

**By** Senator Truenow

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A bill to be entitled

An act relating to eyewitness identification; amending s. 92.70, F.S.; defining terms; revising eyewitness identification procedures; requiring a law enforcement officer to record, as completely as possible, an eyewitness's description of the possible perpetrator of a crime and include the description in the offense report; requiring that such description include specified details; requiring a law enforcement officer or agency to have an evidence-based reason to include a suspect in a lineup; providing that if facial recognition technology is used to identify a suspect, a lineup may not be conducted unless certain conditions are met; specifying the composition of a lineup; requiring that the photograph used in a lineup and the procedures of the lineup meet certain criteria; limiting the number of identification procedures that may be conducted as to certain persons; requiring a law enforcement officer or agency to make efforts to perform a lineup rather than use a show-up or a first-time-in-court identification; specifying the circumstances in which a show-up or in-court identification may be performed; requiring that certain instructions be given to an eyewitness before any identification procedure; revising such instructions; requiring a lineup administrator to document any identification or nonidentification in a specified manner; requiring audio and video recording of all identification procedures; providing an

13-01237-26

20261202

30 exception; authorizing certain attorneys to be present  
31 at a lineup; specifying the permissible conduct of  
32 such attorneys during the lineup; providing an  
33 effective date.

34

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

36

37 Section 1. Subsections (2) and (3) of section 92.70,  
38 Florida Statutes, are amended to read:

39 92.70 Eyewitness identification.—

40 (2) DEFINITIONS.—As used in this section, the term:

41 (a) "Eyewitness" means a person whose identification by  
42 sight of another person may be relevant in a criminal  
43 proceeding.

44 (b) "Facial recognition technology" means an automated or  
45 semiautomated tool that captures biometric information, analyzes  
46 facial features, and is used for identification, verification,  
47 or tracking the location of an individual. The term does not  
48 include the use of search terms to sort images in a database.

49 (c) "Filler" means a person or a photograph of a person who  
50 is not suspected of a crime under investigation and is included  
51 in an identification procedure.

52 (d) "Identification procedure" means a live lineup, photo  
53 lineup, or show-up.

54 (e) ~~(b)~~ "Independent administrator" means a person who is  
55 not participating in the investigation of a criminal offense and  
56 is unaware of which person in the lineup is the suspect.

57 (f) ~~(e)~~ "Lineup" means a photo lineup or live lineup.

58 (g) ~~(d)~~ "Lineup administrator" means the person who conducts

13-01237-26

20261202

59 a lineup.

60 (h) ~~(e)~~ "Live lineup" means a procedure in which a group of  
61 people is displayed to an eyewitness for the purpose of  
62 determining if the eyewitness can identify the perpetrator of a  
63 crime.64 (i) ~~(f)~~ "Photo lineup" means a procedure in which an array  
65 of photographs is displayed to an eyewitness for the purpose of  
66 determining if the eyewitness can identify the perpetrator of a  
67 crime.68 (j) "Show-up" means a procedure in which an eyewitness is  
69 presented with a single suspect for the purpose of determining  
70 whether the eyewitness identifies the person as the perpetrator  
71 of a crime.72 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—A lineup  
73 conducted in this state by a state, county, municipal, or other  
74 law enforcement agency must meet all of the following  
75 requirements:76 (a) The lineup must be conducted by an independent  
77 administrator. However, in lieu of using an independent  
78 administrator, a law enforcement agency may conduct a photo  
79 lineup eyewitness identification procedure using an alternative  
80 method specified in subparagraph 1., subparagraph 2., or  
81 subparagraph 3. Any alternative method must be carefully  
82 structured to achieve neutral administration and to prevent the  
83 lineup administrator from knowing which photograph is being  
84 presented to the eyewitness during the identification procedure.  
85 Alternative methods may include any of the following:86 1. An automated computer program that can automatically  
87 administer the photo lineup directly to an eyewitness and

13-01237-26

20261202

88 prevent the lineup administrator from seeing which photograph  
89 the eyewitness is viewing until after the procedure is  
90 completed.

91 2. A procedure in which photographs are placed in folders,  
92 randomly numbered, and shuffled and then presented to an  
93 eyewitness such that the lineup administrator cannot see or  
94 track which photograph is being presented to the eyewitness  
95 until after the procedure is completed.

96 3. Any other procedure that achieves neutral administration  
97 and prevents the lineup administrator from knowing which  
98 photograph is being presented to the eyewitness during the  
99 identification procedure.

100 (b) Before an identification procedure, a law enforcement  
101 officer shall record a description as complete as possible of  
102 the perpetrator of a crime, provided by the eyewitness in the  
103 eyewitness's own words, and shall include the description in the  
104 offense report. This statement must also include, from the  
105 eyewitness's point of view, information regarding the conditions  
106 under which the eyewitness observed the perpetrator, including  
107 location, time, distance, obstructions, lighting, weather  
108 conditions, and other impairments, including, but not limited  
109 to, alcohol, drugs, stress, and visual or auditory disabilities.

110 (c) To include a suspect in a lineup, a law enforcement  
111 officer or agency must have an evidence-based reason to believe  
112 that such suspect committed the crime under investigation. If  
113 facial recognition technology is used to identify a suspect, a  
114 law enforcement officer or agency may not conduct a lineup  
115 unless there is a basis, independent of the use of facial  
116 recognition technology, to support a belief that the suspect

13-01237-26

20261202

117 committed the crime under investigation.

118 (d) A lineup must be composed of the suspect and at least  
119 five fillers who generally resemble the eyewitness's description  
120 of the perpetrator, and the law enforcement officer or agency  
121 shall ensure that the suspect does not stand out from the  
122 fillers in appearance. The photograph of the suspect that is  
123 included in a photo lineup must be contemporary and must  
124 resemble the suspect's appearance at the time of the crime under  
125 investigation. The photographs and the background context in  
126 which such photographs are placed must be free from any  
127 characteristics that make any photograph stand out.

128 1. If there is more than one suspect, only one suspect may  
129 be included in each identification procedure. If the eyewitness  
130 has previously viewed a lineup in connection with the  
131 identification of another person suspected of involvement in the  
132 crime under investigation, the fillers in the lineup in which  
133 the current suspect is included must be different from the  
134 fillers used in any prior lineups.

135 2. If there are multiple eyewitnesses to a crime under  
136 investigation, each eyewitness must view the identification  
137 procedure separately and the suspect must be placed in a  
138 different position in the lineup for each eyewitness.

139 3. Only one identification procedure involving the same  
140 eyewitness and suspect may be conducted.

141 (e) A law enforcement officer or agency shall make efforts  
142 to perform a lineup instead of a show-up or a first-time-in-  
143 court identification.

144 1. Show-ups may only be performed using a live suspect and  
145 only in exigent circumstances that require the immediate display

13-01237-26

20261202

146 of a suspect to an eyewitness close to the time and place of the  
147 crime scene. In the event of a show-up, the eyewitness must be  
148 transported to a neutral, non-law enforcement location where the  
149 suspect is detained for the purpose of the show-up. Unless  
150 impractical, a show-up may not be conducted when the suspect is  
151 in a patrol car, noticeably handcuffed, or physically restrained  
152 by officers.

153 2. An eyewitness may not identify the defendant for the  
154 first time in court unless the prosecutor provides a good reason  
155 for the failure to conduct an out-of-court identification  
156 procedure. A relationship of close familiarity which minimizes  
157 the risk of misidentification, such as that of an immediate  
158 family member, a close friend, or a daily coworker, constitutes  
159 a good reason.

160 (f) (b) Before an identification procedure a lineup, the  
161 eyewitness must be instructed that:

162 1. The perpetrator might or might not be in the lineup or,  
163 in the case of a show-up, might or might not be the person that  
164 is presented to the eyewitness;

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

169 3. The eyewitness ~~must~~ should not feel compelled to make an  
170 identification;

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

173 5. The investigation will continue with or without an  
174 identification;

13-01237-26

20261202

175       6. After an identification, the administrator will ask the  
176       eyewitness to state, in his or her own words, how certain he or  
177       she is of the identification; and

178       7. The eyewitness may not discuss the identification  
179       procedure or results with any other eyewitnesses involved in the  
180       investigation and may not speak with the media about such  
181       identification procedure.

182

183       The eyewitness shall acknowledge, in writing, having received a  
184       copy of the lineup instructions. If the eyewitness refuses to  
185       sign a document acknowledging receipt of the instructions, the  
186       lineup administrator must document the refusal of the eyewitness  
187       to sign a document acknowledging receipt of the instructions,  
188       and the lineup administrator must sign the acknowledgment  
189       document himself or herself.

190       (g) After an identification procedure, the lineup  
191       administrator shall document any identification or  
192       nonidentification. Such documentation must include a clear  
193       statement from the eyewitness, at the time of the identification  
194       and in the eyewitness's own words, as to the eyewitness's  
195       confidence level that the person he or she identified is the  
196       perpetrator of the crime under investigation.

197       (h) All identification procedures must be captured by audio  
198       and video recording unless visual recording is unavailable, in  
199       which case the recording of audio alone is permissible.

200       (i) The prosecuting attorney and the suspect's attorney may  
201       be present during a lineup to observe the manner in which the  
202       lineup is conducted. Such persons must be out of the view of the  
203       eyewitness and must be instructed to remain silent during the

13-01237-26

20261202

204       procedure and to refrain from exercising any influence on the  
205       procedure.

206       Section 2. This act shall take effect July 1, 2026.