
DIGEST

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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)