

1 result of exposure to extrinsic information related to that
2 person or event.

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

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

8 "Identification" means the eyewitness has identified a
9 specific person as the suspect.

10 "Identification procedure" means a live lineup, a photo
11 lineup, or a showup.

12 "Law enforcement" means any law enforcement entity
13 conducting an investigation.

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

19 "Photo lineup" means an identification procedure in which
20 an array of photographs, including a photograph of the suspect
21 and additional photographs of other persons not suspected of the



1 offense, is displayed to an eyewitness either in hard copy form
2 or via computer or other electronic means for the purpose of
3 determining whether the eyewitness identifies a person as the
4 suspect.

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

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

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

17 § -2 **Eyewitness identification procedures.** (a) In any
18 photo or live lineup or showup, law enforcement shall inform the
19 eyewitness, without other eyewitnesses present, of the following
20 information, including but not limited to:



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



1 (7) Any additional information required by procedures and
2 protocols established by the attorney general pursuant
3 to section -4.

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 -4.

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 -4.

11 § -3 **Admissibility of eyewitness identification.** If a
12 court determines that the eyewitness identification is
13 admissible, the court shall instruct the jury when admitting
14 such evidence and prior to the jury's deliberation, when
15 applicable:

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



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1 § -4 Statewide eyewitness identification procedures.
2 Notwithstanding any law to the contrary, the attorney general
3 shall establish procedures and protocols that shall be uniform
4 throughout the State and counties for eyewitness
5 identification."

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 3. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:  _____

JAN 25 2017

H.B. NO. 1398

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.

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