
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

SB 397 Original	DIGEST 2018 Regular Session	Gary Smith
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Proposed law provides relative to eyewitness identification procedures.

Proposed law provides the following definitions:

- (1) "Administrator" means the person conducting the live or photo lineup.
- (2) "Blind" means the administrator does not know the identity of the suspect.
- (3) "Blinded" means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.
- (4) "Criminal justice entity" means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime.
- (5) "Eyewitness" means a person who observes another person at or near the scene of an offense.
- (6) "Filler" means either a person, or a photograph of a person, who is not suspected of an offense but is included in an identification procedure.
- (7) "Folder shuffle method" means a procedure in which the suspect photo and nonsuspect or filler photos are placed in separate folders for a total of six photographs, and shuffled together along with four blank folders and handed to the eyewitness one at a time so that the administrator cannot see which photograph the eyewitness is viewing.
- (8) "Live lineup" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- (9) "Photo lineup" 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 not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer or similar device for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

- (10) "Suspect" means the person believed by law enforcement to be the possible perpetrator of the crime.
- (11) "Showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

Proposed law provides that no later than 1/1/19, any criminal justice entity conducting eyewitness identifications must adopt the International Association of Chiefs of Police ("IACP") model policy on eyewitness identification procedures, or draft its own policy that minimally comports to key best practices as outlined in proposed law. Proposed law further provides that each criminal justice entity that administers eyewitness identification procedures must provide a copy of its written policies to the attorney general and the Dept. of Public Safety and Corrections no later than 1/1/19.

Proposed law provides that for any criminal justice entity that elects to draft its own policy on eyewitness identification procedures, these policies must, at a minimum, include the following best practices:

- (1) Having a blind or blinded administrator perform the live or photo lineup.
- (2) Providing the eyewitness with instructions as outlined in the IACP model policy that minimize the likelihood of an inaccurate identification.
- (3) Composing the lineup so that the fillers generally resemble the eyewitness's description of the perpetrator and so that the suspect does not stand out from the fillers.
- (4) Using the appropriate number of fillers in a live or photo lineup.
- (5) Ensuring, when practicable, that a photograph of the suspect used in a photo lineup is contemporary.
- (6) Presenting separate live and photo lineups when there are multiple eyewitnesses, ensuring the same suspect is placed in a different position for each identification procedure.
- (7) Having the administrator seek and document a clear statement from the eyewitness, immediately after the eyewitness makes an identification in the eyewitness's own words, relative to the eyewitness's level of confidence that the person identified is the person who committed the crime.
- (8) Adopting relevant practices that have been shown to enhance the reliability of an eyewitness participating in a showup procedure, including:
 - (a) Identifying the circumstances under which a showup is warranted.
 - (b) Transporting the eyewitness to a neutral, nonlaw enforcement or criminal justice

entity location where the detained suspect is being held.

- (c) Removing the suspect from any law enforcement vehicle.
 - (d) Removing restraints from the suspect when he is being observed by the eyewitness.
 - (e) Administering the showup procedure as close in time as practicable to the commission of the crime.
- (9) Where practicable, electronically recording the entirety of the live or photo lineup, or the showup procedure, either through video, or through audio if video is not possible.
 - (10) Preserving photographic documentation of all live and photo lineup members and showup suspects.
 - (11) Documenting verbatim the descriptions provided by the eyewitness of the perpetrator as well as the confidence statement made by the eyewitness during the identification procedure.

Proposed law provides that a video record of identification procedures is to be made or, if a video record is not practicable, an audio record is to be made. Proposed law further provides that if neither a video nor audio record are practicable, the reasons must be documented in writing, and the lineup administrator is to make a full and complete written record of the lineup.

Proposed law provides that the written eyewitness identification procedures of a criminal justice entity must be made available, in writing, to the public upon request.

Proposed law provides that evidence of failure to comply with any of the provisions of proposed law:

- (1) Must be considered by the district court in adjudicating motions to suppress an eyewitness identification.
- (2) Is admissible in support of any claim of eyewitness misidentification, as long as such evidence is otherwise admissible.
- (3) If otherwise admissible, requires the court to instruct the jury that it may consider credible evidence of compliance or noncompliance with the provisions of proposed law in determining the reliability of eyewitness identifications.
- (4) If otherwise admissible, serves as a basis for the admissibility of expert testimony by the state or the defendant on the subject of eyewitness identification.

Proposed law provides relative to legislative intent.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds C.Cr.P. Art. 251-253)