

By Senator Negrón

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1 A bill to be entitled
2 An act relating to eyewitness identification;
3 providing a short title; defining terms; requiring
4 state, county, municipal, and other law enforcement
5 agencies that conduct lineups to follow certain
6 specified procedures; requiring the eyewitness to sign
7 an acknowledgement that he or she received the
8 instructions about the lineup procedures from the law
9 enforcement agency; providing for an alternative
10 method of identification of suspects; requiring the
11 Criminal Justice Standards and Training Commission to
12 specify and approve any alternative method used for
13 eyewitness identification; requiring that any such
14 method be neutral in its administration; specifying
15 remedies for failing to adhere to the eyewitness
16 identification procedures; requiring the Criminal
17 Justice Standards and Training Commission to create
18 educational materials and conduct training programs on
19 how to conduct lineups in compliance with the act;
20 providing an effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Eyewitness identification.—

25 (1) SHORT TITLE.—This section may be cited as the
26 “Eyewitness Identification Reform Act.”

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

28 (a) “Eyewitness” means a person whose identification by
29 sight of another person may be relevant in a criminal

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30 proceeding.

31 (b) "Filler" means a person or a photograph of a person who
32 is not suspected of an offense but is included in a lineup.

33 (c) "Independent administrator" means a person who is not
34 participating in the investigation of a criminal offense and is
35 unaware of which person in the lineup is the suspect.

36 (d) "Lineup" means a photo lineup or live lineup.

37 (e) "Lineup administrator" means the person who conducts a
38 lineup.

39 (f) "Live lineup" means a procedure in which a group of
40 people is displayed to an eyewitness for the purpose of
41 determining if the eyewitness is able to identify the
42 perpetrator of a crime.

43 (g) "Photo lineup" means a procedure in which an array of
44 photographs is displayed to an eyewitness for the purpose of
45 determining if the eyewitness is able to identify the
46 perpetrator of a crime.

47 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted
48 in this state by state, county, municipal, and other law
49 enforcement agencies must meet all of the following
50 requirements:

51 (a) A lineup must be conducted by an independent
52 administrator or pursuant to an alternative method as provided
53 by subsection (4).

54 (b) Individuals or photos must be presented to witnesses
55 sequentially, with each individual or photo presented to the
56 witness separately, in a previously determined order.
57 Thereafter, each individual or photo must be removed after being
58 viewed before the next individual or photo is presented.

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59 (c) Before a lineup, the eyewitness shall be instructed
60 that:

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

62 2. The lineup administrator does not know the suspect's
63 identity;

64 3. The eyewitness should not feel compelled to make an
65 identification;

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

68 5. The investigation will continue with or without an
69 identification.

70
71 The eyewitness shall acknowledge, in writing, having received a
72 copy of the lineup instructions. If the eyewitness refuses to
73 sign a document acknowledging receipt of the instructions, the
74 lineup administrator shall document the refusal of the
75 eyewitness to sign the writing and then sign the acknowledgement
76 himself or herself.

77 (d) In a photo lineup, the photograph of the suspect must
78 be contemporary and, to the extent practicable, resemble the
79 suspect's appearance at the time of the offense.

80 (e) The lineup shall be composed so that the fillers
81 generally resemble the eyewitness's description of the
82 perpetrator, while ensuring that the suspect does not unduly
83 stand out from the fillers. In addition:

84 1. In a photo or live lineup at least five fillers must be
85 included in the lineup, in addition to the suspect.

86 2. If the eyewitness has previously viewed a photo or live
87 lineup in connection with the identification of another person

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88 suspected of involvement in the offense, the fillers in the
89 lineup in which the current suspect participates must be
90 different from the fillers used in any previous lineup.

91 (f) If there are multiple eyewitnesses, the suspect shall
92 be placed in a different position in the lineup or photo array
93 for each eyewitness.

94 (g) In any lineup, writings or information concerning any
95 previous arrest, indictment, or conviction of the suspect may
96 not be visible or made known to the eyewitness.

97 (h) In a live lineup, any identifying actions of the
98 suspect, such as speech, gestures, or other movements, must be
99 performed by all lineup participants.

100 (i) In a live lineup, all lineup participants must be out
101 of view of the eyewitness before the lineup.

102 (j) Only one suspect shall be included in a lineup.

103 (k) An eyewitness may be told nothing regarding the
104 suspect's position in the lineup or anything that might
105 influence the eyewitness's identification.

106 (l) The lineup administrator shall seek and document a
107 clear statement from the eyewitness at the time of the
108 identification, and in the eyewitness's own words, as to the
109 eyewitness's confidence level that the person identified in a
110 lineup is the perpetrator. The lineup administrator shall
111 separate all witnesses in order to discourage witnesses from
112 conferring with one another before or during the identification
113 procedure. Each witness shall be given instructions regarding
114 the identification procedures without other witnesses present.

115 (m) If the eyewitness identifies a person as the
116 perpetrator, the eyewitness may not be provided any information

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117 concerning the person before the lineup administrator obtains
118 the eyewitness's statement of confidence regarding the
119 identification of the suspect. There may not be anyone present
120 during the live lineup or photographic identification procedures
121 who knows the suspect's identity, except the eyewitness and
122 counsel as required by law.

123 (n) Unless it is not practical, a video record of a live
124 identification procedure shall be made. If a video record is not
125 practical, the reason for the impracticality must be documented
126 and an audio record shall be made in its place. If neither a
127 video or audio record is practical, the reasons for the
128 impracticality must be documented and the lineup administrator
129 shall make a written record of the lineup.

130 (o) The record, by whatever means recorded, must include
131 all of the following information:

132 1. All identification and nonidentification results,
133 including the eyewitness's statement of confidence, obtained
134 during the identification procedure.

135 2. The signature of the eyewitness. If the eyewitness
136 refuses to sign the record, the lineup administrator shall
137 document the refusal of the eyewitness to sign the results and
138 sign the record.

139 3. The names of all persons present at the lineup.

140 4. The date, time, and location of the lineup.

141 5. The words used by the eyewitness in any identification,
142 including words that describe the eyewitness's certainty of
143 identification.

144 6. Whether it was a photo lineup or live lineup and how
145 many photos or individuals were presented in the lineup.

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146 7. The sources of all photographs or persons used.

147 8. In a photo lineup, the photographs themselves.

148 9. In a live lineup, a photo or other visual recording of
149 the lineup which includes all persons who participated in the
150 lineup.

151 (4) ALTERNATIVE METHOD FOR IDENTIFICATION.—In lieu of using
152 an independent administrator, a photo lineup eyewitness
153 identification procedure may be conducted using an alternative
154 method specified and approved by the Criminal Justice Standards
155 and Training Commission. Any alternative method must be
156 carefully structured to achieve neutral administration and to
157 prevent the administrator from knowing which photograph is being
158 presented to the eyewitness during the identification procedure.
159 The alternative methods may include:

160 (a) Automated computer programs that can automatically
161 administer the photo lineup directly to an eyewitness and
162 prevent the lineup administrator from seeing which photo the
163 witness is viewing until after the procedure is completed; or

164 (b) A procedure in which photographs are placed in folders,
165 randomly numbered, and shuffled and then presented to an
166 eyewitness such that the administrator cannot see or track which
167 photograph is being presented to the witness until after the
168 procedure is completed.

169 (5) REMEDIES.—All of the following remedies are available
170 as consequence of a person not complying with the requirements
171 of this section:

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

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175 2. A failure on the part of a person to comply with any
176 requirement of this section is admissible in support of claims
177 of eyewitness misidentification, as long as such evidence is
178 otherwise admissible.

179 (b) When evidence of compliance or noncompliance with the
180 requirements of this section has been presented at trial, the
181 jury shall be instructed that it may consider credible evidence
182 of compliance or noncompliance to determine the reliability of
183 eyewitness identifications.

184 (6) EDUCATION AND TRAINING.—The Criminal Justice Standards
185 and Training Commission, in consultation with the Department of
186 Law Enforcement, shall create educational materials and conduct
187 training programs on how to conduct lineups in compliance with
188 this section.

189 Section 2. This act shall take effect July 1, 2011.