

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 428**

As Amended by House Committee on Judiciary

Brief*

Sub. for SB 428 would require all law enforcement agencies in Kansas to adopt a detailed, written policy regarding citizen identification of persons during a criminal investigation. The agencies would be required to collaborate with the county or district attorney to adopt written policies regarding eyewitness procedures and make such policies available to all agency officers. The policies would be required to include identification of the procedures the agency should employ when asking a citizen to identify a person during a criminal investigation. The bill would direct that these procedures should include use of blind and blinded procedures, instructions to the witness regarding the perpetrator's presence, use of non-suspect fillers who do not make the suspect stand out, and eliciting a confidence statement regarding the level of certainty in the selection.

The bill would require the policies to be implemented by agencies within two years of the effective date of the act and to make the policies available for public inspection during normal business hours.

Background

As introduced by Senator Haley, the bill contained detailed definitions and requirements for eyewitness identification procedures that would have been added to the Kansas Code of Criminal Procedure.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

In the hearing before the Senate Committee on Judiciary, Senator Haley and a representative of the Midwest Innocence Project testified in support of the legislation. A representative of the Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill. A representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified as an opponent. The director of the Kansas Bureau of Investigation and a representative of the Kansas County and District Attorneys Association (KCDAA) submitted written opposition testimony.

The Senate Committee recommended a substitute bill containing language proposed in the KCDAA testimony.

The Senate Committee of the Whole adopted an amendment specifying certain procedural topics to be addressed in the policies.

In the hearing before the House Committee on Judiciary, a representative of the Innocence Project and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs' Association testified in support of the bill. Senator Haley and a representative of the Kansas Association of Criminal Defense Lawyers submitted written testimony supporting the bill. There was no neutral or opponent testimony.

The House Committee adopted a technical amendment recommended by the Office of the Revisor of Statutes.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the bill would have a fiscal effect on the court system if litigation increased due to the new requirements in the bill. However, a fiscal effect cannot be estimated.

The Kansas Association of Counties and the League of Kansas Municipalities indicate the bill could increase costs to

local governments by requiring time for local law enforcement agencies to develop rules and train law enforcement officers on the new rules. Any fiscal effect is not reflected in *The FY 2017 Governor's Budget Report*.

No fiscal note was available for the substitute bill at the time of the House Committee action.