

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 312

INTRODUCER: Criminal Justice Committee and Senator Baxley

SUBJECT: Eyewitness Identification

DATE: March 28, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>Parks</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 312 creates procedures for state, county, and municipal law enforcement agencies to follow when they have a “lineup” for an eyewitness to identify a suspect. The procedures apply whenever a law enforcement agency is investigating a crime and showing potential suspects to an eyewitness for identification. These procedures require the use of a lineup administrator who is unaware of which person in a live lineup is the suspect. For photo lineups, the procedures prohibit the photo administrator from knowing which photograph is presented to the eyewitness.

The bill further provides that the Criminal Justice Standards and Training Commission of the Florida Department of Law Enforcement are responsible for educating police departments on of implementing the new guidelines.

II. Present Situation:

Eyewitness misidentification of crime suspects has contributed to 64 percent of the Florida cases in which DNA evidence later exonerated the defendant.¹ Of the 349 DNA exonerations nationwide, more than 70 percent had a mistaken identification issue.²

¹ This represents nine of the 14 DNA-based exonerations in Florida. Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

² Information provided by Seth Miller, Executive Director, The Innocence Project of Florida (February 8, 2017, e-mail on file with Criminal Justice Committee staff).

Lineups

A lineup should be familiar to anyone who has seen police work depicted in popular media. During a lineup, officers ask an eyewitness to a crime to identify the suspect from among various people lined up in a room or from their pictures (usually the other people bear a resemblance to the suspect). If the eyewitness correctly identifies the actual suspect from the lineup, the identification can be used as evidence in a case against the suspect.

While a lineup is thus a valuable tool for officers, concerns have arisen that the eyewitness can be unduly influenced by several factors, most notably having an officer present who knows which person is the suspect.

Standards for Lineups

The FDLE, in collaboration with several other law enforcement organizations, published standards in 2011 which strive to establish neutral lineups.³ The FDLE standards are intended to allow officers the flexibility of implementing a neutral lineup procedure.⁴

Guidelines and commentary instruct agencies to:

- Keep administration neutral by using someone unaffiliated with the investigation to administer the lineup;
- Inform an eyewitness of the goals of the procedure beforehand; and
- Obtain an acknowledgement from the eyewitness before proceeding.⁵

The guidelines also encourage officers to follow consistent and specific procedures.⁶ Being guidelines, they are not binding.

Florida Law Enforcement Training

The Criminal Justice Standards and Training Commission (CJSTC), created within the Florida Department of Law Enforcement, is responsible for, among other things, establishing uniform minimum training standards for training officers in the various criminal justice disciplines and establishing minimum curricular requirements for criminal justice training schools.⁷

Additionally, the CJSTC is tasked with designing, implementing, maintaining, evaluating, revising, or adopting certain statutorily approved training programs. These programs include basic recruit, advanced, career development, and specialized training.⁸

³ Florida Department of Law Enforcement, Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification (Rev. Jun. 15, 2011)

<https://www.fdle.state.fl.us/cms/Guidelines/Documents/Standards.aspx>.

⁴ Florida Department of Law Enforcement, Eyewitness Guidelines, <https://www.fdle.state.fl.us/cms/Guidelines/Eyewitness-Guidelines.aspx> (last visited Mar. 11, 2017).

⁵ Florida Department of Law Enforcement, Eyewitness Guidelines Commentary (Rev. Jun. 15, 2011), <https://www.fdle.state.fl.us/cms/Guidelines/Documents/EyewitnessGuidelinesCommentary.aspx>.

⁶ *Id.*

⁷ Sections 943.11 and 943.12(5) and (8), F.S.

⁸ Section 943.17(1)(a)-(e), F.S.

III. Effect of Proposed Changes:

The bill codifies many of the standards for conducting live and photo lineups which were developed in 2011 by the Florida Department of Law Enforcement and associations representing sheriffs, police chiefs, and prosecuting attorneys.

Lineup Procedures

The new procedures, which are codified in s. 92.70, F.S., cover live lineups, where the “suspects” are shown in person to the eyewitness, and photo lineups, where pictures of the “suspects” are shown to the eyewitness.

Under the bill, any live lineup in a law enforcement investigation must be conducted by an “independent administrator,” someone “who is not participating in the investigation ... and is unaware of which person in the lineup is the suspect.” If an independent administrator cannot be found, no live lineup may be conducted.

A photo lineup should also be conducted with an independent administrator, but if one cannot be found, the agency can use any technique that “achieves neutral administration,” as long as the administrator of the lineup has no idea which pictures the eyewitness is viewing at which time. Specific examples include using an “automated computer program” to show the pictures to the eyewitness, and giving the photos to the eyewitness from a shuffled and randomly numbered stack of folders.

Before the lineup is given, the bill also requires the agency to instruct the eyewitness:

- 1) The perpetrator might or might not be in the lineup;
- 2) The lineup administrator does not know the suspect’s identity (this instruction need not be given if an alternative method is used in lieu of using an independent administrator);
- 3) The eyewitness should not feel compelled to make an identification;
- 4) It is as important to exclude innocent persons as it is to identify the perpetrator; and
- 5) The investigation will continue with or without an identification.

Remedies for Improper Lineups

The bill also specifies consequences in subsequent judicial proceedings of the failure of a law enforcement agency to follow the required procedures. Notably, this section is not included in the FDLE standards on which the bill is modeled.

The failure to properly administer the lineup may be considered by the judge on a motion to suppress the eyewitness identification. The failure to follow procedures is also admissible in support of claims of eyewitness misidentification. Finally, the jury must be instructed that it may consider evidence of compliance or noncompliance with the procedures to determine the reliability of eyewitness identifications when compliance with the procedures is at issue.

Criminal Justice Standards and Training Commission

In addition to the procedures for lineups, the bill directs the Criminal Justice Standards and Training Commission to consult with the Department of Law Enforcement to create educational materials and provide training programs on conducting lineups.

The bill takes effect on October 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the State Constitution restricts the authority of the Legislature to enact legislation requiring counties and municipalities to spend funds or take actions requiring the expenditure of funds. However, section (d) of s. 18 exempts criminal laws from these restrictions. Accordingly, the authority of the Legislature to enact this bill is not restricted because the bill relates to criminal laws.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Standards and Training Commission, through the Department of Law Enforcement does not anticipate any new expenditures as a result of the bill. Its current materials and training are already consistent with the requirements of the bill.⁹

VI. Technical Deficiencies:

None.

⁹ Florida Department of Law Enforcement, 2017 Legislative Bill Analysis for CS/SB 312 (Feb. 22, 2017).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 92.70, Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 21, 2017:

The CS eliminated the Criminal Justice Standards and Training responsibility of specifying and approving alternative lineup procedures as these are described in the bill.

B. Amendments:

None.