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FISCAL IMPACT REPORT

ORIGINAL DATE 03/10/09

SPONSOR HJC LAST UPDATED _____ HB 396/HJCS

SHORT TITLE Reliable Eyewitness Identification Act SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund and Local Government Funds

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for HB 396 enacts the “Reliable Eyewitness Identification Act,” providing procedures for law enforcement to use in line-up and photo array eyewitness identification proceedings. The HJC substitute defines “line-up” as a series of live persons shown to an eyewitness for the purpose of determining whether the eyewitness can identify the subject. The substitute defines “photo array” as a series of photographs shown to an eyewitness for the purpose of determining whether the eyewitness can identify the subject. The bill also provides that, unless otherwise required by age, disability, emotional trauma 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. The substitute bill provides that 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 may be recorded or transcribed or written by the eyewitness.

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, the eyewitness may take as much time as the eyewitness wants to view the lineup, and an identification, or a lack of identification, will not end the investigation.

Additional requirements under the substitute bill are:

- No more than one suspect shall be included in a lineup.
- A live lineup shall consist of at least six persons.
- A photo array shall consist of 8 photographs, if possible, but no fewer than 6 photographs. No more than one photograph of the suspect shall be included in the photo lineup.
- Members of a lineup or photo array may be shown either sequentially or simultaneously.
- A member of a lineup shall generally fit the description of the subject.

Immediately after a lineup, an eyewitness is required to complete a form describing the eyewitness's reactions to the procedure, any ID made by the eyewitness and the degree of confidence felt by the eyewitness in making an ID. If the form cannot be completed in writing, the eyewitness shall be recorded providing the required information. The HJC substitute for HB 396 requires that a complete audio and visual recording be made of each lineup procedure and include specified information. An administrator must have good cause to not comply with the audio and visual recording requirement. Good cause includes the recording equipment is not be reasonably available or that the recording equipment failed and obtaining replacement equipment was not feasible.

The substitute bill provides that a suspect may not be shown to an eyewitness outside a lineup procedure for the purpose of ID unless:

- (1) the suspect is shown within a reasonable time after being seen;
- (2) initial descriptive information was obtained;
- (3) the suspect fits the description of the subject described by the witness;
- (4) the suspect was found in close proximity in time and place to the event seen; and
- (5) it is not feasible to conduct a lineup.

The substitute for HB 396 requires that a record of a lineup procedure be made that includes specified information.

The HJC substitute provides that compliance with the Reliable Eyewitness Identification Act shall not solely determine the admissibility of evidence.

The substitute bill provides that the provisions of the Act do not apply to lineup procedures conducted outside of New Mexico and do not apply within a correctional facility.

The effective date of the Act is July 1, 2009.

FISCAL IMPLICATIONS

The AOC anticipates the following fiscal impacts.

- 1) 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.
- 2) As with the original HB 396, 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. It is also possible, however, that if these procedures are followed, it may reduce the number of hearings on motions to suppress identifications and may reduce the number of cases proceeding to trial.
- 3) There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

DPS adds similar information.

Under the proposed bill additional resources may be expended by law enforcement agencies and the courts. 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, training and documentation that are required in addition to the procedures currently imposed by law.

There may also 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

DPS offers the following comments.

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 correctly followed, it will likely reduce the number of hearings on motions to suppress identifications and may reduce the number of cases proceeding to trial.

However, following the mandatory provisions of the act will lead to increased workload for law enforcement investigating crimes. Additionally, the bill creates another method for defendants to challenge their proper identification by witnesses. Currently, both State and Federal Constitutions govern eyewitness identification procedures.

As a practical matter, rural areas may have great difficulty sourcing and implementing the provisions of this bill. Imposing new standards without providing the necessary funding to cover hiring, training and equipment can result in legal challenges resulting in suppression of otherwise competent identification of suspects.

POSSIBLE QUESTIONS

How is this different than current procedures and what results are expected to be achieved with a new procedure?

MW/svb