

By Senator Baxley

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1 A bill to be entitled
2 An act relating to eyewitness identification; creating
3 s. 92.70, F.S.; providing a short title; defining
4 terms; requiring state, county, municipal, or other
5 law enforcement agencies that conduct lineups to
6 follow specified procedures; requiring eyewitnesses to
7 sign an acknowledgment that they have received the
8 instructions about the lineup procedures from the law
9 enforcement agency; requiring lineup administrators to
10 document the refusal of an eyewitness to acknowledge
11 such receipt; specifying remedies for failing to
12 adhere to the eyewitness identification procedures;
13 requiring the Criminal Justice Standards and Training
14 Commission to create educational materials and provide
15 training programs on how to conduct lineups; providing
16 an effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 92.70, Florida Statutes, is created to
21 read:

22 92.70 Eyewitness identification.-

23 (1) SHORT TITLE.-This section may be cited as the
24 "Eyewitness Identification Reform Act."

25 (2) DEFINITIONS.-As used in this section, the term:

26 (a) "Eyewitness" means a person whose identification by
27 sight of another person may be relevant in a criminal
28 proceeding.

29 (b) "Independent administrator" means a person who is not
30 participating in the investigation of a criminal offense and is
31 unaware of which person in the lineup is the suspect.

32 (c) "Lineup" means a photo lineup or live lineup.

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33 (d) "Lineup administrator" means the person who conducts a
34 lineup.

35 (e) "Live lineup" means a procedure in which a group of
36 people is displayed to an eyewitness for the purpose of
37 determining if the eyewitness can identify the perpetrator of a
38 crime.

39 (f) "Photo lineup" means a procedure in which an array of
40 photographs is displayed to an eyewitness for the purpose of
41 determining if the eyewitness can identify the perpetrator of a
42 crime.

43 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—A lineup
44 conducted in this state by a state, county, municipal, or other
45 law enforcement agency must meet all of the following
46 requirements:

47 (a) The lineup must be conducted by an independent
48 administrator. In lieu of using an independent administrator, a
49 law enforcement agency may conduct a photo lineup eyewitness
50 identification procedure using an alternative method specified
51 and approved by the Criminal Justice Standards and Training
52 Commission. Any alternative method must be carefully structured
53 to achieve neutral administration and to prevent the lineup
54 administrator from knowing which photograph is being presented
55 to the eyewitness during the identification procedure. An
56 alternative method approved by the Criminal Justice Standards
57 and Training Commission may include any of the following:

58 1. An automated computer program that can automatically
59 administer the photo lineup directly to an eyewitness and
60 prevent the lineup administrator from seeing which photograph
61 the eyewitness is viewing until after the procedure is

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62 completed.

63 2. A procedure in which photographs are placed in folders,
64 randomly numbered, and shuffled and then presented to an
65 eyewitness such that the lineup administrator cannot see or
66 track which photograph is being presented to the eyewitness
67 until after the procedure is completed.

68 3. Any other procedure that achieves neutral administration
69 and prevents the lineup administrator from knowing which
70 photograph is being presented to the eyewitness during the
71 identification procedure.

72 (b) Before a lineup, the eyewitness must be instructed
73 that:

74 1. The perpetrator might or might not be in the lineup;
75 2. The lineup administrator does not know the suspect's
76 identity, except that this instruction need not be given when a
77 specified and approved alternative method of neutral
78 administration is used;

79 3. The eyewitness should not feel compelled to make an
80 identification;

81 4. It is as important to exclude innocent persons as it is
82 to identify the perpetrator; and

83 5. The investigation will continue with or without an
84 identification.

85
86 The eyewitness shall acknowledge, in writing, having received a
87 copy of the lineup instructions. If the eyewitness refuses to
88 sign a document acknowledging receipt of the instructions, the
89 lineup administrator must document the refusal of the eyewitness
90 to sign a document acknowledging receipt of the instructions,

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91 and the lineup administrator must sign the acknowledgment
92 document himself or herself.

93 (4) REMEDIES.—All of the following remedies are available
94 as consequences of compliance or noncompliance with any
95 requirement of this section:

96 (a)1. A failure on the part of a person to comply with any
97 requirement of this section shall be considered by the court
98 when adjudicating motions to suppress eyewitness identification.

99 2. A failure on the part of a person to comply with any
100 requirement of this section is admissible in support of a claim
101 of eyewitness misidentification, as long as such evidence is
102 otherwise admissible.

103 (b) If evidence of compliance or noncompliance with any
104 requirement of this section is presented at trial, the jury
105 shall be instructed that the jury may consider credible evidence
106 of compliance or noncompliance to determine the reliability of
107 eyewitness identifications.

108 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
109 and Training Commission, in consultation with the Department of
110 Law Enforcement, shall create educational materials and provide
111 training programs on how to conduct lineups in compliance with
112 this section.

113 Section 2. This act shall take effect October 1, 2017.