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FISCAL IMPACT REPORT

ORIGINAL DATE 1/28/07
 LAST UPDATED 3/10/07 HB 295/HJCS

SPONSOR HJC

SHORT TITLE Reliable Eyewitness Identification Act SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY07 | FY08 | FY09 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------|------|----------------------|-------------------------|------------------|
| Total | | Unknown | | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Public Defender Department (PDD)
 Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 295 creates a new statute providing procedures for law enforcement to use in line-up eyewitness identification procedures. The bill defines “line-up” as a series of persons or photographs shown to an eyewitness to a crime to determine whether or not that eyewitness can identify the subject. The bill also requires unless otherwise required by age, disability or the language needs of the eyewitness, only an administrator shall be present with an eyewitness during the lineup procedure, except that a suspect's attorney may be present during a lineup of persons. No other person shall be in a position to be seen or heard by the eyewitness during the lineup procedure.

The procedures require that prior to being shown a lineup, and as close in time to the incident as possible, an eyewitness shall give a description of the subject and the circumstances under which the subject was seen by the eyewitness, including the time of day, the length of time the subject was seen, the distance from the eyewitness to the subject and the lighting conditions. The description shall be recorded or written.

Prior to a lineup, an eyewitness shall be instructed that the eyewitness should not feel compelled to make an identification, the subject may not be among the members of the lineup and an identification, or a lack of identification, will not end the investigation.

The bill requires a photo lineup to consist of at least ten photographs. No more than one photograph of the suspect shall be included in the photo lineup.

The bill prohibits the presence of any person other than the administrator and eyewitness at a lineup except a suspect's attorney.

FISCAL IMPLICATIONS

The AODA states there will be additional resources expended by law enforcement agencies. Additional hearing will be held on eyewitness cases. As this will be a new requirement, no documentation exists as to what additional expense will be incurred.

The AOC notes there will be increased costs associated with a requirement to make a video and audio recording of every lineup procedure, as well as the additional costs required for the various records, instructions and documentation that are required in addition to the procedures currently imposed by law.

There may be increased costs to the courts because of challenges to eyewitness identifications and because litigation over such issues may demand more judicial resources than current law.

SIGNIFICANT ISSUES

A procedure such as is contemplated by the bill will likely reduce mistaken identifications, by improving the reliability of identifications and thus improving confidence in the criminal justice system. If these procedures are followed, it will likely reduce the number of hearings on motions to suppress identifications and may reduce the number of cases proceeding to trial.

The AODA claims that following the mandatory provisions of the act will lead to increased workload for law enforcement investigating crimes. The bill creates another method for defendants to challenge their proper identification by witnesses. Currently State and Federal Constitution govern eyewitness identification procedures. A recent study by the State of Illinois showed this method to be less effective than current methods.

The AODA also notes that rural areas may have difficulty implementing the provisions of this bill

ADMINISTRATIVE IMPLICATIONS

The bill will require extensive training for judicial and law enforcement agencies affected by this bill. Policies and procedure manuals will need to be revised.

OTHER SUBSTANTIVE ISSUES

The SC has provided the following:

- The sequential, blind lineup procedures set forth in the Reliable Eyewitness Identification Act are suggested as an alternative to traditional practice, which involves the simultaneous presentation of a lineup to an eyewitness. Also, in traditional practice, the person who administers the lineup often knows the identity of the suspect.
- Proponents for the use of sequential, blind lineups believe that implementation of these procedures will decrease the rate of mistaken identifications that result from the use of traditional practices. They raise the following issues concerning traditional practices:
 - When a lineup administrator knows the identity of a suspect, the administrator may provide unintentional or deliberate cues to the eyewitness about which person to pick from the lineup.
 - When an eyewitness is shown individuals or photos simultaneously, the eyewitness tends to choose a person from the lineup based upon a relative judgment (who looks the most like the suspect) rather than basing the identification on the eyewitnesses' own mental image of the suspect.

Research and field studies show that compared simultaneous and sequential, blind lineup procedures concluded that the sequential method reduced the number of false identifications with little or no loss in the number of accurate identifications.

A 2001 research study on line-up presentations collected and analyzed the results of twenty-three papers on sequential lineups compared to simultaneous lineups. The authors of the research study came to the conclusion that the rejection of the innocent occurred at a significantly higher rate in a sequential lineup compared to a simultaneous lineup.

Field studies that compared the effectiveness of sequential and simultaneous lineup presentations in Minnesota and Illinois, respectively, yielded conflicting results. Reviews of the Minnesota field study concluded that the sequential, blind lineup method was superior to the simultaneous method, resulting in decreased rates of false identification and maintaining an effective rate of suspect identification. On the other hand, the authors of a report on the Illinois field study concluded that the Illinois data showed that the sequential, blind lineups, when compared with the simultaneous method, produced a higher rate of known false picks and a lower rate of suspect picks.

DW/csd