

The Department of Corrections must develop staff training on mental health issues. SB 190 establishes revised criteria for post-conviction DNA testing, allows death row inmates up to three years to file post-conviction motions, requires open-file discovery, and permits death row inmates to make a personal appeal to the Parole Board. SB 190 requires the retention of biological evidence in capital cases. It prohibits executions when certain mental health or competency conditions are present. It revises the point in a case when the jury receives its instructions. The bill increases the factors considered by the Supreme Court in death penalty appeals; broadens the applicability of the Kentucky Racial Justice Act; creates a commission to study judicial selection in Kentucky; and requires a study of the effect of the Kentucky Racial Justice Act.

Part III: Fiscal Explanation, Bill Provisions, and Estimated Cost

The fiscal impact of SB 190 on local governments is indeterminable. The majority of costs to local governments would result from additional equipment and required training for law enforcement. In the long-term, local government may realize savings from correctly investigating and handling cases from initial investigation through to prosecution, thus limiting future appeals.

SB 190 sets forth requirements for the collection and preservation of biological evidence, the conduction of lineups and interviews, and mental health training. The bill directs the Kentucky Law Enforcement Council to develop mandatory law enforcement training relative to those subjects. According to the Department of Criminal Justice Training, SB 190 will require a reworking of current law enforcement training. Existing training will either have to be revised to remove current subjects or extended to provide additional training time. Local governments will bear the costs of new and additional training for their police officers. The bill also requires specific procedures for interviews and lineups. These include recording police lineups and interviews with suspects and witnesses. Local governments may incur costs complying with the procedures and obtaining the necessary recording equipment.

In the way of background, the Department of Public Advocacy reports that more than two-thirds of Kentucky's death sentences have been overturned on appeal. According to the Department for Public Advocacy, as of January 1, 2015 seventy-eight people have been sentenced to death. Fifty-one of these individuals have had a death sentence overturned on appeal by Kentucky or federal courts, or been granted clemency. This is an error rate of approximately sixty percent. The fifty-one reversals required retrials or have resulted in pleas to nondeath sentences. These subsequent proceedings would not have occurred but for the significant errors at trial.

Another way to look at the above is to identify the 58 cases whose mandatory review process has ended. Of this 58, 47 (81%) were reversed by the courts, two (3%) were granted clemency, and three (5%) were executed.

Data Source(s): LRC Staff; Department of Criminal Justice Training; Department for Public Advocacy, American Bar Association; Louieville Metro Chief Public defender.

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