

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: MAR 9 2009

SUBJECT: Fiscal Impact Statement: "Eyewitness Identification Procedures Act of 2009"

REFERENCE: Bill 18-67, draft Committee Print dated March 10, 2009

Conclusion

Funds are sufficient in the FY 2009 through FY 2012 budget and financial plan to implement the provisions of the proposed legislation.

Background

The stated intent of the proposed legislation is to "...create and mandate an eyewitness identification process; to codify best practices in identification procedures; to mandate training of law enforcement in these best practices; to require that identification procedures be documented to authorize discovery of these materials; and to provide remedies for when an identification procedure is not in accordance with this law." Below is a section-by-section summary of the proposed bill.

Procedures for investigators conducting lineups and photographic displays, and procedures for witnesses viewing lineups and photographic displays

- Requires District of Columbia law enforcement agencies to administer all lineups¹ double-blind² and all photographic displays³ double-blind or modified nonblind⁴;

¹ "Lineup" is defined in the bill as "...a procedure conducted by an investigator in which a witness views a number of live persons in order to determine if the witness can make an identification."

- Provides instructions to the investigator conducting the lineup or photographic display regarding processes to be followed, including questions s/he must ask witness(es) and procedures s/he must explain to the witness(es) orally and in writing;
- Specifies that if photographic displays are conducted modified nonblind, the investigator must properly document circumstances in accordance with requirements enumerated in the proposed bill (e.g., the investigator must preserve all copies of photographic displays, record the names of the individuals displayed in a photographic display, etc.);
- Provides that "...if at any time the modified nonblind nature of the photographic display is compromised..." the investigator would be required to immediately stop the identification procedure and "...if appropriate, a new investigator..." would be required to be located in order to administer a new procedure;
- Requires investigators to photograph all participants in any lineup viewed by a witness, and preserve all photographs of a live lineup and copies of all photographic displays viewed by a witness;
- Requires investigators to record: the names of individuals displayed in a lineup or photographic display, other information regarding such individuals, and methods used in the lineup or photographic display;
- Provides procedures for witnesses viewing lineups and photographic displays;

Discovery of identification procedure documents and records

- Provides that counsel for a person accused of a criminal offense or a delinquent act in the Superior Court of the District of Columbia is entitled to discovery of all materials created pursuant to this proposed bill;

Remedies

- Provides that failure to comply with any of the requirements of the proposed bill must be considered by the court in adjudicating motions to suppress eyewitness identification;
- Provides that failure to comply with any of the requirements of the proposed bill must be admissible in support of claims of eyewitness identification, as long as such evidence is otherwise admissible;
- Provides that when evidence of compliance or noncompliance with such requirements has been presented at trial, the jury must be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications; and

Training

² "Double-blind" is defined in the bill as meaning that "...an investigator conducting or present for the lineup or photographic display is unaware which (if any) of the participants in the identification procedure is suspected of committing the offense, and the witness viewing the lineup or photographic display is not informed, by express or implied means, of the identity of any suspect."

³ "Photographic display" is defined in the bill as "...a procedure conducted by an investigator in which a witness views a number of photographs of persons to determine if the witness can make an identification."

⁴ "Modified nonblind" is defined in the bill as "...an investigator conducting a or present for a photographic display, because of procedural precautions taken, is unable to discern at any time during the identification procedure the identity of the person the witness is viewing." The bill presents as examples of modified nonblind "...allowing a witness to view photographs in manila folders or on a laptop computer."

- Requires all investigators to be trained on the procedures set forth by the proposed bill and the scientific findings on which such procedures are based.

Financial Plan Impact

Funds are sufficient in the FY 2009 through FY 2012 budget and financial plan to implement the proposed legislation.

MPD has expressed to the OCFO that the proposed bill may create additional unbudgeted expenditure pressures and opportunity costs related to the administration of the witness identification procedures enumerated in the proposed bill. These include potentially increased court overtime costs and opportunity costs created from the time the administrator could have spent investigating other crimes if and when the double-blind procedure is used. OAG has also indicated that it may face additional expenditure pressures arising from legislative interpretation issues which may result in additional litigation. However, these expenditure pressures and opportunity costs cannot be reliably estimated and may not directly impact the budget and financial plan.