



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

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

6 "Identification" means the eyewitness has identified a  
7 specific person as the suspect.

8 "Identification procedure" means a live lineup, a photo  
9 lineup, or a showup.

10 "Law enforcement" means any law enforcement entity  
11 conducting an investigation.

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

17 "Photo lineup" means an identification procedure in which  
18 an array of photographs, including a photograph of the suspect  
19 and additional photographs of other persons not suspected of the  
20 offense, is displayed to an eyewitness either in hard copy form  
21 or via computer or other electronic means for the purpose of



1 determining whether the eyewitness identifies a person as the  
2 suspect.

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

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

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

15 § -2 **Eyewitness identification procedures.** (a) In any  
16 photo or live lineup or showup, law enforcement shall inform the  
17 eyewitness, without other eyewitnesses present, of information,  
18 including but not limited to the following:

19 (1) The suspect may or may not be among the persons in the  
20 identification procedure;



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



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

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 -3.

20 (d) Law enforcement shall perform a photo lineup or live  
21 lineup whenever reasonably practicable. If a showup is



1 unavoidably necessary, law enforcement shall comply with the  
2 following, as applicable:

- 3 (1) Conduct a showup only by using a live suspect and only
- 4 under exigent circumstances that require the immediate
- 5 display of a suspect to an eyewitness;
- 6 (2) Use a blind or blinded administrator;
- 7 (3) Document in writing the reasons why a showup was
- 8 performed instead of a photo or live lineup; and
- 9 (4) Comply with any other procedures and protocols
- 10 established by the attorney general pursuant to
- 11 section -3.

12 § -3 Statewide eyewitness identification procedures.

13 Notwithstanding any law to the contrary, the attorney general  
14 shall establish procedures and protocols that shall be uniform  
15 throughout the State and counties for eyewitness  
16 identification."

17 SECTION 2. This Act does not affect rights and duties that  
18 matured, penalties that were incurred, and proceedings that were  
19 begun before its effective date.

20 SECTION 3. This Act shall take effect on January 7, 2059.

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**Report Title:**

Criminal Procedure; Eyewitness Identification

**Description:**

Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. Requires the attorney general to establish procedures for the implementation of uniform statewide eyewitness identification procedures. Takes effect on 1/7/2059.  
(SD1)

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