

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\_\_

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

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

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

92.70 Eyewitness identification.—

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

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

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

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

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

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

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

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

13-01237-26

20261202\_\_

a lineup.

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

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

(j) "Show-up" means a procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies the person as the perpetrator of a crime.

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

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

1. An automated computer program that can automatically 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\_\_

committed the crime under investigation.

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

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

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

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

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

1. Show-ups may only be performed using a live suspect and 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.