

FIRST REGULAR SESSION

HOUSE BILL NO. 1173

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

2537L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 542.296, 544.250, and 545.490, RSMo, and to enact in lieu thereof three new sections relating to criminal proceedings.

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

Section A. Sections 542.296, 544.250, and 545.490, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 542.296, 544.250, and 545.490, to read as follows:

542.296. 1. A person aggrieved by an unlawful seizure made by an officer and against whom there is a pending criminal proceeding growing out of the subject matter of the seizure may file a motion to suppress the use in evidence of the property or matter seized. For the purposes of this section, a pending criminal proceeding shall mean [any criminal investigation being conducted with the intention of using the seized subject matter in seeking an indictment or information or] when an information has been issued or an indictment returned.

2. The motion to suppress shall be in writing. It shall be filed with the court in which there is pending against the moving party a criminal proceeding growing out of the subject matter of the seizure.

3. The motion shall be made before the commencement of the trial of the moving party on the charge arising out of the seizure unless he was unaware of the grounds or had no opportunity to do so before the trial. In that event the motion may be made during the trial. However, the trial judge may in his discretion entertain a motion any time during trial.

4. Notice shall be given to the prosecuting attorney of the date, time, place and nature of the hearing.

5. The motion to suppress may be based upon any one or more of the following grounds:

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.

- 17 (1) That the search and seizure were made without warrant and without lawful authority;
- 18 (2) That the warrant was improper upon its face or was illegally issued, including the
- 19 issuance of a warrant without proper showing of probable cause;
- 20 (3) That the property seized was not that described in the warrant and that the officer was
- 21 not otherwise lawfully privileged to seize the same;
- 22 (4) That the warrant was illegally executed by the officer;
- 23 (5) That in any other manner the search and seizure violated the rights of the movant
- 24 under Section 15 of Article I of the Constitution of Missouri, or the fourth and fourteenth
- 25 amendments of the Constitution of the United States.
- 26 6. The judge shall receive evidence on any issue of fact necessary to the decision of the
- 27 motion. The burden of going forward with the evidence and the risk of nonpersuasion shall be
- 28 upon the state to show by a preponderance of the evidence that the motion to suppress should be
- 29 overruled.
- 30 7. If the motion is sustained, the judge shall order the property or matter delivered to the
- 31 moving party, unless its retention is authorized or required by section 542.301, or by any other
- 32 law of this state.

544.250. 1. No prosecuting or circuit attorney in this state shall file any information

2 charging any person or persons with any felony, until such person or persons shall first have been

3 accorded the right of a preliminary examination before some associate circuit judge in the county

4 where the offense is alleged to have been committed in accordance with this chapter. And if

5 upon such hearing the associate circuit judge shall determine that the alleged offense is one on

6 which the accused may be released, the associate circuit judge may release him as provided in

7 section 544.455 conditioned for his appearance at a time certain before a circuit judge, or

8 associate circuit judge who is specially assigned, and thereafter as directed by the court to answer

9 such charges as may be preferred against him, abide sentence and judgment therein, and not to

10 depart the court without leave; provided, a preliminary examination shall in no case be required

11 where same is waived by the person charged with the crime, or in any case where an information

12 has been substituted for an indictment as authorized by section 545.300.

13 **2. The findings by the court shall be based on evidence, in whole or in part, in the**

14 **following forms:**

- 15 (1) **Testimony of witnesses;**
- 16 (2) **Written reports of expert witnesses;**
- 17 (3) **Documentary evidence without a proper predicate, provided there is a**
- 18 **substantial basis for believing such predicate will be available at trial and that the**
- 19 **document is otherwise competent; or**

20 **(4) Testimony of a witness concerning the declarations of another where such**
21 **evidence is cumulative, or there is a substantial basis for believing that the source of the**
22 **hearsay is credible and that a factual basis for the information furnished exists and there**
23 **is no reason for believing the declarant will not be personally available for trial.**

 545.490. [The petition of the applicant for a change of venue shall set forth the facts or
2 grounds upon which such change is sought, and such petition shall be supported by the affidavit
3 of petitioner and the affidavit of at least two credible disinterested citizens of the county where
4 said cause is pending and the truth of the allegations thereof shall be proved, to the satisfaction
5 of the court, by legal and competent evidence, and the prosecuting attorney may in such case
6 offer evidence in rebuttal of that submitted in support of such application; the court, or judge in
7 vacation, shall fix the number of witnesses for which the state or county may be liable; provided,
8 in all cases in counties in this state which now have or may hereafter have a population of less
9 than seventy-five thousand inhabitants if such petition for change of venue is supported by the
10 affidavits of five or more credible disinterested citizens residing in different neighborhoods of
11 the county where said cause is pending, then the court or judge in vacation, shall grant such
12 change of venue, as of course, without additional proof; provided further, that reasonable
13 previous notice of such application shall in all cases be given to the prosecuting attorney; and
14 provided further, that if the facts alleged as the ground of the application be within the
15 knowledge of the court or judge, he may order such removal of the cause without any formal
16 proof or the filing of affidavit; and provided further, that if the application shall allege prejudice
17 of the inhabitants of more than one county in the circuit in which the case is pending, the court
18 may, upon proof of the allegations as herein provided for, order the case sent to some county in
19 the same or some other circuit where such causes do not exist.] **1. Upon written application**
20 **by the defendant, a change of venue may be ordered in any felony proceeding for the**
21 **following reasons:**

22 **(1) That the inhabitants of the county are prejudiced against the defendant; or**

23 **(2) That the state has an undue influence over the inhabitants of the county.**

24 **2. The application shall be filed no later than thirty days after arraignment.**

25 **3. A copy of the application and a notice of the time when it will be presented to the**
26 **court shall be served on all parties.**

27 **4. The application shall set forth the reason or reasons for change of venue. The**
28 **application need not be verified and shall be signed by the defendant or his or her attorney.**

29 **5. The state may, within five days after the filing of the application for a change of**
30 **venue, file a denial of the existence of the reason or reasons alleged in the application. Such**
31 **denial need not be verified. If a denial is filed, the court shall hear evidence and determine**
32 **the issues. If the issues are determined in favor of the defendant, or if the truth of the**

33 grounds alleged is within the knowledge of the court, or if no denial is filed, a change of
34 venue shall be ordered to some other county convenient to the parties and where the reason
35 or reasons for the change of venue do not exist.

36 **6. All proceedings, except the trial by jury, shall occur in the originating county,**
37 **except as may be agreed upon by the parties and the court.**

38 **7. In lieu of transferring the case to another county, the court may secure a jury**
39 **from another county as provided by law.**

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