

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 1549-01
Bill No.: HB 575
Subject: Courts; Crimes and Punishment; Criminal Procedure; Evidence
Type: Original
Date: March 5, 2013

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
General Revenue	(\$1,749,891 to Unknown)	(\$1,074,752 to Unknown)	(\$1,087,564 to Unknown)
Total Estimated Net Effect on General Revenue Fund	(\$1,749,891 to Unknown)	(\$1,074,752 to Unknown)	(\$1,087,564 to Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Highway Funds	\$142,811	\$252,354	\$211,136
Total Estimated Net Effect on Other State Funds	\$142,811	\$252,354	\$211,136

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 13 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2014	FY 2015	FY 2016
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 2014	FY 2015	FY 2016
Local Government	(Unknown)	(Unknown)	(Unknown)

FISCAL ANALYSIS

ASSUMPTION

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.

Regarding Section 545.365, this may cause an increase in investigator workload to provide additional information to prosecutors regarding “in-custody informants” as offenders are commonly providing information to investigative staff about crimes occurring outside of the department. The fiscal impact for additional DOC Investigations cannot be determined and is unknown for each fiscal year.

In addition, this bill, in Sections 547.035 and 547.037, seeks to expand an offender's ability to file a post-conviction motion if they claim that forensic DNA will demonstrate their innocence of the crime and to also permit offenders sentenced to death to file such a motion if the testing will demonstrate the person’s innocence as it relates to any aggravating factor of the crime that led to the person being sentenced to death even if the person cannot claim that he is innocent of first-degree murder. If the testing demonstrates the offender’s innocence as it relates to the aggravating circumstance when the sentencing the person to death, the court shall order the offender to serve a sentence of imprisonment for life without eligibility for probation or parole. This provision may impact the DOC should an offender’s death sentence be changed to life imprisonment, however the impact would be past the scope of this fiscal note.

DOC assumed an unknown cost related to this proposal.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** state even though any law enforcement agency conducting one or more of the identification procedures shall adopt written rules governing the procedures by January 1, 2014, and each agency shall provide a copy of its written rules to the director of the department of public safety by February 1, 2014, the Highway Patrol assumes that this proposed legislation would still take effect on August 28, 2013.

ASSUMPTION (continued)

In order to administer this legislation, the Highway Patrol states that 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. If an attempt was made to use an investigator from another agency or another unit with the Patrol, this would cause a time delay in administering the lineup. The legislation provides for a time delay to be considered when dismissing the case.

9 Probationary Troopers ($\$1,547.50 \times 2 \times 7$) + ($\$1,640.50 \times 2 \times 5$) x 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.

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	\$45,266
Academy Training	\$10,854
Weapons, etc.	\$4,677
Uniform Allowance	\$2,367
Vehicle Maintenance	\$3,209
Gasoline	\$11,875
Miscellaneous Trooper Expenses (Ammunition, Leather Replacement, etc.)	\$346

This proposed legislation initially appears to eliminate a requirement that all custodial interrogations be recorded. However, Section 590.700.6 still states that an oral, written, or sign language statement of an accused made as a result of a custodial interrogation shall be presumed to be inadmissible as evidence in any criminal proceeding brought for any of the crimes listed in

ASSUMPTION (continued)

subsection 2 of this section if the interrogation was not recorded as required under this section unless one of the exceptions listed in subsection 2 or 3 of this section applies or the statement is used for the purposes of impeachment. The state shall bear the burden of proving the applicability of an exception. As long as this language remains in the bill, then all officers will need to have recording devices regardless of earlier language in the law that states that custodial interrogations shall not be required to be recorded.

Purchase of digital recording devices for every member of the Patrol likely to engage in a custodial interrogation will be necessary to capture statements containing admissions and confessions. The estimated cost for portable digital recording devices with a tripod is approximately \$400. The estimated cost to provide a portable video digital recorder to 1,000 Patrol members who regularly engage in enforcement duties is \$400,000 (\$400 x 1,000).

Digital Video and Audio Recording Devices	\$400,000
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The MHP states they will transfer Troopers 1st Class, Corporals and Sergeants from patrol duty to fill these nine needed positions within the investigative units. To estimate the expense for the new positions, the MHP took the average of the three positions. MHP also stated, these new positions will be paid from General Revenue Funds.

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 **Office of the State Courts Administrator** 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 Judicial Weighted Workload (JWWL) or Clerical Weighted Workload (CWWL), but that would be reflected in a future request.

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 SPD is required to provide representation, the changes in the indicated procedures may impact the necessary workload to defend the indigent accused.

In response to a similar proposal from this year (SB 162), officials from the **Attorney General's Office** assumed that any potential costs arising from this proposal could be absorbed with existing resources.

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ASSUMPTION (continued)

In response to a similar proposal from this year (SB 162), officials from the **Office of Prosecution Services** assumed the proposal would not create a measurable fiscal impact on their office.

In response to a similar proposal from this year (SB 162), officials from the **Columbia Police Department** stated the 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 this year (SB 162), officials from the **Springfield Police Department** stated Section 590.0700 (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 how long the prison term shall be.

Officials from the **Boone County Sheriff's Department, Buchanan County Sheriff's Department, Cole County Sheriff's Department, Independence Police Department, Jefferson City Police 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 2014 (10 Mo.)	FY 2015	FY 2016
GENERAL REVENUE			
<u>Costs - Missouri Highway Patrol</u>			
Personal Service	(\$414,000)	(\$501,768)	(\$506,786)
Fringe Benefits	(\$349,375)	(\$423,442)	(\$427,677)
Vehicle and Equipment	(\$407,394)	\$0	\$0
Expenses	(\$179,122)	(\$149,542)	(\$153,101)
Digital Audio/Video devices	(\$400,000)	\$0	\$0
<u>Total Costs - MHP</u>	(\$1,749,891)	(\$1,074,752)	(\$1,087,564)
FTE Change - MHP	9 FTE	9 FTE	9 FTE
<u>Costs - Dept. of Corrections</u>			
Additional DOC investigations and/or potential additional biological storage space	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
ESTIMATED NET EFFECT TO THE GENERAL REVENUE FUND	<u>(\$1,749,891 to Unknown)</u>	<u>(\$1,074,752 to Unknown)</u>	<u>(\$1,087,564 to Unknown)</u>
Estimated Net FTE Change for the Missouri Highway Patrol	9 FTE	9 FTE	9 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2014 (10 Mo.)	FY 2015	FY 2016
HIGHWAY FUNDS			
<u>Costs</u> - MHP for probationary Troopers			
Personal Service	(\$283,572)	(\$364,909)	(\$392,281)
Fringe Benefits	(\$239,306)	(\$307,947)	(\$331,046)
Expense and Equipment	(\$97,686)	\$0	\$0
<u>Total Costs</u> - MHP	(\$620,564)	(\$672,856)	(\$723,327)
 <u>Savings</u> - MHP - Higher salaried Troopers 1 st Class, Corporals and Sergeants moving into 9 new positions within investigative units (personal ser.)			
	\$414,000	\$501,768	\$506,786
 <u>Savings</u> - MHP - Higher salaried Troopers 1 st Class, Corporals and Sergeants moving into 9 new positions within investigative units (fringe benefits)			
	<u>\$349,375</u>	<u>\$423,442</u>	<u>\$427,677</u>
<u>Total Savings</u> - MHP	<u>\$763,375</u>	<u>\$925,210</u>	<u>\$934,463</u>
 ESTIMATED NET EFFECT TO HIGHWAY FUNDS	 <u>\$142,811</u>	 <u>\$252,354</u>	 <u>\$211,136</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2014 (10 Mo.)	FY 2015	FY 2016
POLICE DEPARTMENTS / SHERIFF DEPARTMENTS			
<u>Costs</u> - for increased investigation / storage space requirements			
	<u>(Unknown)</u>	<u>(Unknown)</u>	<u>(Unknown)</u>
 ESTIMATED NET EFFECT TO POLICE DEPARTMENTS / SHERIFF DEPARTMENTS	 <u>(Unknown)</u>	 <u>(Unknown)</u>	 <u>(Unknown)</u>

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 (Sections 491.500 & 545.275) - each law enforcement agency that uses eyewitness identification procedures must adopt written rules governing the procedures by January 1, 2014. 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 provided.

The court must consider 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.

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.

FISCAL DESCRIPTION (continued)

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.

JAILHOUSE INFORMANT TESTIMONY (Section 545.365) - requires prosecuting and circuit attorneys to follow certain procedures regarding testimony from jailhouse informants.

First, 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 and a video or audio recording of any discussion or interview of the informant by law enforcement officers.

Any materials required to be disclosed under this act are admissible to impeach the credibility of the informant.

In order for the testimony of a jailhouse informant to be admissible at trial, the prosecuting attorney must file a motion and prove at a hearing that the testimony is reliable and that it is corroborated by other evidence.

This act provides a list of factors for the court to consider when ruling on the motion.

Whenever a jailhouse 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.

This act requires the Attorney General to create a registry of jailhouse informants that includes information presented at trial and disclosed to defense attorneys. The information is not public record and is only available to prosecuting 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 the person is imprisoned may request to have DNA evidence tested to prove his or her innocence. This act allows a person who has been sentenced to death to have evidence tested to prove innocence of an aggravating factor that led to the person being sentenced to death even if the person cannot claim to be innocent of first degree murder.

FISCAL DESCRIPTION (continued)

Current law also limits post-conviction testing to evidence that has not previously been tested for DNA and evidence that was secured in relation to the crime for which the person is imprisoned. This act allows retesting of evidence that had previously been tested if additional 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 circumstance, 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.

CUSTODIAL INTERROGATIONS (Section 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 equipment fails or is not available at the location of the interrogation. This act 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.

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 (Sections 650.056 & 650.075) - current law requires investigating law enforcement agencies to preserve all DNA evidence leading to a conviction of certain types 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

FISCAL DESCRIPTION (continued)

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.

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.

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 Prosecution Services
Office of the State Public Defender
Office of the State Courts Administrator
Attorney General's Office
Department of Corrections

Not Responding:

Boone County Sheriff's Department
Buchanan County Sheriff's Department
Cole County Sheriff's Department
Independence Police Department
Jefferson City Police Department
St. Louis Metropolitan Police Department



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Ross Strobe
Acting Director
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