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**FISCAL IMPACT STATEMENT**

**LS 7556**

**BILL NUMBER: SB 574**

**NOTE PREPARED: Jan 17, 2007**

**BILL AMENDED:**

**SUBJECT:** Innocence Review Commission; Interrogations.

**FIRST AUTHOR:** Sen. Bowser

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:  GENERAL  
 DEDICATED  
 FEDERAL**

**IMPACT:** State

**Summary of Legislation:** This bill has the following provisions:

- A. Electronic Record of Custodial Interrogations – It requires state and local law enforcement agencies to electronically record custodial interrogations of suspects during felony investigations. It requires the agencies to retain copies of custodial interrogations for certain periods. It provides that any statements made by a suspect that are in violation of the custodial interrogation requirements are inadmissible in a felony prosecution against the suspect. It provides for certain exceptions.
- B. Innocence Review Commission – It establishes the Innocence Review Commission to consider claims of individuals convicted of a felony who assert: (1) complete innocence of criminal responsibility for the felony; and (2) credible, verifiable evidence of innocence that was not previously considered at trial or in a hearing for post-conviction relief. It provides that if the Commission votes that an individual has a claim of factual innocence, the State Public Defender shall file a petition for post-conviction relief on the individual's behalf.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** *Electronic Record of Custodial Interrogations* – This bill should result in minimal impact to state agencies. In this bill, a "custodial interrogation" occurs when a law enforcement officer questions a person about a murder and the person considers himself or herself to be in custody. The questions that the law enforcement officer asks may result in an incriminating response. Beginning July 1, 2008, any custodial interrogation occurring in a law enforcement agency's building must be recorded with electronic equipment. The price of office video recording equipment is estimated to be between \$2,000 and \$3,000.

While eight state agencies have law enforcement officers with arrest powers, the State Police will conduct almost all murder investigations. The cost to the Indiana State Police should be minimal since the State Police typically record interrogations with audio recording equipment.

*Innocence Review Commission* – Potential costs could be limited. Assuming that much of the work could be performed by law school students and faculty at state universities in Indiana, any additional expenditures related to this provision could be limited to adding a director to the state payroll. No appropriations are included in this bill.

This proposal would create a commission and review process similar to the North Carolina Center for Actual Innocence. The Center reviews claims filed by criminal defendants who are in prison who have exhausted direct appeals after a criminal trial. Direct appeals are filed after a trial. In a direct appeal, the defendant is required to show that what happened at trial was legally erroneous and no new evidence may be presented. The Center staff identify cases and investigate whether facts be found to exonerate a criminal defendant. Volunteer law students and law school faculty at state universities in North Carolina perform most or all of the work.

The bill provides that the seven-member Innocence Review Commission would include:

1. a judge who exercises criminal jurisdiction
2. a prosecuting attorney
3. a criminal defense attorney
4. a judge of the Court of Appeals, all of whom would be appointed by the chief justice of the Indiana Supreme Court
5. the director of the Indiana Criminal Justice Institute
6. the director of the Prosecuting Attorneys Council
7. the executive director of the Public Defender Council

The Innocence Review Commission would have the following duties and powers:

- establish criteria and a screening process to determine which cases to accept for review
- conduct inquiries into claims of factual innocence
- coordinate the investigation of the cases for review
- maintain records of investigations
- report on the investigation to the commission

A defendant in these cases would have had to exhaust direct appeals and would have to waive all procedural safeguards and privileges and agree to cooperate and provide full disclosure.

The Criminal Justice Institute is to provide staff to the Commission. After reviewing a report prepared by staff, the Commission members will decide whether sufficient evidence exists to merit further review. At least five of the seven members would be required to vote in favor. If five members vote in favor, then the case shall be referred to the State Public Defender to file a petition for post-conviction relief. A petition filed for post-conviction relief is conducted at the trial court level. At the hearing, newly discovered evidence such as DNA and other issues may be presented.

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** *Electronic Record of Custodial Interrogations* – This provision is

anticipated to result in minimal to moderate costs to local law enforcement agencies. The cost to county sheriffs should be minimal since almost all county sheriffs record interrogations using electronic equipment. Electronic recording of interrogations is standard operating procedure for municipal police departments in larger urban areas in Indiana. Consequently, these agencies should already be able to comply with this legislation.

Municipal police departments in smaller cities and towns may have a more difficult time complying. However, these smaller departments can probably have access to the equipment at the headquarters of another department. There are 454 municipal police departments in Indiana.

**Explanation of Local Revenues:**

**State Agencies Affected:** Criminal Justice Institute; Indiana State Police.

**Local Agencies Affected:** Local law enforcement agencies.

**Information Sources:** Crime in the United States, Federal Bureau of Investigation; Doug Gosser, Indiana Sheriffs' Association; Uniform Crime Reports, Federal Bureau of Investigation.

[http://www.law.duke.edu/innocencecenter/what\\_we\\_do.html](http://www.law.duke.edu/innocencecenter/what_we_do.html)

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