

CHAPTER 2017-91

Committee Substitute for Senate Bill No. 312

An act relating to eyewitness identification; creating s. 92.70, F.S.; providing a short title; defining terms; requiring state, county, municipal, or other law enforcement agencies that conduct lineups to follow specified procedures; requiring eyewitnesses to sign an acknowledgment that they have received the instructions about the lineup procedures from the law enforcement agency; requiring lineup administrators to document the refusal of an eyewitness to acknowledge such receipt; specifying remedies for failing to adhere to the eyewitness identification procedures; requiring the Criminal Justice Standards and Training Commission to create educational materials and provide training programs on how to conduct lineups; providing an effective date.

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

Section 1. Section 92.70, Florida Statutes, is created to read:

92.70 Eyewitness identification.—

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

(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) “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.

(c) “Lineup” means a photo lineup or live lineup.

(d) “Lineup administrator” means the person who conducts a lineup.

(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.

(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.

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

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

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

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

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

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

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.

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

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

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

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

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

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

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

Approved by the Governor June 14, 2017.

Filed in Office Secretary of State June 14, 2017.