

AN ACT relating to eyewitness identification.

WHEREAS, over the past 30 years, peer-reviewed scientific research and practice have demonstrated that simple systematic changes in the administration of eyewitness identification procedures by all law enforcement agencies can greatly improve the accuracy of those identifications and strengthen public safety while protecting the innocent; and

WHEREAS, the integrity of Kentucky's criminal justice system benefits from adherence to evidence-based practices in the investigation of criminal activity; and

WHEREAS, these practices are derived from over three decades of scientific research, and are reflected in the model policies of the International Association of Chiefs of Police, the Major City Chiefs Conference, and the Kentucky League of Cities, as well as the National Academy of Sciences 2014 report on eyewitness identification methods; and

WHEREAS, Kentucky will benefit from the development and uniform implementation of written law enforcement policies which will ultimately improve the accuracy of eyewitness identification and strengthen the criminal justice system;

NOW, THEREFORE,

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 421 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, unless the context otherwise requires:

(a) "Blind" means the administrator of a live lineup or photo array does not know the identity of the suspect;

(b) "Blinded" means the administrator of a photo array may know who the suspect is but does not know in which position the suspect is placed in the photo array when it is viewed by the eyewitness;

(c) "Eyewitness" means a person who observed another person at or near the

scene of an offense;

(d) "Filler" means either a person or a photograph of a person who is not suspected of the offense in question and is included in an identification procedure;

(e) "Live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons who are not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

(f) "Photo array" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons who are not suspected of the offense, is displayed to an eyewitness either in hard copy form or via electronic means for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator; and

(g) "Showup" means an identification procedure in which an eyewitness is presented with a single individual in person for the purpose of determining whether the eyewitness identifies the individual as the perpetrator.

(2) Any Kentucky law enforcement agency charged with enforcing the criminal laws of Kentucky that uses or may use any eyewitness identification procedure as part of a criminal investigation shall adopt written policies and procedures concerning law enforcement-conducted eyewitness identifications which comport with the best practices provided in this section, including but not limited to:

(a) Blind administration of both photo arrays and live lineups and the recommended use of a blinded administration of the photo array when circumstances prevent the use of a blind administrator;

(b) Implementing uniform, easily understood instructions for use by

eyewitnesses which, at a minimum, shall advise the eyewitness that the alleged perpetrator may or may not be present in the photo array or live lineup;

(c) Developing uniform instructions to the employees of the law enforcement agency regarding the appropriate choice and use of fillers in compiling a live lineup or photo array, including ensuring that the suspect does not stand out;

(d) Requiring written or video documentation of the eyewitness's level of confidence as elicited verbatim at the time he or she first makes an identification, as well as thorough documentation of the entire procedure including all comments or observations made by the eyewitness; and

(e) Adopting uniform practices shown to enhance the reliability of an eyewitness participating in a showup procedure, including but not limited to:

1. Identifying the circumstances under which a showup is warranted;

2. Conducting showups close in time to the commission of the crime;

3. Instructing the eyewitness that the person he or she is seeing may not be the perpetrator;

4. Transporting the eyewitness to a neutral, non-law enforcement location where the detained suspect is being held; and

5. Where practicable, electronically recording the entirety of any photo array procedure, live lineup, or showup procedure.

(3) If otherwise admissible, noncompliance or failure to substantially comply with the eyewitness identification requirements provided in this section shall be considered relevant evidence as to the weight accorded an eyewitness identification in a criminal action.

(4) Local law enforcement policies and procedures relating to eyewitness

identification shall be subject to disclosure pursuant to the provisions of KRS 61.870 to 61.884.

→Section 2. Section 1 of this Act may be cited as the Eyewitness Identification Reform Act.

→Section 3. This Act takes effect July 1, 2017.