instruct the jury to consider the same factors for reliability that the court considered when admitting the evidence.

The bill requires the Attorney General to create a registry of in-custody informants that includes the information presented at trial and disclosed to defense attorneys. The information is not a public record under the Open Meetings and Records Law, commonly called the Sunshine Law, and is only available to prosecuting, circuit, and defense attorneys and law enforcement officers upon request.

POST-CONVICTION DNA TESTING (Sections 547.035 & 547.037)

Under current law, a person who claims to be innocent of a crime for which he or she is imprisoned may request to have DNA evidence tested to prove his or her innocence. The bill allows a person who has been sentenced to death to have evidence tested to prove his or her innocence of an aggravating factor that led to the sentence of death even if he or she cannot claim to be innocent of first degree murder.

Current law also limits post-conviction testing to evidence that has not previously been tested for DNA and was secured in relation to the crime for which the person is imprisoned. The bill allows retesting of evidence that had previously been tested if the testing would produce more probative results and removes the provision requiring the evidence be secured in relation to the crime.

If the testing demonstrates a person's innocence regarding an aggravating factor, the person may file a motion for a new

sentence. The court must order the person to serve a life sentence without eligibility for parole upon finding that the testing demonstrates the person's innocence of the aggravating factor or all the factors the trier used to declare the death sentence. If the testing demonstrates the person's innocence on some but not all of the aggravating factors, the court must set the sentence aside and order a retrial of the sentence hearing.

CUSTODIAL INTERROGATIONS (Section 590.700)

Current law allows law enforcement officers to not record custodial interrogations when the equipment fails or is not available at the location of the interrogation. The bill specifies that if the equipment fails or is not available, the law enforcement agency must demonstrate a good faith effort to maintain the recording equipment for interrogations to be in compliance with the statute.

In addition, the bill repeals the penalty for failure to comply with the statute that allows the Governor to withhold funding from the noncompliant law enforcement agency and the provision that prohibits compliance with the statute from being raised in a criminal trial.

The bill specifies that statements made during an unrecorded interrogation are presumed to be inadmissible in a criminal proceeding unless one of the statutory exceptions exists. The presumption may be overcome by a preponderance of the evidence that the statement was voluntarily provided and is reliable.

The bill also requires the preservation of electronic recordings of interrogations until the offender can no longer appeal a conviction or when prosecution of the offense is barred by law.

BIOLOGICAL EVIDENCE PROCEDURES (Sections 650.056, 650.070 & 650.075)

Current law requires investigating law enforcement agencies to preserve all DNA evidence leading to a conviction of certain types of felonies. The bill specifies that any biological evidence gathered during an investigation of the specified felonies must be preserved by the agency until the offender who was convicted and sentenced to prison as a result of the investigation has been released from prison. Biological evidence gathered during an investigation of first degree murder must be retained until five years after the offender has been executed or upon being pardoned or otherwise found innocent.

The bill requires the evidence to be retained in a manner that preserves the DNA evidence for further testing. If the crime

remains unsolved, the evidence must be preserved until the prosecuting attorney authorizes its destruction.

The bill requires law enforcement agencies to develop written guidelines for the identification, collection, and preservation of biological evidence.

The bill establishes procedures for situations in which the DNA testing will consume an entire biological sample.