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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/19/13  
 SPONSOR McSorley LAST UPDATED 03/11/13 HB \_\_\_\_\_  
 SHORT TITLE Accuracy of Eyewitness Procedures SB 490/aSJC  
 ANALYST Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY13 | FY14    | FY15    | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|------|---------|---------|----------------------|------------------------------|------------------|
| <b>Total</b> |      | Minimal | Minimal | Minimal              | Recurring                    | General<br>Fund  |

(Parenthesis ( ) Indicate Expenditure Decreases)

Similar to SB 489

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)  
 Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 490 strikes the legislative intent section and removes the requirement that governmental agencies conducting eyewitness procedures provide written policies to the Secretary of the DPS.

#### Synopsis of Original Bill

Senate Bill 490 (SB 490) would create a new law requiring any “criminal justice entity conducting eyewitness identification procedures to adopt written policies for using an eyewitness to identify a suspect” after viewing suspects in a lineup, show-up, or representation in a photo lineup. In developing their procedures the bill directs a law enforcement agency to “consider practices shown by reliable evidence to enhance the accuracy of identification procedures.”

## **FISCAL IMPLICATIONS**

The DPS's current policy is similar to policies in SB 490 therefore there should be no impact when developing new policies and procedures. However, the Act could create a fiscal impact upon law enforcement agencies that currently do not have a policy or procedure but who will be required to develop one.

The AGO stated that recommending multiple individuals including an administrator who is "blind" or "blinded," in addition to case agents and equipment operators would require additional staff for law enforcement agencies including the AGO investigations.

## **SIGNIFICANT ISSUES**

The AOC stated that courts consider the admissibility of identification testimony under a Fourteenth Amendment procedural due process analysis. In her 2008 article in the Duke Journal of Constitutional Law & Public Policy, Professor Sarah Anne Mourer sets out the current constitutional standards as follows:

If a court determines that a pretrial identification was unnecessarily suggestive, it then ascertains whether the suggestive procedure gave rise to a substantial likelihood of irreparable misidentification. A court will find a substantial likelihood of irreparable misidentification only if the identification is found to be unreliable. Therefore, even if the court concludes that a police identification procedure was suggestive, it may be admissible if the court finds that the identification is nevertheless likely to be accurate. A court will balance the suggestiveness of the identification procedure against the likelihood that the identification is correct, resulting in an unprincipled rule of law that turns on the court's subjective assessment of the defendant's guilt.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The PDD provided the following:

The differences between this bill and SB 489 are: delegation of authority to local agencies; probable lack of uniformity in adopted local procedures; additional lag time while procedures are developed; and lack of clear directives to courts, prosecutors, and defense counsel of the legal status of the local regulations or the consequences of violation of these procedures.

Perceived advantages from delegation of authority to local law enforcement should be weighed against the problems that could arise from lack of uniformity in procedures and uncertainty in enforcement. Given the clear evidence regarding the problem and solutions, it is unclear whether additional time is necessary to identify solutions. Lack of uniformity could lead to citizens in different parts of the State being afforded different levels of protection from mistaken identification testimony and the concomitant risk of wrongful convictions. It is not clear whether this result is anticipated or desired.