

February 17, 2016

The Honorable Jeff King, Chairperson  
Senate Committee on Judiciary  
Statehouse, Room 341-E  
Topeka, Kansas 66612

Dear Senator King:

**SUBJECT:** Fiscal Note for SB 428 by Senator Haley

In accordance with KSA 75-3715a, the following fiscal note concerning SB 428 is respectfully submitted to your committee.

SB 428 would require any law enforcement agency conducting eyewitness identification procedures to adopt rules for conducting photo and live lineups that comply with provisions specified in the bill. For any photo or live lineup, or showup procedure that was administered on and after July 1, 2016, whenever the prosecution intends to offer eyewitness identification evidence at trial, the defendant would be entitled to a pretrial evidentiary hearing regarding the reliability of the evidence.

The courts would be required to examine whether law enforcement failed to substantially comply with the bill's provisions; whether any other suggestive identification procedures were employed; whether the eyewitness identification evidence may have been otherwise contaminated; and any other factors regarding the reliability of the identification evidence.

If the courts find evidence that law enforcement failed to comply with the bill's provisions, the court would consider the evidence in determining the admissibility of the eyewitness identification, suppress the evidence when there is a substantial probability of eyewitness misidentification, or if the evidence is deemed admissible, instruct the jury as required in the bill.

SB 428 has the potential for increasing litigation in the courts because of the new requirements concerning eyewitness identification procedures created by the bill. If it does, the Office of Judicial Administration indicates that there would be a fiscal effect on the operations of the court system. However, it is not possible to estimate the number of additional court cases that would arise or how complex and time-consuming they would be. Therefore, a fiscal effect cannot be estimated.

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The Kansas Association of Counties and the League of Kansas Municipalities indicate the bill has the potential to increase costs to local governments since the bill establishes procedures for conducting photo and live lineups. This would result in time spent by local law enforcement agencies to develop rules and to train law enforcement officers on the new rules. Any fiscal effect associated with SB 428 is not reflected in *The FY 2017 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,  
Director of the Budget

cc: Shelia Sawyer-Tyler, KBI  
Kim Torrey, Highway Patrol  
Larry Baer, League of Municipalities  
Melissa Wangemann, Association of Counties  
Ashley Michaelis, Judiciary  
Willie Prescott, Attorney General's Office