

By the Committee on Criminal Justice; and Senator Baxley

591-01907-17

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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

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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.

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. However, in lieu of using an independent
49 administrator, a law enforcement agency may conduct a photo
50 lineup eyewitness identification procedure using an alternative
51 method specified in subparagraph 1., subparagraph 2., or
52 subparagraph 3. Any alternative method must be carefully
53 structured to achieve neutral administration and to prevent the
54 lineup administrator from knowing which photograph is being
55 presented to the eyewitness during the identification procedure.
56 Alternative methods may include any of the following:

57 1. An automated computer program that can automatically
58 administer the photo lineup directly to an eyewitness and

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59 prevent the lineup administrator from seeing which photograph
60 the eyewitness is viewing until after the procedure is
61 completed.

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

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

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

73 1. The perpetrator might or might not be in the lineup;

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

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

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

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

84
85 The eyewitness shall acknowledge, in writing, having received a
86 copy of the lineup instructions. If the eyewitness refuses to
87 sign a document acknowledging receipt of the instructions, the

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88 lineup administrator must document the refusal of the eyewitness
89 to sign a document acknowledging receipt of the instructions,
90 and the lineup administrator must sign the acknowledgment
91 document himself or herself.

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

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

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

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

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

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