

SENATE BILL NO. 38

BY SENATORS BISHOP, BARROW AND CARTER AND REPRESENTATIVES BAGNERIS, CHAD BROWN, JIMMY HARRIS, JACKSON, MAGEE, MARINO, MUSCARELLO AND ZERINGUE

1 AN ACT

2 To enact Title V-A of the Code of Criminal Procedure, to be comprised of Articles 251
3 through 253, relative to eyewitness identifications; to provide procedures relative to
4 law enforcement investigative procedures relating to eyewitness identifications of
5 criminal suspects; to provide definitions; to provide relative to legislative intent; and
6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Title V-A of the Code of Criminal Procedure, comprised of Articles 251
9 through 253, is hereby enacted to read as follows:

10 **TITLE V-A. EYEWITNESS IDENTIFICATION PROCEDURES**

11 **Art. 251. Legislative intent**

12 **A. The legislature finds that police investigations are strengthened by the**
13 **use of best practices for investigative procedures, which increase the ability of**
14 **law enforcement to keep communities safe and apprehend those suspected of**
15 **criminal activity, reduce erroneous eyewitness identifications, and enhance the**
16 **reliability and objectivity of eyewitness identification.**

17 **B. The legislature further finds that policies and procedures to improve**
18 **the accuracy of eyewitness identifications, such as those recommended by the**
19 **Louisiana Sheriff's Executive Management Institute (LSEMI) and the Federal**
20 **Bureau of Investigation, would help to ensure that the integrity of Louisiana**
21 **criminal justice investigations is strengthened and enhanced so as to convict the**
22 **guilty and protect the innocent.**

23 **Art. 252. Definitions**

24 **For purposes of this Title:**

25 **(1) "Administrator" means the person conducting the photo or live**
26 **lineup.**

1 (2) "Blind" means conducted in such a way that the administrator does
2 not know the identity of the suspect.

3 (3) "Blinded" means conducted in such a way that the administrator
4 may know who the suspect is, but does not know which lineup member is being
5 viewed by the eyewitness.

6 (4) "Criminal justice entity" means any government agency or subunit
7 thereof, or private agency that, through statutory authorization or a legal
8 formal agreement with a governmental unit or agency, has the power of
9 investigation, arrest, detention, prosecution, adjudication, treatment,
10 supervision, rehabilitation, or release of persons suspected, charged, or
11 convicted of a crime.

12 (5) "Eyewitness" means a person who observes another person at or near
13 the scene of an offense.

14 (6) "Filler" means either a person or a photograph of a person who is not
15 suspected of an offense but is included in an identification procedure.

16 (7) "Folder shuffle method" means a blinded procedure in which the
17 suspect photos and nonsuspect or filler photos are each placed in separate
18 folders for a total of six photographs and shuffled together along with four
19 blank folders and handed to the eyewitness one at a time so that the
20 administrator cannot see which photograph the eyewitness is viewing.

21 (8) "Live lineup" means an identification procedure in which a group of
22 persons, including the suspected perpetrator of an offense and other persons not
23 suspected of the offense, is displayed to an eyewitness for the purpose of
24 determining whether the eyewitness identifies the suspect as the perpetrator.

25 (9) "Photo lineup" means an identification procedure in which an array
26 of photographs, including a photograph of the suspected perpetrator of an
27 offense and additional photographs of other persons not suspected of the
28 offense, is displayed to an eyewitness either in hard copy form or via computer
29 or similar device for the purpose of determining whether the eyewitness
30 identifies the suspect as the perpetrator.

1 (10) "Suspect" means a person believed by law enforcement to be the
2 possible perpetrator of an offense.

3 Art. 253. Eyewitness identification procedures

4 A.(1) No later than January 30, 2019, any criminal justice entity
5 conducting eyewitness identifications shall either adopt the LSEMI model policy
6 or draft its own policy that minimally comports to key best practices as outlined
7 in this Article.

8 (2) Each criminal justice entity that administers eyewitness identification
9 procedures shall provide a copy of its written policies to the Louisiana
10 Commission on Law Enforcement and Administration of Criminal Justice no
11 later than March 1, 2019.

12 B. For any criminal justice entity that elects to draft its own policy on
13 eyewitness identification procedures, these policies shall:

14 (1) Be based on all of the following:

15 (a) Credible field, academic, or laboratory research on eyewitness
16 memory.

17 (b) Relevant policies, guidelines, and best practices designed to reduce
18 erroneous eyewitness identifications and to enhance the reliability and
19 objectivity of eyewitness identifications.

20 (c) Other relevant information as appropriate.

21 (2) Include the following information regarding evidence-based
22 practices:

23 (a) Procedures for selecting photograph and live lineup filler
24 photographs or participants to ensure that the photographs or participants:

25 (i) Are consistent in appearance with the description of the alleged
26 perpetrator.

27 (ii) Do not make the suspect noticeably stand out.

28 (b) Instructions given to a witness before conducting a photograph or live
29 lineup identification procedure shall include a statement that the person who
30 committed the offense may or may not be present in the procedure.

1 (c) Procedures for documenting and preserving the results of a
2 photograph or live lineup identification procedure, including the documentation
3 of witness statements, regardless of the outcome of the procedure.

4 (d) Procedures for administering a photograph or live lineup
5 identification procedure to an illiterate person or a person with limited English
6 language proficiency.

7 (e) For a live lineup identification procedure, if practicable, procedures
8 for assigning an administrator who is unaware of which member of the live
9 lineup is the suspect in the case or alternative procedures designed to prevent
10 opportunities to influence the witness.

11 (f) For a photograph identification procedure, procedures for assigning
12 an administrator who is capable of administering a photograph array in a blind
13 manner or in a blinded manner consistent with other proven or supported best
14 practices designed to prevent opportunities to influence the witness.

15 (g) Any other procedures or best practices supported by credible
16 research or commonly accepted as a means to reduce erroneous eyewitness
17 identifications and to enhance the objectivity and reliability of eyewitness
18 identifications.

19 (3) Provide that a witness who makes an identification based on a
20 photograph or live lineup identification procedure be asked immediately after
21 the procedure to state, in the witness's own words, how confident the witness is
22 in making the identification. A law enforcement agency shall document in
23 accordance with Subsubparagraph (2)(c) of this Paragraph any statement made
24 under this Subparagraph.

25 C. Not later than December thirty-first of each odd-numbered year, the
26 institute shall review the model policy and training materials adopted under this
27 article and shall modify the policy and materials as appropriate while
28 maintaining the requirements outlined in Paragraph B of this Article.

29 D. Not later than December thirty-first of each even-numbered year,
30 each law enforcement agency shall review its policy adopted under this Article

1 and shall modify that policy as appropriate while maintaining the requirements
2 outlined in Paragraph B of this Article.

3 E. Failure to conduct a photograph or live lineup identification
4 procedure in substantial compliance with the model policy or any other policy
5 adopted under this Article shall not bar the admission of eyewitness
6 identification testimony.

7 F. A video record of identification procedures shall be made or, if a video
8 record is not practicable, an audio record shall be made. If neither a video nor
9 audio record are practicable, the reasons shall be documented in writing, and
10 the lineup administrator shall make a full and complete written record of the
11 lineup in accordance with Subsubparagraph (B)(2)(c) of this Article.

12 G. The written eyewitness identification procedures of a criminal justice
13 entity shall be made available, in writing, to the public upon request.

14 H. Evidence of failure to comply with any of the provisions of this
15 Article:

16 (1) May be considered by the district court in adjudicating motions to
17 suppress an eyewitness identification.

18 (2) May be admissible in support of any claim of eyewitness
19 misidentification, as long as the evidence is otherwise admissible.

20 Section 2. This Act shall become effective upon signature by the governor or, if not
21 signed by the governor, upon expiration of the time for bills to become law without signature
22 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
23 vetoed by the governor and subsequently approved by the legislature, this Act shall become
24 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____