

2018 Regular Session

HOUSE BILL NO. 582

BY REPRESENTATIVE JAMES

WITNESSES/CRIMINAL: Provides relative to law enforcement investigative procedures relating to eyewitness identification

1 AN ACT

2 To enact Part IX of Chapter 2 of Title 15 of the Louisiana Revised Statutes of 1950, to be  
3 comprised of R.S. 15:479 through 481, relative to law enforcement investigative  
4 procedures; to provide relative to law enforcement investigative procedures relating  
5 to eyewitness identification; to provide for the adoption of policy relative to  
6 eyewitness identification procedures; to provide standards for such policies; to  
7 provide with respect to the failure to adopt or comply with such policies; to provide  
8 for definitions; to provide for legislative intent; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part IX of Chapter 2 of Title 15 of the Louisiana Revised Statutes of 1950,  
11 to be comprised of R.S. 15:479 through 481, is hereby enacted to read as follows:

12 PART IX. EYEWITNESS IDENTIFICATION PROCEDURES

13 §479. Legislative intent

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

1           B. When an innocent person is mistakenly identified as the perpetrator of a  
2           crime, this increases the danger to the public and derails investigations. Victims of  
3           crime experience either delayed justice or no justice at all.

4           C. Mistaken eyewitness identification has contributed to the wrongful  
5           conviction in seventy percent of the nation's three hundred and fifty-three DNA-  
6           based exonerations, and to the wrongful conviction in thirteen out of fourteen DNA-  
7           based exonerations in Louisiana. The multi-faceted societal costs of wrongful and  
8           erroneous convictions are burdensome and preventable.

9           D. Policies and procedures to improve the accuracy of eyewitness  
10          identifications such as those recommended by the International Association of Chiefs  
11          of Police and the Federal Bureau of Investigations would ensure that the integrity of  
12          Louisiana criminal justice investigations is strengthened and enhanced to convict the  
13          guilty and protect the innocent.

14          §480. Definitions

15               For the purposes of this Act:

16               (1) "Administrator" means the person conducting the photo or live lineup.

17               (2) "Blind" means the administrator does not know the identity of the  
18               suspect.

19               (3) "Blinded" means the administrator may know who the suspect is, but  
20               does not know which lineup member is being viewed by the eyewitness.

21               (4) "Eyewitness" means a person who observes another person at or near the  
22               scene of an offense.

23               (5) "Filler" means either a person or a photograph of a person who is not  
24               suspected of an offense and is included in an identification procedure.

25               (6) "Folder shuffle method" is a procedure in which the suspect photo and  
26               non-suspect or "filler" photos, as defined by Paragraph (5) of this Section, are each  
27               placed in separate folders for a total of six, and shuffled together along with four  
28               blank folders and handed to the eyewitness one at a time so that the administrator  
29               cannot see which photograph the eyewitness is viewing.

1           (7) "Live lineup" means an identification procedure in which a group of  
2           persons, including the suspected perpetrator of an offense and other persons not  
3           suspected of the offense, is displayed to an eyewitness for the purpose of determining  
4           whether the eyewitness identifies the suspect as the perpetrator.

5           (8) "Photo lineup" means an identification procedure in which an array of  
6           photographs, including a photograph of the suspected perpetrator of an offense and  
7           additional photographs of other persons not suspected of the offense, is displayed to  
8           an eyewitness either in hard copy form or via computer for the purpose of  
9           determining whether the eyewitness identifies the suspect as the perpetrator.

10          (9) "Showup" means an identification procedure in which an eyewitness is  
11          presented with a single suspect for the purpose of determining whether the  
12          eyewitness identifies this individual as the perpetrator.

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

15          §481. Eyewitness identification procedures

16          A.(1) Not later than January 1, 2019, any criminal justice entity conducting  
17          eyewitness identification procedures shall do either of the following:

18               (a) Adopt the International Association of Chiefs of Police model policy on  
19               eyewitness identification procedures.

20               (b) Draft a policy for eyewitness identification procedures which minimally  
21               comports to best practices and standards set forth in this Section.

22          (2) Each criminal justice entity in Louisiana that conducts eyewitness  
23          identification procedures shall provide a copy of its written policies to the Louisiana  
24          Commission on Law Enforcement and Administration of Criminal Justice no later  
25          than February 1, 2019.

26          B. If any criminal justice entity elects to draft its own policy on eyewitness  
27          identification procedures pursuant to Subparagraph (A)(1)(b) of this Section, the  
28          policies shall, at a minimum, include all of the following:

29               (1) Having a blind or blinded administrator perform the live or photo lineup.

1           (2) Providing the eyewitness with instructions as outlined in the International  
2           Association of Chiefs of Police model policy that minimize the likelihood of an  
3           inaccurate identification.

4           (3) Composing the lineup so that the fillers generally resemble the  
5           eyewitness's description of the perpetrator, and so that the suspect does not stand out  
6           from the fillers.

7           (4) Using the appropriate number of fillers in a live and a photo lineup.

8           (5) Ensuring, when practicable, that a photograph of the suspect used in a  
9           photo lineup is contemporary.

10          (6) Presenting separate photo and live lineups when there are multiple  
11          eyewitnesses, ensuring the same suspect is placed in a different position for each  
12          identification procedure.

13          (7) Having the administrator seek and document a clear statement from the  
14          eyewitness, immediately after the eyewitness makes an identification in the  
15          eyewitness's own words, as to the eyewitness's confidence level that the person  
16          identified is the person who committed the crime.

17          (8) Adopting relevant practices shown to enhance the reliability of an  
18          eyewitness participating in a showup procedure, such as identifying the  
19          circumstances under which a showup is warranted, transporting the eyewitness to a  
20          neutral, non-law enforcement location where the detained suspect is being held,  
21          removing the suspect from the law enforcement squad car, removing restraints from  
22          the suspect when he is being observed by the eyewitness, and administering the  
23          showup procedure close in time to the commission of the crime.

24          (9) Where practicable, electronically recording the entirety of the photo and  
25          live lineup and the showup procedure either through video or audio, if video is not  
26          possible.

27          (10) Preserving photographic documentation of all live and photo lineup  
28          members, and showup suspects, documenting verbatim the descriptions provided by

1 the eyewitness of the perpetrator as well as the confidence statement made by the  
2 eyewitness during an identification procedure.

3 C. A video record of identification procedures shall be made. If a video  
4 record is not practical, an audio record shall be made. If neither a video or audio  
5 record are practical, the reasons shall be documented, and the lineup administrator  
6 shall make a complete written record of the lineup.

7 D. All written eyewitness identification policies of a criminal justice entity  
8 shall be made available to the public upon request.

9 E.(1) When a criminal justice entity fails to comply with Subsections A and  
10 B of this Section, any of the following remedies may apply:

11 (a) Evidence of failure to comply with any of the provisions of Subsections  
12 A and B of this Section shall be considered by the district court in adjudicating  
13 motions to suppress identification evidence.

14 (b) Evidence of failure to comply with any of the provisions of Subsections  
15 A and B of this Section shall be admissible in support of any claim of eyewitness  
16 misidentification, as long as such evidence is otherwise admissible.

17 (2) The court may instruct the jury that it may consider credible evidence of  
18 a criminal justice entity's compliance or noncompliance with the provisions of  
19 Subsections A and B of this Section in determining the reliability of eyewitness  
20 identifications.

21 (3) The court may permit expert testimony by the state or the defendant on  
22 the subject of eyewitness identification.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 582 Original

2018 Regular Session

James

**Abstract:** Provides relative to the adoption of policies by certain criminal justice entities with respect to eyewitness identification procedures.

Proposed law requires any criminal justice entity conducting eyewitness identification procedures to either adopt the International Assoc. of Chiefs of Police model policy on

eyewitness identification procedures or draft a policy for eyewitness identification procedures by Jan. 1, 2019, and to provide a copy of such policy to the La. Commission on Law Enforcement and Administration of Criminal Justice by Feb. 1, 2019. Further provides that all written eyewitness identification policies of a criminal justice entity shall be made available to the public upon request.

If the criminal justice entity drafts its own policy for eyewitness identification, proposed law provides that the policy shall, at a minimum, include the following standards or 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 International Assoc. of Chiefs of Police 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 and a photo lineup.
- (5) Ensuring, when practicable, that a photograph of the suspect used in a photo lineup is contemporary.
- (6) Presenting separate photo and live 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, as to the eyewitness's confidence level that the person identified is the person who committed the crime.
- (8) Adopting relevant practices shown to enhance the reliability of an eyewitness participating in a showup procedure, such as identifying the circumstances under which a showup is warranted, transporting the eyewitness to a neutral, non-law enforcement location where the detained suspect is being held, removing the suspect from the law enforcement squad car, removing restraints from the suspect when he is being observed by the eyewitness, and administering the showup procedure close in time to the commission of the crime.
- (9) Where practicable, electronically recording the entirety of the photo and live lineup and the showup procedure either through video or audio, if video is not possible.
- (10) Preserving photographic documentation of all live and photo lineup members, and showup suspects, documenting verbatim the descriptions provided by the eyewitness of the perpetrator as well as the confidence statement made by the eyewitness during an identification procedure.

Proposed law requires a video or audio recording of the eyewitness identification procedures to be made. If neither a video or audio record are practical, proposed law requires the reasons to be documented, and the lineup administrator to make a complete written record of the lineup.

Proposed law provides that when a criminal justice entity fails to comply with these provisions of proposed law, any of the following remedies may apply:

- (1) Evidence of such failure to comply shall be considered by the district court in adjudicating motions to suppress identification evidence.
- (2) Evidence of such failure to comply shall be admissible in support of any claim of eyewitness misidentification, as long as such evidence is otherwise admissible.

In addition, proposed law provides that the court may instruct the jury that it may consider credible evidence of a criminal justice entity's compliance or noncompliance with proposed law in determining the reliability of eyewitness identifications. Further provides that the court may permit expert testimony by the state or the defendant on the subject of eyewitness identification.

Proposed law provides legislative intent and definitions of certain terms for purposes of proposed law.

(Adds R.S. 15:479 - 481)