

1 A bill to be entitled
 2 An act relating to eyewitness identification; creating
 3 s. 92.70, F.S.; providing a short title; defining
 4 terms; requiring state, county, municipal, or other
 5 law enforcement agencies that conduct lineups to
 6 follow specified procedures; requiring eyewitnesses to
 7 sign an acknowledgment that they have received the
 8 instructions about the lineup procedures from the law
 9 enforcement agency; requiring lineup administrators to
 10 document the refusal of an eyewitness to acknowledge
 11 such receipt; specifying remedies for failing to
 12 adhere to the eyewitness identification procedures;
 13 requiring the Criminal Justice Standards and Training
 14 Commission to create educational materials and provide
 15 training programs on how to conduct lineups; providing
 16 an effective date.

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

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

22 92.70 Eyewitness identification.—

23 (1) SHORT TITLE.—This section may be cited as the

24 "Eyewitness Identification Reform Act."

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

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

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

32 (c) "Lineup" means a photo lineup or live lineup.

33 (d) "Lineup administrator" means the person who conducts a
 34 lineup.

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

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

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

47 (a) The lineup must be conducted by an independent
 48 administrator. However, in lieu of using an independent
 49 administrator, a law enforcement agency may conduct a photo
 50 lineup eyewitness identification procedure using an alternative

51 method specified in subparagraph 1., subparagraph 2., or
52 subparagraph 3. Any alternative method must be carefully
53 structured to achieve neutral administration and to prevent the
54 lineup administrator from knowing which photograph is being
55 presented to the eyewitness during the identification procedure.
56 Alternative methods may include any of the following:

57 1. An automated computer program that can automatically
58 administer the photo lineup directly to an eyewitness and
59 prevent the lineup administrator from seeing which photograph
60 the eyewitness is viewing until after the procedure is
61 completed.

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

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

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

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

74 2. The lineup administrator does not know the suspect's
75 identity, except that this instruction need not be given when a

76 specified and approved alternative method of neutral
 77 administration is used;

78 3. The eyewitness should not feel compelled to make an
 79 identification;

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

82 5. The investigation will continue with or without an
 83 identification.

84
 85 The eyewitness shall acknowledge, in writing, having received a
 86 copy of the lineup instructions. If the eyewitness refuses to
 87 sign a document acknowledging receipt of the instructions, the
 88 lineup administrator must document the refusal of the eyewitness
 89 to sign a document acknowledging receipt of the instructions,
 90 and the lineup administrator must sign the acknowledgment
 91 document himself or herself.

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

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

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

101 otherwise admissible.

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

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

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