

1 "Eyewitness" means a person who observes another person at
2 or near the scene of an offense.

3 "Filler" means either a person or a photograph of a person
4 who is not suspected of an offense and is included in an
5 identification procedure.

6 "Identification" means the eyewitness has identified a
7 specific person as the suspect.

8 "Identification procedure" means a live lineup, a photo
9 lineup, or a showup.

10 "Law enforcement" means any law enforcement entity
11 conducting an investigation.

12 "Live lineup" means an identification procedure in which a
13 group of persons, including the suspect and other persons not
14 suspected of the offense, is displayed to an eyewitness for the
15 purpose of determining whether the eyewitness identifies a
16 person as the suspect.

17 "Photo lineup" means an identification procedure in which
18 an array of photographs, including a photograph of the suspect
19 and additional photographs of other persons not suspected of the
20 offense, is displayed to an eyewitness either in hard copy form
21 or via computer or other electronic means for the purpose of



1 determining whether the eyewitness identifies a person as the
2 suspect.

3 "Showup" means an identification procedure in which an
4 eyewitness is presented in-person with a single person for the
5 purpose of determining whether the eyewitness identifies this
6 person as the suspect.

7 "Suggestive procedures" means any effort by law enforcement
8 to contaminate an eyewitness identification of a suspect,
9 including any actions taken or words spoken by law enforcement
10 or any other person connected with the identification procedure
11 to the eyewitness before, during, or after the identification
12 procedure.

13 "Suspect" means the person believed by law enforcement to
14 be the possible perpetrator of the crime.

15 § -2 **Eyewitness identification procedures.** (a) In any
16 photo or live lineup or showup, law enforcement shall inform the
17 eyewitness, without other eyewitnesses present, of the following
18 information, at minimum:

19 (1) The suspect may or may not be among the person in the
20 identification procedure;



- 1 (2) The administrator does not know the identity of the
- 2 suspect, if applicable;
- 3 (3) The eyewitness should not feel compelled to make an
- 4 identification;
- 5 (4) The investigation will continue regardless of whether
- 6 an identification is made;
- 7 (5) The identification procedure requires the
- 8 administrator to ask the eyewitness to state, in the
- 9 eyewitness' own words, how certain the eyewitness is
- 10 of any identification, including but not limited to
- 11 the conditions under which the eyewitness observed the
- 12 suspect, including location, time, distance,
- 13 obstructions, lighting, weather conditions, and other
- 14 impairments, such as alcohol, drugs, stress, and
- 15 visual or auditory impairments;
- 16 (6) The eyewitness shall not discuss the identification
- 17 procedure or its results with other eyewitnesses
- 18 involved in the incident and shall not speak with the
- 19 media; and



- 1 (7) Any additional information required by procedures and
2 protocols established by the attorney general pursuant
3 to section -5.
- 4 (b) In any photo or live lineup or showup, law enforcement
5 shall not contaminate the eyewitness identification by:
- 6 (1) Requiring the suspect to wear distinctive clothing
7 that the alleged perpetrator wore;
- 8 (2) Allowing the eyewitness to view the suspect in
9 handcuffs or otherwise appear to be in law enforcement
10 custody; and
- 11 (3) Using any suggestive procedures.
- 12 (c) In any photo or live lineup, law enforcement shall
13 comply with the following, as applicable:
- 14 (1) For a photo lineup, include at least five fillers in
15 addition to the suspect;
- 16 (2) For a live lineup, include at least four fillers in
17 addition to the suspect; and
- 18 (3) Any other procedures and protocols established by the
19 attorney general pursuant to section -5.
- 20 (d) In any showup, law enforcement shall comply with the
21 following, as applicable:



- 1 (1) Conduct a showup only by using a live suspect and only
- 2 under exigent circumstances that require the immediate
- 3 display of a suspect to an eyewitness;
- 4 (2) If possible, perform a photo or live lineup instead of
- 5 a showup and use a blind or blinded administrator;
- 6 (3) Document in writing the reasons why a showup was
- 7 performed instead of a photo or live lineup; and
- 8 (4) Comply with any other procedures and protocols
- 9 established by the attorney general pursuant to
- 10 section -5.

11 § -3 Video record of identification procedures;

12 impracticability; alternative record. (a) Unless

13 impracticable, a video record of the identification procedure

14 shall be made that includes the following information:

- 15 (1) All identification and non-identification results
- 16 obtained during the identification procedures, signed
- 17 by any eyewitness, including any eyewitness'
- 18 confidence statements;
- 19 (2) The names of all persons present at the identification
- 20 procedure, including the name of the photo or live



1 lineup or showup administrator and whether the
2 administrator was blind, blinded, or non-blind;

3 (3) If an administrator other than a blind administrator
4 was used, the reason therefor;

5 (4) The date and time of the identification procedure;

6 (5) In a photo or live lineup, any eyewitness
7 identification of filler; and

8 (6) In a photo or live lineup, the names of the lineup
9 members and other relevant identifying information,
10 and the sources of all photographs or persons used in
11 the lineup.

12 (b) If a video record of the lineup is impracticable, the
13 administrator of the photo or live lineup shall document the
14 reason therefor and an audio record of the identification
15 procedure shall be made. The audio record shall be supplemented
16 by the following:

17 (1) All of the photographs used in a photo lineup; and
18 (2) Photographs of all of the individuals used in a live
19 lineup or showup.

20 (c) If a video and audio record of a photo or live lineup
21 are impracticable, the administrator of the photo or live lineup



1 shall document in writing the reason therefor and a written
2 record of the photo or live lineup shall be made. The written
3 record shall be supplemented by all of the following:

- 4 (1) All of the photographs used in a photo lineup; and
- 5 (2) Photographs of all of the individuals used in a live
6 lineup.

7 § -4 **Admissibility of eyewitness identification.** If a
8 court determines that the eyewitness identification is
9 admissible, the court shall instruct the jury when admitting
10 such evidence and prior to the jury's deliberation, when
11 applicable:

- 12 (1) That the purpose of this chapter is to reduce the risk
13 of eyewitness misidentification; and
- 14 (2) That the jury may consider credible evidence of
15 noncompliance with this chapter when assessing the
16 reliability of the eyewitness identification evidence.

17 § -5 **Statewide eyewitness identification procedures.**

18 Notwithstanding any law to the contrary, the attorney general
19 shall establish procedures and protocols that shall be uniform
20 throughout the State and counties for eyewitness identification.



1 § -6 Training of law enforcement officers. The county
2 police departments shall develop and administer and require law
3 enforcement officers and recruits to attend training programs
4 regarding the methods, technical aspects, and scientific
5 findings of the eyewitness identification practices and
6 procedures under in this chapter and any statewide eyewitness
7 identification procedures and protocols established by the
8 attorney general pursuant to section -5."

9 SECTION 2. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 3. This Act shall take effect on July 1, 2015.



Report Title:

Criminal Procedure; Eyewitness Identification

Description:

Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. Establishes jury instructions when the court determines that the eyewitness identification is admissible. Requires the attorney general to establish procedures for the implementation of uniform statewide eyewitness identification procedures. Requires county police departments to develop and administer to law enforcement officers and recruits training programs regarding the eyewitness identification practices and procedures. (SD1)

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