

PRELIMINARY STUDY OUTLINE -- HJR 14

Study: HJR 14 Interim Study Poll Rank: 13

Short Title: Study of Eyewitness Identification Policies and Procedures

Staff Recommendation: Do Not Assign

Preliminary Analysis

Issue(s) as listed in legislation:

The resolution's preamble lists two main issues:

- eyewitness misidentification contributing to wrongful convictions; and
- the need to ensure that law enforcement agencies across the state uniformly adopt and implement eyewitness identification best practices.

The study is to:

- identify current written eyewitness identification policies and procedures in place at law enforcement agencies throughout the state;
- create a plan for a uniform, statewide adoption of the eyewitness identification model policy developed by the Montana Law Enforcement Academy (MLEA) by law enforcement agencies;
- identify resources to assist law enforcement with the adoption of eyewitness identification best practices that comport with the Montana Law Enforcement Academy policy;
- recommend essential components of training programs for law enforcement officers on eyewitness identification procedures;
- develop a compliance mechanism to ensure that law enforcement agencies have adopted evidence-based eyewitness policies; and
- identify any statutory changes needed to implement the policies.

Preliminary study approach:

The preamble of the resolution acknowledges that the MLEA has already adopted a model policy based on best practices and the recommendations of the National Academy of Sciences. The MLEA or the Police Protective Association could conduct its own survey and evaluation of eyewitness policies throughout the state and propose legislation for the next session if desired without committing legislative staff or committee resources to do this study.

If the study is assigned, legislative staff would:

- work with the MLEA to conduct a survey of all local law enforcement agencies;
- obtain and summarize the model policy developed by the MLEA;
- obtain and summarize the key components of the National Academy of Sciences' best practices;
- conduct a legal analysis of whether the state has authority to require local law enforcement agencies to adopt and/or comply with certain eyewitness policies;
- investigate whether other states have adopted a state compliance mechanism; and
- based on guidance from the LJIC, develop a committee bill draft to implement a statewide compliance program (within the scope of the state's authority) and provide the LJIC with a fiscal analysis of the estimated cost to implement the state compliance program.

Deliverables; end products:

- a staff paper for the LJIC or a final report to the legislature;
- a bill draft, if recommended and within the scope of the state's authority; and
- a fiscal analysis of the bill draft.

Role for LFD or LAD staff? X **Yes** **No**
LFD staff to provide fiscal analysis of any bill draft recommended.

Role for Executive agency? X **Yes** **No**
MLEA to help conduct a survey of local law enforcement agencies.

Additional costs, over meetings? **Yes** X **No**

Estimated LSD staff time: 480 to 640 **hours**

Other comments: If this study were to be undertaken, it would best be assigned to the Law and Justice Interim Committee. However, the LJIC and, especially, the LJIC staff is fully deployed on the studies directed statutorily through HB 430 (Judicial Redistricting) and SB 224 (Sentencing Commission) and the sexual assault study requested in SJR 24. Therefore, the staff recommends that this study not be assigned.

Law and Justice Interim Committee
June 25, 2015
EXHIBIT11