

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 4170-06
Bill No.: SB 732
Subject: Courts; Crimes and Punishment; Criminal Procedure; Evidence; Law Enforcement Officers and Agencies; Public Safety Department
Type: Original
Date: February 14, 2014

Bill Summary: This proposal modifies provisions relating to criminal procedure.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	(\$1,411,341 to Unknown)	(\$1,072,946 to Unknown)	(\$1,085,739 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$1,411,341 to Unknown)	(\$1,072,946 to Unknown)	(\$1,085,739 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Highway Funds	\$138,965	\$251,862	\$210,723
Total Estimated Net Effect on Other State Funds	\$138,965	\$251,862	\$210,723

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 11 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
General Revenue	9 FTE	9 FTE	9 FTE
Total Estimated Net Effect on FTE	9 FTE	9 FTE	9 FTE

Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2015	FY 2016	FY 2017
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the State Courts Administrator (CTS)** state there will be some, unquantifiable at this time, impact spent on hearings but there is no way to quantify that. There also may be a future impact on Juvenile Weighted Workload (JWWL) or Clerical Weighted Workload (CWWL), but that would be reflected in a future request. Any significant increase in workload will be reflected in future budget requests.

Officials from the **Office of the State Public Defender (SPD)** state although this bill may have no impact on the number of cases for which the Public Defender System is required to provide representation, the changes in the indicated procedures may impact the necessary workload to defend the indigent accused.

Officials from the **Department of Corrections (DOC)** state in situations where outside law enforcement declines to investigate a criminal offense occurring within the DOC, investigators from the Office of Inspector General conduct such criminal investigations. DOC Investigators are trained in and comply with nationally recognized standards for interviews, interrogations, evidence collection and preservation, and adhere to applicable laws/statutes. Guidelines would be written for the requirements of this bill if it is passed into law. If collection and preservation of evidence according to this bill did not comply with statute, the evidence collected would be thrown out. Adequate space would be required to preserve biological evidence longer than our current practice.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state in order to administer this legislation, additional personnel would be required to implement a "blind administrator" or "blinded administrator" as proposed. An additional FTE would be needed for each of the nine investigative units for a total of 9 FTE. Each FTE would be involved in the investigation solely for the purpose of administering the lineups, audio or video recording of the lineup procedure, interviewing the witness at the time of the lineup, and court appearances.

9 Probationary Troopers $(\$1,547.50 * 2 * 7) + (\$1,640.50 * 2 * 5) \times 9$ \$342,630
(7 months entry salary/5 months graduation salary)

**Even though this position would be filled by members having the rank of Trooper 1st Class, Corporal or Sergeant, the cost to the state would be hiring a new recruit to eventually replace these positions. The starting salary has been shown, but the recruit would go through several salary levels during the first three years. Our figures are based on internal pay increases unique to troopers.

RAS:LR:OD

ASSUMPTION (continued)

The cost for the starting level recruit would be a relatively-smaller Highway expense, while the Trooper 1st Class, Corporal or Sergeant would save a larger amount of Highway money but be a corresponding General Revenue expense as that higher-paid FTE transferred into a Drug and Crime position. Overall, the cost to the state would be a General Revenue expense with a smaller offsetting savings in Highway. For purposes of this fiscal note, an average pay of \$55,200 was used for each of the nine FTE being transferred into a Drug and Crime position.

To administer/facilitate lineups, etc.	
Vehicle and Equipment	\$43,665
Academy Training	\$11,229
Weapons, Personal Equipment, etc.	\$4,677
Uniform Allowance	\$2,367
Vehicle Maintenance	\$3,209
Gasoline	\$11,875
Miscellaneous Trooper Expenses (Ammunition, Leather Replacement, etc.)	\$346

MHP's Division of Drug and Crime Control states that this legislation would require the purchase of 58 additional digital video camcorders at a cost of \$460 each for a total cost of \$26,680 (58 x \$460). It would also require the purchase of nine additional DVD duplicators to be distributed throughout the state at a cost of \$4,500 (9 x \$500).

Digital Video Camcorders	\$26,680
DVD Duplicators	\$4,500

There may be some costs associated with production and distribution of training materials such as videos, lesson plans, brochures, and quick reference cards to communicate the requirements of this bill. A conservative estimate of these expenses would be approximately \$6,170 (\$10 x 617 law enforcement agencies that reported vehicle stop data to the Missouri Attorney General during 2012).

Production and Distribution of Materials	\$6,170
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ASSUMPTION (continued)

At a minimum, digital audio recording devices will be needed to record the eyewitness' confidence level in the identification of the suspect from the photo or live lineup, per paragraph 8 of section 491.500.4. To ensure no recording opportunity is missed by members of the Patrol, approximately 1,000 digital audio recording devices will need to be purchased at approximately \$40 each for a total cost of \$40,000 (\$40 x 1,000).

Digital Audio Recording Devices	\$40,000
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As written, the bill requires the Department of Public Safety to create, administer, and conduct training programs for law enforcement officers on this revised identification process. There would be a need to prepare a lesson plan and training program as outlined. The Patrol's Academy believes this impact will be minimal and can be absorbed.

The MHP states they will see a savings to the Highway Funds since these nine positions going to the investigative units, are currently being paid through Highway Funds, and will be replaced with lower paid Patrol Academy recruits. Therefore, **Oversight** will show a net savings to Highway Funds for these transfers/back-fills.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal could be absorbed with existing resources.

In response to a similar proposal from 2013 (SB 162), officials from the **Columbia Police Department** stated this proposal would result in a nominal fiscal impact. The majority is already required in our present policy. The requirement to record the entire process when possible will result in some costs.

In response to a similar proposal from 2013 (SB 162), officials from the **Springfield Police Department** stated Section 590.700 (requiring LE to prove a good faith effort to maintain recording equipment for interrogation) would require some form of weekly checks with a log-one officer, one hour per week, per year - \$35 per hour (\$1,820/year). Also, Section 650.056 (requiring investigating agencies to retain biological evidence until a convicted offender is released from prison) will require more freezer space for all affected agencies. At \$4,000 per freezer, at least 4 more freezers for a total of \$16,000 would be needed. This is simply an estimate as it is not possible to know how many defendants our agency will collect biological evidence from, and convict and be imprisoned, nor no how long the prison term shall be.

ASSUMPTION (continued)

Officials from the **St. Louis County Sheriff's Department** and the **St. Louis Metropolitan Police Department** did not respond to our request for fiscal impact.

Oversight will reflect a cumulative unknown costs to local police departments and sheriff's departments.

<u>FISCAL IMPACT - State Government</u>	FY 2015 (10 Mo.)	FY 2016	FY 2017
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GENERAL REVENUE

Costs - Missouri Highway Patrol

Personal Service	(\$414,000)	(\$501,768)	(\$506,786)
Fringe Benefits	(\$347,884)	(\$421,636)	(\$425,852)
Vehicles and equipment (9)	(\$392,985)	\$0	\$0
Digital Video Camcorders (58)	(\$26,680)	\$0	\$0
DVD Duplicators (9)	(\$4,500)	\$0	\$0
Audio Recording Devices (1,000)	(\$40,000)	\$0	\$0
Other Expense and Equipment	<u>(\$185,292)</u>	<u>(\$149,542)</u>	<u>(\$153,101)</u>
<u>Total costs - Missouri Highway Patrol</u>	(\$1,411,341)	(\$1,072,946)	(\$1,085,739)
FTE Change - MHP	9 FTE	9 FTE	9 FTE

Costs - Dept. of Corrections

Additional DOC investigations and/or potential additional biological storage space	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	(\$1,411,341 to <u>Unknown</u>)	(\$1,072,946 to <u>Unknown</u>)	(\$1,085,739 to <u>Unknown</u>)
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Estimated Net FTE Change for the Missouri Highway Patrol	9 FTE	9 FTE	9 FTE
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<u>FISCAL IMPACT - State Government</u>	FY 2015	FY 2016	FY 2017
(continued)	(10 Mo.)		

HIGHWAY FUNDS

<u>Costs - MHP for probationary Troopers</u>			
Personal Service	(\$283,572)	(\$364,909)	(\$392,281)
Fringe Benefits	(\$238,286)	(\$306,633)	(\$329,634)
Expense and Equipment	<u>(\$101,061)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - MHP</u>	<u>(\$622,919)</u>	<u>(\$671,542)</u>	<u>(\$721,915)</u>

<u>Savings - MHP - Higher salaried Troopers 1st Class, Corporals and Sergeants moving into 9 new positions within investigative units (personal ser.)</u>	\$414,000	\$501,768	\$506,786
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<u>Savings - MHP - Higher salaried Troopers 1st Class, Corporals and Sergeants moving into 9 new positions within investigative units (fringe benefits)</u>	<u>\$347,884</u>	<u>\$421,636</u>	<u>\$425,852</u>
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<u>Total Savings - MHP</u>	<u>\$761,884</u>	<u>\$923,404</u>	<u>\$932,638</u>
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ESTIMATED NET EFFECT TO HIGHWAY FUNDS	<u>\$138,965</u>	<u>\$251,862</u>	<u>\$210,723</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2015	FY 2016	FY 2017
	(10 Mo.)		

POLICE DEPARTMENTS / SHERIFF DEPARTMENTS

<u>Costs - for increased investigation / storage space requirements</u>	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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ESTIMATED NET EFFECT TO POLICE DEPARTMENTS / SHERIFF DEPARTMENTS	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
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FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This act modifies provisions relating to criminal procedure.

EYEWITNESS IDENTIFICATION PROCEDURES (491.500 & 545.275)

Under this act, each law enforcement agency that uses eyewitness identification procedures must adopt written policies governing the procedures by Jan. 1, 2015. The agency must submit the policies to the Department of Public Safety and biannually review the policies.

A list of practices that may be included within the policies is provided.

The court must consider failure to comply with the statute or the law enforcement agency's procedures 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 statute or the policies 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.

This act 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 non-exhaustive list of factors for the court to consider when determining whether to hold a hearing or approve the motion is provided.

The judge must approve the motion to suppress if he or she finds that a substantial likelihood of irreparable misidentification exists.

This act provides that expert testimony on eyewitness identifications is admissible at the hearing 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 or on any factors in the particular case that might raise the risk of a misidentification.

RAS:LR:OD

FISCAL DESCRIPTION (continued)

CUSTODIAL INTERROGATIONS (590.700)

Under current law, custodial interrogations must be recorded when feasible. This act removes the phrase "when feasible".

Current law allows law enforcement officers to not record custodial interrogations when the suspect requests the interrogation not be recorded or the equipment fails or is not available at the location of the interrogation. This act repeals the exception regarding the suspect requesting the interrogation not be recorded and provides that, if the equipment fails or is not available, the law enforcement agency must demonstrate a good faith effort to maintain recording equipment for interrogations to be in compliance with the statute.

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

Under this act, 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 jury must be instructed that it may consider credible evidence of compliance or noncompliance with the recording requirements to determine whether the defendant's statement was voluntary and reliable.

This act 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 (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. This act modifies that list of felonies. Under this act, any biological evidence gathered during an investigation of the specified felonies must be preserved by the agency until any 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 twenty years after the offender has been executed or upon being pardoned or otherwise found innocent.

FISCAL DESCRIPTION (continued)

This act requires the evidence to be retained in a manner that preserves any possible DNA evidence for further testing. If the crime remains unsolved, the evidence must be preserved until the prosecuting attorney authorizes its destruction.

This act requires law enforcement agencies to develop written guidelines for the identification, collection, and preservation of biological evidence. In addition, crime labs are required to establish testing procedures.

Under this act, procedures are established for situations in which DNA testing will consume an entire biological sample.

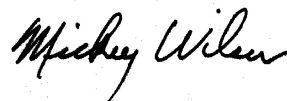
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Public Safety
Office of the State Public Defender
Office of the State Courts Administrator
Attorney General's Office
Department of Corrections
Springfield Police Department
Columbia Police Department

NOT RESPONDING:

Office of Prosecution Services



Mickey Wilson, CPA
Director
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